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September 8, 2015

Re: **Possible Revisions to Audit Committee Disclosures**
Release No. 33-9862; 34-75344; File No. S7-13-15

VIA E-MAIL: rule-comments@sec.gov

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Mr. Fields:

We are submitting this letter in response to the solicitation by the Securities and Exchange Commission (the "**Commission**") for comments on the Commission's concept release on possible revisions to audit committee disclosures (Release No. 33-9862; 34-75344; File No. S7-13-15) dated July 1, 2015 (the "**Release**").[1] We appreciate the opportunity to comment on the Release and the important issues it raises.

We support the Commission's efforts to increase the value of the audit committee report to investors, to enhance investor understanding of the audit committee's auditor oversight responsibilities and to improve audit quality. However, we also believe that, consistent with an effective public company disclosure regime that is grounded in providing material information to the reasonable investor, any proposed changes to the current audit committee reporting model, and the processes and interactions that may result from those changes, should be guided by the following core principles:

- Any mandated changes to the audit committee's role or report must be designed to provide material information needed by reasonable investors to make informed investment and voting decisions; and

- The anticipated benefits of implementing any proposed changes should outweigh the associated costs, including the risks of unintended, potentially adverse, consequences.

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[1] Possible Revisions to Audit Committee Disclosures, 80 Fed. Reg. 38995 (proposed July 1, 2015) (to be codified at 17 C.F.R. pt. 240).

In our view, the possible revisions to audit committee disclosures set forth in the Release depart from these principles in certain important respects and raise a number of significant concerns, including:

- immaterial and potentially misleading or confusing disclosures;
- risks to the quality of audit committee oversight of the auditor and to audit quality itself;
- promotion of an overly prescriptive, "check-the-box" approach to audit committee oversight of the auditor;
- additional strains on the limited time, attention and resources of already overburdened audit committees;
- expansion in length and complexity of the audit committee report, exacerbating the problem of "disclosure overload";
- chilling of communications between and among audit committees, auditors and management;
- heightened litigation exposure for audit committees and issuers; and
- substantially increased burdens and costs on issuers and their audit committees without commensurate benefits to investors, including higher compliance costs and potential filing delays.

We describe our concerns in greater detail below.

1. Information Disclosed Pursuant to Expanded Audit Committee Reporting Requirements May Not Be Material to Investors and May, In Fact, Mislead or Confuse Investors.

The concept of materiality is central to issuers' disclosure obligations under the federal securities laws. The general rule for determining the materiality of particular information is whether there is a substantial likelihood that a reasonable investor would have considered the information important in making her investment or voting decision. "Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."[2] In formulating the "total mix" standard, the U.S. Supreme Court refused to find that a fact is material just because a reasonable investor "might" consider it important, explaining that such a low standard of materiality poses the danger of too much disclosure, namely that "management's fear of exposing itself to substantial liability may cause it simply to bury the shareholders in an avalanche of trivial information—a result that is hardly conducive to informed decisionmaking."[3]

While we believe disclosure requirements must evolve over time, it is important that they do so in a manner that retains the focus on information that is material to a reasonable investor's ability to

[2] *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

[3] *Id.* at 448-49.

understand and evaluate a business. New disclosures should help investors make better-informed investment and voting decisions and not overwhelm them with extraneous information that can obscure what is material.

We are concerned that the proposed new disclosures do not appear to be based on any empirical evidence that the existing audit committee reporting model has been ineffective relative to the quality and utility of information available to investors. Despite suggestions that there is investor interest in greater transparency about audit committee activities, we believe there is little persuasive evidence specifically supporting the notion that any broad group of investors is seeking additional information on this subject, or that investors will actually find enhanced audit committee disclosures useful or will rely on them for making investment or voting decisions. The Commission concedes as much, acknowledging in the Release that "there appears to be limited research as to…whether and how such additional information impacts investors' investment or voting decisions."[4] Whether there is even market demand for this information remains an open question.[5] As lawyers who regularly advise issuers and others on their reporting and disclosure obligations, it is vanishingly rare, in our experience, that our public company clients or their audit committees receive questions or requests for additional information from investors about the audit committee's oversight of the auditor.

We have no doubt, however, that when the question is put to investors broadly, some will respond that they would indeed like the additional information discussed in the Release. We would ask the Commission to bear in mind that there is no cost to investors of replying to the question in the affirmative. And while we cannot exclude the possibility that there may in fact be an investor or group of investors who would actually find this information useful, the materiality inquiry is not based on the particular information preferences of a subset of investors, but on what a "reasonable investor" needs for decision-making purposes.

