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September 8, 2015

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

Re: Concept Release No. 33-9862; File No. S7-13-15 – Possible Revisions to Audit Committee Disclosures

Dear Mr. Fields:

The Association of Corporate Counsel, its Corporate and Securities Law Committee and the 100 general counsel signing this letter are pleased to have the opportunity to present comments on Securities Exchange Commission ("Commission") Concept Release No. 33-9862, Possible Revisions to Audit Committee Disclosures ("Concept Release").

The Association of Corporate Counsel is a global bar association representing over 40,000 attorneys within the in-house legal departments of more than 10,000 corporations and private-sector organizations in over 85 countries. Our Corporate and Securities Law Committee has more than 7,700 attorneys, a significant number of which specialize in corporate governance issues and regularly advise corporate boards of directors and management regarding their obligations under securities laws. These members have a particular interest in shaping the dialogue around required corporate disclosures, as do many of our members who are general counsel and corporate secretaries of their companies.

ACC strongly supports audit committees that offer voluntary, particularized disclosures regarding their important role in overseein the financial reporting process.[1] If properly tailored to the circumstances in which the company operates,

[1] See, e.g., Audit Committee Collaboration, "Enhancing the Audit Committee Report, A Call to Action," (Nov. 20. 2013), available at: http://thecaq.org/reports-and-publications/enhancing-the-audit-committee-report-a-call-to-action/enhancing-the-audit-committee-report-a-call-to-action ("A Call to Action"). This collaborative effort of corporate governance stakeholders called for audit committees to voluntarily consider changes to reporting and communication with shareholders to strengthen confidence in the audit committee's role of overseeing a company's financial statement process. Studies have shown that companies are heeding this call. For example, a 2014 examination of Fortune 100 proxy statements found that 46% of companies specifically stated their belief that the choice of the independent auditor was in the best interests of the company and/or shareholders – u from just 4% in 2012. See, "Let's talk: governance. Audit committee reporting to shareholders 2014

such disclosures may be quite helpful to investors and other stakeholders. However, we have concerns about the type of mandatory disclosures contemplated in the Concept Release. In this letter, we identify four principles that should guide the Commission as it considers whether to require additional audit committee disclosures. *First*, the Commission should carefully examine whether mandating additional disclosures merely reinforces the dangers posed by "disclosure overload", thereby unnecessarily adding to the already heavy workload of the audit committee. *Second*, if the Commission were to move forward in this context, a principles-based framework should drive the development of any additional disclosure requirements, rather than less flexible, prescriptive or rules-based approaches. *Third*, in promulgating any rules, the Commission must engage in a cost-benefit analysis, particularly weighing the specter of additional officer and director liability against the questionable utility to investors of one-size-fits-all mandatory disclosures. And *finally*, the Commission should safeguard the confidentiality of communications between the audit committee and the independent auditor to avoid hindering open communications and the exercise of the audit committee's supervisory authority.

I. The Commission should eliminate, not reinforce, "disclosure overload."

"Disclosure overload" and the increased responsibilities of the audit committee are two corporate governance trends that should be considered in tandem with respect to the proposals in the Concept Release. Stakeholders in effective corporate governance have agreed that the volume of information required in mandated corporate disclosures is often duplicative, suffers from too much boilerplate, and is sometimes of questionable value to investors.[2] In a thoughtful response to this growing consensus, the Commission has initiated efforts to examine how disclosures can be improved, with a goal of reducing disclosure overload and making disclosures more meaningful and informative.

Specifically with respect to financial accounting, both the Public Company Accounting Oversight Board (PCAOB) and Financial Accounting Standards Board (FASB) have ongoing projects that are likely to result in additional information about financial audits and financial statements being made available to the investing public. The PCAOB efforts may also provide additional information about the independent auditor.[3] To avoid aggravating the current state of disclosure overload,

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proxy season update," EY Center for Board Matters (August 2014). Available at: http://www.ey.com/Publication/vwLUAssets/ey-lets-talk-governance-august-2014/$FILE/ey-lets-talk-governance-august-2014.pdf .

[2] See, e.g., "Disclosure Effectiveness: Remarks Before the American Bar Association Business Law Section Spring Meeting," Keith F. Higgins, Director Division of Corporation Finance (April 14, 2014). Available at: http://www.sec.gov/News/Speech/Detail/Speech/1370541479332 .

[3] The PCAOB has proposed changes to the content of the auditor's report, including a requirement that the report discuss certain matters addressed during the audit that, in the auditor's judgment, involved the most difficult, subjective, or complex judgments or posed the most difficulty in obtaining

we urge the Commission to consider any additional audit committee disclosures in the context of the additional information to be provided as a result of PCAOB and FASB initiatives. Additional disclosures of the type proposed in the Concept Release may prove to be redundant or not as useful compared to the information that will be disclosed under the PCAOB and FASB initiatives.

Against this backdrop of disclosure overload, there have also been significant changes in the role and responsibilities of audit committees since passage of the Sarbanes-Oxley Act in 2002. The potential disclosures discussed in the Concept Release focus on the audit committee's oversight of the independent auditor, but many audit committees have much broader responsibilities in monitoring the financial reporting and risk management functions of a corporation, includin cybersecurity, global compliance, and reputational risk. Corporate governance stakeholders already worry that the growing role of the audit committee is making it more difficult for companies to recruit qualified directors to serve on that committee.[4] Increasing the workload of the audit committee through added disclosure requirements – not to mention the added liability potential that comes along with that disclosure – could further deter qualified candidates from serving on audit committees.

