

September 8, 2015

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

Via website submission: rule-comments@sec.gov

Re: File Number S7-13-15 *Possible Revisions to Audit Committee Disclosures*

To Whom It May Concern:

The American Bankers Association (ABA¹) appreciates the opportunity to comment on the Concept Release – *Possible Revisions to Audit Committee Disclosures* (CR). The CR seeks comment on a number of proposals that are intended to provide consistency in disclosure related to an audit committee's (AC's) oversight of the external auditor, the AC's process for appointing and retaining the auditor, and the qualifications of the audit firm and certain members of the related engagement team.

An effective audit committee is an essential component within a board of directors' fiduciary duties to its investors. The Sarbanes-Oxley Act of 2002 helped raise the importance of audit committees and this has been followed by increased focus by the banking industry, external auditors, and boards of directors on responsibilities of the AC. So, it is evident that the role of audit committees is taken very seriously in the industry. However, when we think about what is decision-useful for investors, we do not believe the CR will improve the body of disclosures that financial institutions are currently required to provide.

It is difficult to estimate how much of the material in the CR could be decision-useful for investors on a practical basis. Except in extraordinary situations, it is likely investors will require inordinate amounts of information (beyond those already provided on Form 14A) to base any educated judgment on the effectiveness of the audit committee. We also believe that readers of the information can easily reach inappropriate conclusions related to the AC and to the independent auditors based on the disclosures. In our view, much of the material is not appropriate for disclosure.

¹ The American Bankers Association is the voice of the nation's \$15 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$11 trillion in deposits and extend more than \$8 trillion in loans. Learn more at aba.com.

Effectively executing the duties of the AC requires an enormous amount of judgment. While disclosures addressing the judgments made by the AC are not impossible, they can be very difficult. For example, an audit committee's oversight of the independent auditing firm's examination of highly judgmental accounting estimates (especially those involving forecasts of the future) may follow the appropriate due diligence, yet, their due diligence may not preclude differences of opinion and subsequent restatement. Both existing² and new accounting standards are often not as clear as needed, resulting in differing interpretations.³ Disclosures relating to this effort could be misinterpreted and be viewed by others as a failure on the part of the audit committee, when, in fact, the audit committee performed appropriately. In other words, restatements can (and will) occur even under the most stringent governance process. It is questionable whether any amount disclosure can adequately forewarn investors before a restatement or satisfy them afterward.

As with any proposal to require additional information or procedures, cost-effectiveness must be the overriding principle that guides the Commission as it evaluates the issues discussed in the CR. While most investors subscribe to the notion that any additional information is desirable, the Commission must ask several questions:

1. Can the incremental information indicate whether the audit committee is diligent?
2. How much will the incremental information change investment decisions?
3. Is the incremental information redundant with information addressed elsewhere?

When we analyze these questions, which are discussed in more detail in the Appendix, we do not believe audit committee disclosures, absent a significant audit event such as a restatement or change in auditor (both of which are already required to be disclosed), will provide decision-useful information for investors. Nevertheless, if the Commission still intends to expand audit committee disclosures, we recommend adopting broad disclosure principles and objectives instead of specific points to address (the frequency of the audit committee meetings with the auditor is an example). We also believe these should be optional to registrants.

Requiring disclosures that focus on specific processes will result in boilerplate language that is insensitive to quickly changing risks and auditing needs. Conversely, broad principles will enable companies to communicate information that is more readily decision-useful to their investors. Voluntary disclosures can evolve and change, based on the issues faced by companies as well as the industry and economic climate in which they operate. Allowing disclosures to be voluntary, more importantly, will enable audit committees to provide disclosures based on their

² For example, the many derivatives-related restatements between 2000 and 2006 demonstrate that the standards are often not as clear as needed.

³ The significant changes in accounting under the new standards related to revenue recognition, lease accounting, loan and debt security impairment may also be fertile ground for further lack of clarity and possible inappropriate criticism of the audit committee.

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unique audit risks, in response to best practices of other companies, and in response to investors as they become more educated in the auditing process.

Thank you for your attention to these matters and for considering our views. Please feel free to contact me (mgullette@aba.com; 202-663-4986) if you would like to discuss our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Gullette". The signature is written in a cursive style with a large initial "M".