We are supportive of certain limited revisions to the current audit committee disclosure framework, such as updating the requirements to correct outdated references, to reflect current Public Company Accounting Oversight Board ("**PCAOB**") auditing standards and to make other conforming changes, which would promote more consistent audit committee reporting practices among companies and minimize possible confusion among investors and other users of audit committee reports.[6] We also support modest measures that are not qualitatively different from existing audit committee disclosure requirements, or are ministerial in nature, such as presenting all audit committee-related disclosures in one location;[7] providing a hyperlink to the audit committee charter when referenced;[8] and disclosing whether there is a policy relating to shareholder ratification of the auditor and the factors the board considered in establishing the policy.[9]

We have significant concerns, however, about more substantive revisions to the existing audit committee disclosure regime. The proposed changes appear to be driven in large part by the Commission's belief that providing additional disclosure about the audit committee's oversight of

[4] Release at 39000.

[5] *See id.*

[6] *See id.* at 39004 (Question 7).

[7] *See id.* at 39009 (Question 50).

[8] *See id.* at 39009 (Question 66).

[9] *See id.* at 39006-07 (Question 31).

the independent auditor could provide investors with "useful context for audit committee decisions" and could "enable investors to differentiate between companies based on the quality of audit committee oversight, and determine whether such differences in quality of oversight may contribute to differences in performance or quality of financial reporting among companies."[10] However, we question whether the potential new disclosures serve either of these objectives.

For example, we are skeptical that disclosure that goes beyond a statement that the required communications between the audit committee and the auditor have occurred—such as qualitative disclosures regarding the nature, substance or timing of such communications[11]—would help investors to make better-informed investment and voting decisions or to evaluate the quality of audit committee oversight, in part because such disclosure, considered in isolation and absent broader context regarding a company's unique set of facts and circumstances,[12] likely would not contain enough information to help investors make meaningful assessments and comparisons. Moreover, mandatory disclosure of these matters quite possibly could overstate the appearance of their significance, cause misunderstanding as to their magnitude or otherwise be difficult for investors to evaluate in proper perspective. For example, certain investors may misinterpret or over-react to discussion of these issues as indicative of a problem. The mere fact that the audit committee and auditor have spent substantial time on an issue, however, does not suggest it should be of particular interest to investors or that it has any independent significance. Other disclosures regarding the nature or substance of required audit committee-auditor communications could potentially compromise confidential or proprietary business information or implicate matters that are otherwise unsuitable for public disclosure.[13]

We are particularly concerned that requiring disclosure of potentially sensitive or contentious matters—specifically, disagreements between management and the auditor,[14] topics discussed during executive sessions between the audit committee and the auditor[15] and discussions about the results of the auditor's internal quality review and most recent PCAOB inspection[16]—could, without sufficient context (context that could, for a variety of reasons, be challenging to describe with material accuracy and completeness),[17] be misleading and serve to undermine investor confidence in the financial statements, the auditor or the quality and integrity of the audit process (even if there are caveats that such disclosure does not contradict the audit opinion). While cautionary language could be added to supply context and to counter unwarranted negative inferences, this would add to the length of disclosures and the density of information investors would need to sort through, and it might be difficult for investors to assess the additional context in any meaningful way.

The length of Commission filings such as annual reports and proxy statements has increased dramatically over the past decade, driving up the costs to investors of interpreting disclosure. Expanded audit committee-related disclosures consistent with those proposed in the Release

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[10] *Id.* at 39000.

[11] *See id.* at 39004 (Questions 11, 15 and 16).

[12] *See id.* at 39009 (Question 62).

[13] *See id.* at 39004 (Question 17).

[14] *See id.* at 39004 (Question 12).

[15] *See id.* at 39005 (Question 19).

[16] *See id.* at 39005 (Question 20).

[17] *See id.* at 39009 (Question 62).

would add further to the length of audit committee reports and proxy statements, potentially diluting their impact and effectiveness. The additional information (while possibly of interest to some) may obscure material information and inundate investors with data that may be of limited practical use. To the extent additional disclosures are immaterial, excessive or incomplete, they could potentially mislead or confuse investors and contribute to a state of "information overload," which the Commission has identified as a pressing concern and is addressing as part of its ongoing disclosure effectiveness project.

