

P B T K

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Secretary, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

By e-mail to rule-comments@sec.gov

Re: File No. S7-13-15
Concept Release entitled *Possible Revisions to Audit Committee Disclosures*

Piercy Bowler Taylor & Kern, Certified Public Accountants, is pleased to have this opportunity to comment on the Commission's Concept Release (the Release) entitled *Possible Revisions to Audit Committee Disclosures* (Release No. 33-9862; 34-75344, File Number S7-13-15) issued July 1, 2015. Since our interest in the subject matter of the Release is only indirect, our comments are limited to the nonspecific and are, therefore, brief.

We wholeheartedly concur with the view held by many* that is apparently the underlying premise of the Release, *i.e.*, "that the Commission's disclosure rules for this area may not result in disclosures about audit committees and their activities that are sufficient to help investors understand and evaluate audit committee performance, which may in turn inform those investors' investment or voting decisions." It is quite palpable from the summary of current requirements in Section III of the Release how weak and inadequate the current requirements are with respect to that objective. Although we view the additional disclosure requirements under consideration in the Release, in general, as significant improvements over the *status quo*, we are compelled to observe that no matter how extensive they may be, enhanced disclosure requirements can only be a small step in the right direction. Requiring audit committees to disclose whether, and even the extent to which, their activities do or do not include certain process and procedures is a long way from requiring them to do anything.

Although we do not claim to have commissioned or even searched for any supporting research, we believe these disclosures, if required and made, will have little potential for changing behavior. This is because, absent any direct regulatory performance requirements, we do not believe it is likely that

* Perhaps most significantly, such views are set forth in the Audit Committee Collaboration paper entitled "Enhancing the Audit Committee Report, A Call to Action," issued jointly, November 20, 2013, by the National Association of Corporate Directors, Corporate Board Member/NYSE Euronext, Tapestry Networks, the Directors' Council, the Association of Audit Committee Members, Inc., and the Center for Audit Quality of the American Institute of Certified Public Accountants.

sufficient pressure will be brought to bear on audit committees to overcome the economic and psychological pressures on them to resist such behavioral changes. Absent any scalable minimum, regulatory, performance requirements investors and other financial statement users will continue to have no benchmarks against which to assess the quality of performance no matter how extensive these disclosures.

Moreover, since the issuance in 2004 by the Public Company Accounting Board (PCAOB) of its Auditing Standard (AS) No. 2 (now superseded by AS No. 5), the standards have expressly required auditors to evaluate the effectiveness of the audit committee's performance as part of internal control over financial performance without any objective regulatory criteria against which to make such an evaluation. As we pointed out to the PCAOB in the public comment process precedent to its adoption of AS No. 2, this puts auditors in somewhat of a circular conflict of interests situation, since Section 301 of the Sarbanes-Oxley Act of 2002 made audit committees responsible for the engagement, performance evaluation and retention of auditors. The introduction into the mix of scalable minimum regulatory performance requirements that could be used as objective benchmarks would serve well to alleviate that uncomfortable situation. In addition, such benchmarks would be in the best interests of audit committees and their members by enabling them to better manage the risk of criticism by setting reasonable goals and gauging their own performance.

It is relevant to the foregoing to consider that the suggestion that recent enhancements in auditors' responsibilities to communicate matters to audit committees (most significantly, AS No. 16), have added responsibilities for audit committees, as embodied in the Release and in other writings, is inherently inaccurate. As we all know, the PCAOB has authority only to regulate the activities of auditors, not audit committees. This reality is acknowledged in the last two paragraphs of Section IV.C, of the Release. To suggest that auditing standards adopted by the PCAOB have any significant effect on the responsibilities and behavior of audit committees is, in our opinion, an overstatement. We believe PCAOB standards are no more likely to alter audit committee behavior than enhanced disclosure requirements are.

We previously commented to the PCAOB on its then proposed AS No. 16 and again in our letter to the Commission dated September 28, 2012, with reference to its related File No. PCAOB-2012-01, that AS 16 inappropriately shifts primary responsibility from management to auditors to communicate to audit committees matters regarding the selection and identification by management of significant and critical accounting policies, estimates and significant unusual transactions. We believe the current project presents an excellent opportunity for the Commission to restore those responsibilities so as to reside with management, where they rightfully belong.

Although we acknowledge that enhanced disclosures such as those under consideration in the Release are a good idea, in general (even though, as we have said in the preceding paragraphs, we believe they should be accompanied by scalable minimum performance requirements), we believe their potential effectiveness for informing investors of relevant information would be greatly enhanced by moving them from the proxy statement to the annual report on Form 10-K, where we believe they have a substantially greater probability of being read.

As stated in Section I of the Release, "[t]he Commission has a long history of promoting effective and independent audit committees." The Release makes numerous references to the "responsibilities" of audit committees, but except for limited disclosure requirements summarized in Section III of the Release, the applicable rules and regulations, are at best, too few, hard-to-find, brief, vague and ineffective, with respect to such "responsibilities." Except in the event of Congressional intervention, nobody other than the SEC is in a position to correct this condition. Therefore, in our opinion, that it is now time for the Commission to exercise its authority and responsibility to control the activities of audit committees so as to better assure that audit committees effectively perform their vital oversight role "in protecting the interests of investors by assisting the board of directors in fulfilling its responsibility to oversee the integrity of a company's accounting and financial reporting processes and both internal and external audits."

Thank you for this opportunity to comment on the Release. We believe that serious consideration of these comments by the staff and the Commission would have the potential to substantially elevate the effectiveness of audit committee oversight.

We acknowledge our understanding that this letter will be made available for public viewing and printing. Please contact the undersigned at [REDACTED] or [REDACTED] if there are any questions about these comments.

Very truly yours,
Piercy Bowler Taylor & Kern, Certified Public Accountants



Howard B. Levy, Principal and
Director of Technical Services