II. Principles-based frameworks should drive the development of any new disclosure requirements.

Public companies come in varying sizes and levels of complexity. Audit committees likewise have differing scopes of responsibilities and they perform those responsibilities using different methods. Recognizing that the Concept Release is an initial exploration of requiring additional audit committee disclosures, we are nonetheless troubled by the detailed nature of some of the questions in the Concept Release. They suggest the possibility of a rules-based approach to these disclosures, where companies are required to disclose certain facts about their audit committee proceedings, regardless of whether those facts will provide meaningful information to investors. If the Commission were to prescribe such a one-size-fits-all approach for audit committee disclosures, the result would likely result in boilerplate disclosure. Therefore, any additional audit committee disclosures should be based on a flexible, principles-based approach.

If the goal is to provide more meaningful information around the audit committee's oversight of the independent auditor, audit committees must be allowed leeway in

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sufficient appropriate audit evidence or in forming an opinion on the financial statements. The PCAOB is also considering whether to name the audit engagement partner in the auditor's report or accompanying forms.

[4] See, "Audit Committee Bulletin," EY, Issue 5, October 2013, available at: http://www.ey.com/Publication/vwLUAssets/EY-Audit-Committee-Bulletin-Issue-5-October-2013/$FILE/EY-Audit-Committee-Bulletin-Issue-5-October-2013.pdf . See also, "Expanding Liability for Audit Committee Members," by Eugene R. Licker and Amanda J. Sherman, New York Law Journal (Online), June 2, 2014.

determining what information their investors need to consider. If the Commission moves ahead with this proposal, it should develop guiding principles that audit committees can use to determine what information they should disclose. Rather than listing the specific information sought, the Commission could state the objectives of the additional disclosures and permit audit committees to use their own judgment to determine what information will fulfill the stated objectives. The Commission could provide guidance regarding the categories of concerns to be addressed and the kinds of information that may be useful in addressing those concerns. Employing this flexible approach not only helps avoid the check-the-box boilerplate that is prevalent in corporate disclosures, but also encourages audit committees to be thoughtful in considering their reporting and communication to shareholders.

III. The Commission must carefully weigh the specific benefits of any new disclosure requirements against their cost and the danger of increased liability for officers and directors.

The Concept Release contains many questions relating to specific details about audit committee proceedings. Any potential benefit of providing this sort of specific, yet incremental information about the proceedings of the audit committee must be weighed against the very real costs and risks of additional disclosure. We urge the Commission to conduct a full cost-benefit analysis of any new disclosure requirements. Given that smaller companies are disproportionately affected by disclosure requirements, the SEC should also conduct a regulatory flexibility analysis of requiring additional audit committee disclosures.

Beyond the issue of cost, we question the utility of some of the more specific questions about audit committee proceedings in the Concept Release. For example, Question 19 asks whether the audit committee should disclose the frequency with which the committee met privately with the auditor. Question 22 asks whether disclosures about how the audit committee considered the results of PCAOB inspection reports on the independent auditor should be made. We question whether investors will find disclosures on these topics to be truly meaningful. Knowing how many times the audit committee met separately with the independent auditor does not reveal much about the committee's level of oversight. Similarly, information about whether the audit committee reviewed a PCAOB inspection report does not necessarily provide information about how the committee oversees the audit of that specific company. Because the circumstances of each company, each audit committee, and each independent auditor can vary so significantly, there is likely a wide variety of practices among audit committees on these specific issues. Requiring disclosure about these practices could lead to useless comparisons between audit committees, and these comparisons can be used as fodder in shareholder litigation.

In addition, the Commission must shield the actual legal rules governing audit committee functions from being undermined by unrelated disclosure requirements.

Requiring disclosure about activities audit committees are not required to undertake could create an implication in the investing public's mind that audit committees should be undertaking such activities, regardless of actual legal requirements. For example, there is no requirement for the audit committee to review an independent auditor's PCAOB inspection report. The consequences of such additional disclosure could be increased liability for audit committee members, with the disclosures of such specifics (or lack thereof) fueling frivolous shareholder litigation. Requiring such details about the specific proceedings of the audit committee is unwise, especially when audit committees are not required to consider these issues.

IV. The Commission must safeguard the confidentiality of communications between the audit committee and the independent auditor.

In addition to questions relating to specific audit committee proceedings, the Concept Release also contains a number of questions that seek to disclose the content or substance of communications between the audit committee and the independent auditor. Currently, the audit committee report must confirm that the communications required by PCAOB AS 16 have occurred between the audit committee and auditor. The Concept Release seeks comments as to whether the disclosures about communications should go further, both in scope and depth. For example, Questions 11, 12, and 14 ask for comments on whether and to what extent the substance of communications between the audit committee and the independent auditor should be disclosed with respect to various topics.

We strongly oppose any required disclosure of the substance of communications between the auditor and audit committee. Disclosing the substance and nature of the communications between the auditor and the audit committee will chill open communication between the committee and the auditor. Both parties must be able to freely raise sensitive topics – knowing that these communications may end up in publicly disclosed documents will necessarily lead to caution when discussing important financial reporting issues. Indeed, disclosures including the substance of the required communications could be difficult to make without implicating confidentiality concerns of the company. For example, AS 16 requires a discussion of audit strategy. Such a discussion could involve non-public confidential information about the company. Other matters discussed with the auditor – such as liability reserves – could implicate issues subject to the work product doctrine. Disclosing the content of these communications could subject a company to arguments that the work product doctrine was waived through public disclosure. Crafting language to meet the disclosure requirement while protecting sensitive company information would likely be burdensome and not the best use of audit committee time. Any additional disclosures regarding the responsibilities of the audit committee should therefore not include the content or substance of communications with the independent auditor.

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Thank you for the opportunity to comment on the Concept Release. We would welcome the opportunity to discuss the issues raised further. Please feel free to contact us, if there are further questions.

Sincerely,

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