Michael L. Gullette

Appendix: Questions to Consider Prior to Finalizing Any Additional Audit Committee Disclosures

Question 1: Can the incremental information indicate whether the audit committee is diligent?

The CR is considering additional information related to the oversight of the auditor, including the appointment, compensation, and retention of the auditor. In addition, the CR considers whether additional information should be required, such as the nature and substance of the required communications between the auditor and the audit committee, including the frequency of meetings with the auditor and how it dealt with disagreements between company management and the auditor. While we understand that more information like this can be desirable, we foresee the disclosures to merely cause additional questions to be raised. In fact, for several key issues, we question whether any disclosure will be sufficient. For example, what level of detail will satisfy an investor that:

- The depth of discussion during meetings with the auditor was sufficient and that additional meetings were unnecessary? In other words, will frequency of meetings with the auditor (a proposed disclosure) be the accepted measure of quality?
- Disagreements between the auditor and company management are handled appropriately?
- The auditor was retained, though PCAOB inspection results show a high percentage of audit failures⁴ for the firm or for other audits within the company's industry⁵?
- The auditor was retained, though there was a restatement of the financial statements?⁶

These issues are sure to challenge audit committees (who must defend their diligence) and investors (who will evaluate those explanations). However, during an individual year, the vast majority of companies will face little risk that the disclosures will be questioned or challenged. Based on the text of the final regulation and the advice of legal counsel, disclosures for these companies will likely coalesce around similar language for all companies within specific industries. In the effort to attain consistency, such boilerplate language may unintentionally make the increased information less informative to investors than the current disclosures.

While an effective audit committee may limit the risk of restatement, it is not unreasonable for a company to restate its earnings even under such prudent governance. An effective audit

⁴ Given that auditing of estimates made in bank financial statements requires significant judgment, we believe the PCAOB term "audit failures" often is misleading and misunderstood.

⁵ We understand that PCAOB inspection results on an individual company's audits are not available for audit committees to take significant action on a timely basis.

⁶ We believe much of the same concern exists for many audit committees in which significant changes were made to assumptions made or methods used in certain accounting estimates, measurements, and methods that do not necessarily result in restatement.

committee may increase the chances that the auditing firm performs optimally over time, but it is not unreasonable for an auditing firm to perform sub-optimally on a specific audit⁷. Therefore, except for cases in which there is gross negligence, we believe that it will be very challenging for investors to evaluate whether the company's audit committee or auditors are diligent or effective.

Question 2: How much will the incremental information change investment decisions?

Considering that the effectiveness of a company's audit committee is rarely, if ever, a driver of its operating results, it is difficult for us to understand how the incremental information that is being considered will lead to a better allocation of capital. We believe that investors will tend to base their evaluations of audit committee governance on extraordinary circumstances, such as repetitive restatements or auditor changes (events that are already disclosed). Outside these events, it is difficult to imagine investment decisions being influenced by the vast majority of the proposed audit committee disclosures, whether considered individually or collectively. For example, the name of the lead engagement partner, the impact of multiple location audits, and the number of meetings held with the auditor can be nice to know. However, unless there is an extraordinary event, this information is essentially superfluous.

Question 3: Is the incremental information redundant with information addressed elsewhere?

ABA agrees that a specific location for audit committee disclosures would facilitate more meaningful review of such information. We believe key information contemplated in the CR is very similar to the information already reported on Schedule 14A. Such information should not be disclosed twice. Further, in order to avoid confusion among investors, such information should minimize redundancies related to information already disclosed, as well as information currently being considered by the Public Company Accounting Oversight Board (PCAOB)⁸. For example, a discussion of any audit quality indicators (AQIs) used by the audit committee in evaluating the services of the auditor can be very confusing if they are different from those AQIs contemplated by the PCAOB. We recommend, therefore, that deliberations related to this CR and the PCAOB proposal be conducted in parallel.

⁷ This may be due to turnover of specific key personnel of the auditor, though the problem may then be quickly rectified by the auditing firm through the reassignment of other staff members.

⁸ PCAOB Rulemaking Docket Matter No. 041 *Concept Release on Audit Quality Indicators*.