In addition, we are concerned that the Commission's narrow focus in the Release on the audit committee's oversight of the independent auditor may be misleading and result in increased investor confusion over the role of the audit committee. Mandating enhanced disclosures solely with respect to the audit committee's oversight of the auditor (while certainly an important responsibility of the audit committee) risks overemphasizing the significance of this responsibility and minimizing other, equally or more important audit committee activities, such as oversight of financial reporting and internal controls, oversight of the internal audit function, and risk (including cyber-risk) assessment and oversight. We believe any changes to the audit committee reporting model should narrow, or at least not expand, the "expectations gap"[18] that some have expressed exists between audit committees and investors regarding the role of the audit committee. However, it is uncertain, in our view, whether the Commission's proposals will bridge the gap.

We believe potential additional disclosures in a number of other areas raise similar concerns as to the materiality and possibly misleading or confusing nature of such disclosures. For example:

- We believe that disclosure of the frequency of executive-session meetings between the audit committee and the auditor[19] could be misleading and potentially misinterpreted by investors absent the broader context of a particular company's unique background and circumstances.[20] The number of executive-session meetings, by itself, has no intrinsic value for investors and cannot be properly evaluated without in-depth knowledge and understanding of a company and the particular facts and circumstances it is facing at the time. Investors might speculate that a higher number of executive-session meetings one year as compared to previous years or relative to other companies is evidence of financial reporting problems, for example, or draw other unwarranted inferences based on this number, when in fact it could reflect nothing more than the personal preferences of one or more audit committee members, or something equally benign (and of no serious interest to investors).

- With respect to identification of the name of the engagement partner in the audit committee report,[21] we believe that disclosing a name, by itself, lacks context and would be of little value to investors. Moreover, we are concerned that naming a single individual could be confusing, as audits are conducted by teams, not individuals. Numerous other professionals are involved in the audit in addition to the engagement partner, and identifying only the partner could mislead investors by seeming to overstate the partner's level of responsibility relative to that of the audit firm, distorting the partner's role in the audit, how much they rely on others, the complexity of the audit process and the

[18] *Id.* at 39003.

[19] *See id.* at 39005 (Question 19).

[20] *See id.* at 39009 (Question 62).

[21] *See id.* at 39007 (Question 34).

importance of firm quality controls (in addition to the skills of particular individuals) in assuring audit quality. Consistent with the foregoing reasons, we would not support disclosure about the audit committee's involvement in the selection process for the engagement partner.[22]

- Similarly, we question whether identification of the names of other participating audit firms (if any) in the audit committee report[23] serves a useful disclosure purpose or is likely to be of more than marginal interest to investors. To the extent the identification of other audit participants appears to understate the full responsibility taken by the signing firm for the audit, such identification may actually be misleading without accompanying language to explain the relationship of the signing firm to the other audit participants and their respective roles and responsibilities relative to the audit.[24] Such additional language would add to the length and complexity of disclosures without any clear corresponding benefit to investors, potentially distracting investors from more important information and reducing the probability that the audit committee report would even be read.

- The PCAOB has recently proposed to require disclosure of the audit engagement partner and other participating audit firms in a separate filing with the PCAOB on Form AP.[25] We believe that disclosure of this information on Form AP implicates the same concerns expressed above and elsewhere in this letter as disclosure in the audit committee report and would recommend that such information not be required to be disclosed in any location.[26]

- We believe that disclosure of auditor tenure[27] should continue to be a matter of discretion as it is unclear what inferences can be correctly drawn from the length of an auditor's tenure. Academic research is mixed as to whether short- or long-term audit relationships are more likely to adversely affect audit quality, and we are not aware of any conclusive evidence that such information would help investors make informed decisions. Conversely, mandatory disclosure of auditor tenure may imply, without proper justification, that there is some analytical basis for interpreting such information or otherwise suggest a greater significance for this information than is warranted. We also note that information on auditor tenure over the last two decades is already publicly available to investors via the Commission's EDGAR system.

Finally, we would recommend that any additional required audit committee disclosures, including in the audit committee report, not be included in Securities Act registration statements because, for various reasons described above, we do not believe such disclosures materially inform investors' investment decisions.[28] We would also recommend that any additional required audit committee-related disclosures be treated as information "furnished" to, rather than "filed" with, the Commission (and thus receive the same "furnished" treatment that is now provided in connection

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[22] *See id.* at 39007 (Questions 43 and 44).

[23] *See id.* at 39008 (Question 48).

[24] *See id.* at 39009 (Question 62).

[25] PCAOB Release No. 2015-004 (June 30, 2015).

[26] *See* Release at 39007 (Question 37).

[27] *See id.* at 39008 (Question 45).

