

# BRIAN A. LEBRECHT

August 26, 2015

Via email (rule-comments@sec.gov)

U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

**Re: File No. S7-13-15**

I am writing to comment on the Securities and Exchange Commission's (the "Commission") proposal to amend its rules with respect to audit committee disclosures (the "Concept Release").

**1. Background.**

I am an attorney in private practice in Salt Lake City, Utah, and am licensed in both Utah and California. I previously served as the Chairperson of the Securities Law Section of the Utah State Bar and was a member of the Corporations Committee of the Business Law Section of the California State Bar. I am currently a shareholder and director at Clyde Snow & Sessions, PC. I am writing in my individual capacity and not on behalf of my law firm, any of its clients, or any of the organizations referenced above.

**2. The Commission should not make widespread changes to the audit committee reporting requirements.**

**(a) The Commission has failed to provide any rational basis for its proposal.**

The Commission's proposal to amend the audit committee reporting requirements is based on its belief that enhanced mandatory disclosures "may provide useful information to investors as they evaluate the audit committee's performance in connection with, among other things, their vote for or against directors who are members of the audit committee, the ratification of the auditor, or their investment decisions." The Commission cites an Audit Committee Collaboration by, among others, the Association of Audit Committee Members, Inc., whose President (in his personal capacity) posted the very first response in opposition to the Commission's proposal.

Although the Concept Release indicates that a number of companies voluntarily provide disclosure beyond that required under the existing rules, the Commission fails to quantify the degree to which companies either (i) voluntarily, or (ii) pursuant to some other obligation,<sup>1</sup> provide the disclosures that it proposes to mandate.<sup>2</sup>

The Commission fails to cite any particular ways in which investors or the markets have suffered under the current reporting requirements.

**(b) The Commission’s proposal undermines the important confidentiality of board discussions and the Business Judgment Rule.**

The list of audit committee obligations is long and, for the most part, reasonable and benefits all stakeholders (the companies, its board, the audit committee, and investors). Requiring issuers to report that their audit committee has fulfilled its obligations is fine, but requiring the audit committee to report details of its communications with the auditor and management acts as a roadblock to the objectives achieved by requiring certain communications: to increase communication between the groups.<sup>3</sup>

Further, all board members are protected by the Business Judgment Rule in the sense that some of their decisions will not create expected results. Requiring disclosure of details about communications with interested parties could undermine that doctrine and create liability for directors, which again, will have the effect of reducing communications.

**(c) The Commission’s proposal attempts to create mandated disclosure that is better governed by other agencies or organizations.**

The Concept Release highlights in several places where the NYSE and the PCAOB have either already implemented, or are considering, many of the same disclosure requirements.<sup>4</sup> Those organizations work directly with their constituents, and have a better feel for the demands and requests of the marketplace and the need for increased regulation and disclosure. These matters should be left to them.

**3. Some of the Commission’s proposals should be further considered.**

Notwithstanding my opinion that much of the Commission’s proposal will have a contrary effect on governance practices, and some of it is unnecessary, there are a few of specific proposals that I support.

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<sup>1</sup> For example, recognized exchange listing requirements. See footnote 25 of the Concept Release.

<sup>2</sup> The Commission does include a few results from the Audit Committee Transparency Barometer. See footnote 64 of the Concept Release.

<sup>3</sup> Question #17 of the Concept Release asks “[c]ould these potential disclosure chill communications between the audit committee and the auditor?” I believe the answer is “yes.”

<sup>4</sup> e.g. footnote 25 and Section IV.C. of the Concept Release.

**(a) Question #10. Are statements confirming that required communications have occurred helpful disclosure?**

Maybe. As I stated above, the obligations of the audit committee are, for the most part, reasonable and well thought out. Requiring the audit committee to confirm that it has fulfilled its obligations acts as a reminder to its members to make sure that they have, in fact, done so. The ultimate objective of the Commission is compliance, and anything that helps ensure compliance is positive.

**(b) Question #19. Should the audit committee report disclose the frequency with which it met privately with the auditor? Would confirmation that private conversations occurred be useful disclosure even if there are no disclosures about the topics discussed?**

No. This will create speculation that an increasing number of private conversations with the auditor suggests wrongdoing.

**(c) Question #45. Should the audit committee's report include information about the length of the audit relationship?**

Yes. I believe that disclosing how long the current audit relationship has existed is useful information, as is the length of time left until the auditor must be rotated off (if applicable).

**(d) Question #50. Would investors benefit from the audit committee disclosures being presented in one location? If so, where should the disclosures appear and how would investors benefit.**

Yes. Rule 407 of Regulation S-K disclosures should be included in registration statements on Form S-1 and Form 10, and related forms.

#### **4. Conclusion.**

The Commission's proposal goes too far, and is in effect a solution looking for a problem. Asking the audit committee to fulfil certain objectives is reasonable, but asking them to report on "how the audit committee executes its responsibilities<sup>5</sup>" goes too far. Much of the contemplated disclosures are better suited to the oversight and purview of other agencies or organizations.

Very truly yours,



Brian A. Lebrecht

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<sup>5</sup> See Concept Release, page 18, Section IV.