[28] *See id.* at 39009 (Question 51).

with the audit committee report).[29] The Commission traditionally has treated submissions as "furnished" rather than "filed" in situations where the disclosure is not conducive to certification, and in order to encourage more robust disclosure where registrants have latitude in the substance and quantity of disclosure. Here, we believe treating additional disclosures as "furnished" would also assist in deterring frivolous Securities Act lawsuits based on the new disclosure.

2. Expanded Audit Committee Reporting Requirements May Not Improve, and May Even Degrade, Audit Quality.

There is widespread consensus that audit quality has improved since the enactment of the Sarbanes-Oxley Act of 2002 and the related implementation of regulations and standards adopted by the Commission and the PCAOB. Public company audit committees are currently subject to a high degree of regulation imposed by Commission and PCAOB rules and stock exchange listing standards, as are the audit firms they oversee. Extensive requirements govern, among other matters, the contents of audit committee charters, heightened independence criteria and qualifications of audit committee members, financial literacy and expertise considerations and key audit committee responsibilities, including oversight of the independent auditor. With respect to auditor oversight, in particular, there are a variety of rules already in place relating to communications between the audit committee and the auditor, auditor independence, fee disclosure and evaluation of the auditor. In short, we believe the Commission's current audit committee reporting model works well and has been effective in terms of promoting audit quality, providing investors with sufficient useful information to understand the audit committee's auditor oversight responsibilities and enabling the audit committee to act in the best interest of shareholders.

We are concerned that the proposed new disclosures do not appear to be based on any empirical evidence that the existing audit committee reporting model has been ineffective relative to audit quality, or that expanding audit committee disclosures can or will improve audit performance and quality. Moreover, it is unclear how additional prescriptive disclosures consistent with those suggested in the Release will "enable investors to differentiate between companies based on the quality of audit committee oversight, and determine whether such differences in quality of oversight may contribute to differences in performance or quality of financial reporting among companies."[30]

Rather, the nature of the proposed changes tends to promote a checklist mentality or "one-size-fits-all" approach, which would deprive audit committees of discretion and judgment to oversee the auditor and manage the auditor relationship as they see fit.[31] An overly prescriptive, checklist mentality that fosters too much focus on meeting certain reporting "targets" and not enough on holistically achieving and maintaining audit quality would ultimately diminish governance and degrade audit quality. Because the quality of audit committee oversight and audit quality itself are functions of more than a checklist, we believe any system that attempts to substitute a limited and prescribed set of reporting requirements (which, because they are not tailored to a company's unique characteristics and circumstances, may bear little or no relation to the specific issues confronting the company) for the informed business judgment of the company's audit

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[29] *See id.* at 39009 (Question 52).

[30] *Id.* at 39000.

[31] *See id.* at 39009 (Question 57).

committee would be counterproductive to audit quality and could expose a company to unnecessary costs and risks.

In addition, audit committees have many responsibilities and a limited amount of time (perhaps less time now than they have ever had). The additional time audit committee members would necessarily have to spend on reporting and disclosure matters would detract from their normal auditor oversight functions and other substantive duties. This could have the unintended consequence of spreading the audit committee's attention too thin, which could negatively impact audit quality.[32] Audit quality could be further compromised in the event there is increased reluctance on the part of highly qualified individuals to serve on audit committees as they consider the potential exposure and additional demands on their time that would follow in the wake of additional mandatory disclosure requirements and related expansion of their roles.[33]

Naming the engagement partner

Similarly, requiring disclosure of the name of the engagement partner could have a chilling effect on the willingness of highly qualified audit firm partners to serve as engagement partners, due to potential liability and reputational risks. Liability concerns would also likely drive audit committees to reject out of hand otherwise highly qualified engagement partner candidates with the slightest taint on their records (such as association with a restatement, accounting-related litigation or negative PCAOB inspection results), even if the partner was not at fault. At the same time, requiring disclosure of the name of the engagement partner could lead some audit committees to resist the appointment of a younger or less well-known engagement partner despite such person's skills and readiness for promotion. A more limited talent pool could potentially increase overall audit risk, be detrimental to audit quality and lead to increased costs.[34]

Furthermore, we are not aware of any compelling evidence to support the notion that disclosing the name of the engagement partner will lead to greater professional accountability and higher audit quality.[35] First, we believe that engagement partners are sufficiently accountable at present. Second, if there is any doubt as to whether engagement partners are intrinsically motivated to do their best work (and we do not believe any such doubt would be warranted), we believe there are multiple safeguards already in place to ensure engagement partners operate with a high sense of accountability. These checks and balances include independent partner review, the audit firm's internal quality review program, PCAOB inspections, potential Commission review, audit committee oversight, the prospect of civil litigation and reputational considerations.

Audit quality indicators

We believe it is too early to require disclosure about audit quality indicators or other quantitative metrics that attempt to assess audit quality.[36] As the Commission notes in the Release, there are numerous ongoing efforts to identify ways to assess audit quality, and a number of organizations (including the PCAOB, the International Auditing and Assurance Standards Board and the Center

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[32] *See id.* at 39009-10 (Question 69).

[33] *See id.*

[34] *See id.* at 39007 (Question 34).

[35] *See id.* at 39007 (Question 35).

[36] *See id.* at 39006 (Question 28).

for Audit Quality) have initiated projects related to audit quality indicators.[37] To date, however, there has not been universal agreement on a definition of audit quality, an audit quality framework or the most relevant indicators of audit quality, and the causal relationship of audit quality indicators to audit quality has not been established. The PCAOB acknowledges that, "at this stage, the [audit quality indicator] project poses many questions, from the appropriateness or operation of particular proposed indicators to the way the information they generate might be obtained and used."[38] In light of this uncertainty, we believe it would be premature for the Commission to require disclosure about audit quality indicators or similar metrics at this time.

If the Commission decides to require this disclosure, we would reiterate concerns, similar to those expressed above, that audit quality indicators may promote a "check-the-box" approach to audit committee oversight of the auditor, in which matters of judgment, skepticism and discernment that are difficult or impossible to measure could become overshadowed by less important, but quantifiable, indicators.[39] Such an approach could be counterproductive to overall audit quality. Not all the factors that drive audit quality can easily be measured, and we question the extent to which audit quality is a measurable concept by any metric.

Further challenges are presented by the difficulty of tailoring audit quality indicators to a company's unique characteristics and circumstances and the limited utility this information would have when not considered together with qualitative context. Investors would have to be provided with certain contextual information to properly use and understand audit quality indicator data, in the absence of which such data could be ambiguous or even misleading.[40] As we discussed above, such context could be difficult to describe with material accuracy and completeness, and would add to the size and complexity of already-lengthy disclosure documents, further exacerbating the problem of "disclosure overload."

We believe it is also worth noting that the use of audit quality indicators by audit committees would put additional strains on already overburdened audit committee members, potentially causing them to be stretched too thin and diluting their ability to serve effectively.[41]

3. **Expanded Audit Committee Reporting Requirements May Chill Communications between the Audit Committee and the Auditor.**

We are concerned that expanded audit committee disclosures consistent with those proposed in the Release may have, as an unintended consequence, a tendency to undermine the confidentiality of discussions between and among audit committees, auditors and management.[42] Confidentiality fosters candid and forthright communications. In the absence of confidentiality, discussions between audit committees and auditors, and the audit committee's own internal deliberations, are likely to be inhibited and become more scripted, with adverse consequences for audit quality. By contrast, we believe optimizing conditions for robust, candid and unconstrained communications among the audit committee, the auditor and management is likely

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[37] *Id.* at 39006.

[38] PCAOB Release No. 2015-005 (July 1, 2015) at 3.

[39] *See* Release at 39009 (Question 57).

[40] *See id.* at 39009 (Question 62).

[41] *See id.* at 39009-10 (Question 69).

[42] *See id.* at 39004 (Question 17), 39009 (Question 57) and 39009-10 (Question 69).

to yield higher audit quality than would the expanded audit committee disclosures proposed in the Release.

4. Expanded Audit Committee Reporting Requirements May Heighten Litigation Exposure for Audit Committees and Issuers.

Another significant concern raised by the proposed new disclosures is the potential of heightened litigation exposure for issuers as well as for individual audit committee members, which could make it more difficult for companies (particularly smaller public companies) to recruit and retain professionally qualified individuals to serve on audit committees.[43] Expanded disclosures may change the perception of the audit committee's responsibilities, and the audit committee's litigation risk is likely to increase accordingly. The additional language in audit committee reports could increase the number of incidents and the costs of litigation for audit committees and issuers by, for example, providing new opportunities for assertions of omissions and inadequacies in audit committee oversight or other challenges to audit committee judgment.

Expanded reporting requirements could result in variation in the interpretation and explanation of the required disclosures across registrants and weaken comparability of disclosures among issuers, at least initially. The audit committee and management might be concerned about investors' perceptions when the disclosure in their audit committee report is different in content from the disclosure in other companies' audit committee reports. Investors, for their part, may focus unduly on such variability and inappropriately compare issuers based on these distinctions, attaching greater significance to them than is deserved. For example, investors may make incorrect inferences about the quality of the audit committee's oversight of the auditor or about the quality of the audit itself based on the length and particular contents of the audit committee report.

Over time, the language in audit committee reports likely would evolve to become more standardized (especially for companies in similar industries or audited by the same firm) in response to Commission comments and perhaps litigation experience, and the increased uniformity would almost certainly decrease their informational content for investors.[44]

Additionally, audit committees may be inclined to over-report rather than under-report to minimize retrospective second-guessing by investors or regulators and to provide some cover in the event a potential risk materializes. Audit committees may be incentivized to disclose matters not primarily based on their own professional judgment as to what is best for investors but to be consistent with disclosures included in the audit committee reports of other issuers in order to avoid the potential litigation risk of perceptions of a less complete discussion.

The obvious risk to audit committees of providing litigants and regulatory bodies with additional opportunities for retrospectively second-guessing audit committee judgments could lead to defensive, self-protective language in audit committee reports, which would diminish their utility.

While we agree that an auditor's demonstrated independence, objectivity and professional skepticism is an important criterion for evaluating the auditor's performance, we do not support disclosure about whether and how an audit committee assesses, promotes and reinforces the

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[43] *See id.* at 39009-10 (Question 69).

[44] *See id.* at 39009 (Question 60).

auditor's objectivity and professional skepticism.[45] We believe such disclosure would not be useful to investors and could raise investor expectations that audit committees will be guarantors of auditor objectivity and skepticism. As a result, audit committee members could be at risk in the event of a subsequent audit failure that occurs due to a perceived lack of auditor objectivity or skepticism.

We are also concerned about the potential for increased litigation against audit committee members and issuers associated with disclosure of the name of the engagement partner in the audit committee report.[46] Audit committees might face scrutiny by investors and the public regarding whether to change engagement partners when another audit client receives negative publicity arising from accounting matters, whether or not the engagement partner was at fault, and might face heightened litigation risk to the extent they do not.

5. Expanded Audit Committee Reporting Requirements Would Impose Additional Burdens and Costs on Issuers and Their Audit Committees Without Commensurate Benefits to Investors.

For the reasons we discuss in detail above, we believe expanded reporting requirements would adversely impact the current audit committee reporting model with no clear evidence that the Commission's goals as set forth in the Release will be achieved. We do not believe the expanded disclosures would help investors make better-informed investment and voting decisions, improve audit quality or otherwise deliver significant value for investors. Instead, such disclosures would result in increased burdens and costs on issuers and their audit committees that would substantially outweigh any incremental informational benefit to investors. Such burdens and costs include increased compliance costs to manage the expanded reporting requirements; potential filing delays as additional disclosures would require more extensive review by audit committees, management and legal counsel; the diversion of audit committees' limited time, attention and resources from more productive activities; the expansion in length and complexity of the audit committee report, which could potentially inundate investors with information that may be too time-consuming to parse, increasing the risk that it will be ignored altogether; and other unintended, potentially serious, consequences such as the chilling effect on audit committee communications and the potential for heightened litigation exposure for audit committees and issuers.[47]

As a result, we do not believe that expanded audit committee-related disclosures consistent with those suggested in the Release should be required for any issuers. If, however, the Commission were to move forward with any of the concepts in the Release, we would recommend:

- excluding smaller reporting companies,[48] emerging growth companies[49] and foreign private issuers[50] from any additional audit committee disclosure requirements;

[45] *See id.* at 39005 (Question 24).

[46] *See id.* at 39007 (Question 42).

[47] *See id.* at 39009 (Question 67) and 39009-10 (Question 69).

[48] *See id.* at 39009 (Question 54).

[49] *See id.*

[50] *See id.* at 39009 (Question 63).

- not imposing an obligation to update the expanded disclosures for changes between proxy or information statements;[51] and
- not imposing a requirement to provide the expanded disclosures in an interactive data format.[52]

In each case, we believe the compliance burdens and costs would be onerous and would outweigh any incremental informational benefits to investors.

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We appreciate the opportunity to participate in this process, and would be pleased to discuss our comments or any questions the Commission or its staff may have, which may be directed to Joseph A. Hall of this firm at [redacted].

Very truly yours,

Davis Polk & Wardwell LLP

[51] *See id.* at 39009 (Question 64).

[52] *See id.* at 39009 (Question 65).