SOCIETY
of Corporate Secretaries
& Governance Professionals

September 8, 2015

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

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

Dear Mr. Fields,

The Society of Corporate Secretaries and Governance Professionals (the "Society") appreciates the opportunity to provide comments on the U.S. Securities and Exchange Commission's (the "SEC" or "Commission") concept release regarding possible revisions to audit committee disclosures (the "Concept Release").

The Society was founded in 1946 and is a professional membership association of more than 3,200 corporate secretaries, in-house counsel, and other governance professionals who serve approximately 1,600 entities, including 1,000 public companies of almost every size and industry. Society members are responsible for supporting the work of corporate boards of directors and their committees and the executive management teams of their companies regarding corporate governance and disclosure. Our members generally are responsible for their companies' compliance with the securities laws and regulations, corporate law, and stock exchange listing requirements.

Summary

We commend the Commission for its continued attention to matters affecting investors and SEC registrants and appreciate the extraordinary amount of work and priorities on its plate. Our members are acutely aware of the vital roles played by an audit committee and the independent auditor. The Society agrees that an audit committee "plays an important 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."[1]

The rigorous work of an audit committee does not lend itself easily to a standardized disclosure regime, and we are concerned that many of the potential disclosures in this Concept Release advance solutions to problems that either do not exist or are not as prevalent as some

[1] Concept Release, page 6.

trade or interest groups have suggested. [2] Society members routinely engage and discuss disclosures with the largest institutional investors around the globe. In the main, our members do not report expressions of much, if any, interest on the part of these investors in the kind of disclosures addressed in the Concept Release. We believe this is borne out, in part, by the historically high levels of support for registrant proposals to ratify audit committee selection of the independent auditor. Moreover, voluntary disclosures in registrants' audit committee reports have increased in recent years and have provided additional insight into the work of the audit committee, suggesting that shareholder engagement in this area has been successful. The Concept Release acknowledges this trend but nonetheless suggests a multitude of detailed, mandatory disclosures that we believe would discourage—rather than encourage—such voluntary disclosure.

In this letter we address several of the Requests for Comment included in the Concept Release. Informing our specific comments are the following three general principles that reflect the Society's approach to any new mandated disclosure the Commission considers.

First, we believe that mandatory disclosure should be first and foremost principles-based. Under a principles-based approach, mandatory disclosure rules should start by laying out the key objectives of good disclosure in the subject area and then provide guidance explaining the objective and relating it to some common examples.[3] "While rules are sometimes unavoidable, the intent is not to try to provide specific guidance, or rules, for every possible situation."[4] The Commission has embraced principles-based disclosure successfully in a number of rules, including those pertaining to MD&A and CD&A. Principles-based disclosure also furthers disclosure that is material and meaningful to investors but not an invitation for intrusive micromanagement. For this reason, we would not support additional mandatory disclosures relating to, for example, disclosure of the substance of communications between an audit committee and the independent auditor[5] and specific topics discussed during such sessions,[6] including the independent auditor's internal quality review and most recent Public Company Accounting Oversight Board (the "PCAOB") inspection.[7]

Second, we believe that materiality should be the essential predicate of mandatory disclosure. Information is material if "there is a substantial likelihood a reasonable investor would consider it important" in making a voting or investment decision.[8] Setting the standard of materiality "unnecessarily low," creates the risk that a registrant and its management may be "subjected to liability for insignificant omissions or misstatements," and that "management's fear

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[2] See *Enhancing the Audit Committee Report: A Call to Action* (November 20, 2013), available at http://thecaq.org/reports-and-publications/enhancing-the-audit-committee-report-a-call-to-action. As noted, therein, during the 2012 and 2013 proxy seasons, the pension fund of the United Brotherhood of Carpenters wrote letters to a number of companies seeking additional audit committee disclosures.

[3] See, e.g., John White, *The Principles Matter: Options Disclosure* (Sept. 11, 2006); John White, *Principles Matter* (Sept. 6, 2006); Robert H. Herz, *Remarks Before the Financial Executives International Current Financial Issues Reporting Conference* (Nov. 4, 2002).

[4] Robert H. Herz, *Remarks Before the Financial Executives International Current Financial Issues Reporting Conference* (Nov. 4, 2002).

[5] Concept Release, pages 31-34.

[6] Concept Release, page 34-35.

[7] Concept Release, pages 35-37.

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

of exposing itself to substantial liability may cause it to simply bury shareholders in an avalanche of trivial information – a result that is hardly conducive to informed decision-making."[9] Indeed, materiality has the salutary effect of alleviating disclosure overload. For this reason, we would not support additional mandatory disclosures relating to, for example, the frequency of meetings between a committee and the independent auditor,[10] whether and how the committee assesses and reinforces an independent and professional skepticism,[11] the committee's involvement in approving the auditor's compensation, [12] and requests for proposals.[13]

Third, we believe that the benefits of mandatory disclosure should outweigh the costs. Mandatory disclosure that imposes additional, unwarranted costs on registrants, exacerbates information overload, or chills communications between the parties subject to the disclosure does not help registrants or investors. We have welcomed efforts by the Commission to focus on disclosure effectiveness and rationalize existing disclosure requirements. While we understand that disclosure effectiveness does not entail only reducing existing disclosure requirements, we are concerned that the Concept Release is antithetical to the focus on disclosure effectiveness. For this reason, we would not support additional mandatory disclosures, relating to, for example, the substance of communications between an audit committee and the independent auditor,[14] the occurrence of communications between an audit committee and the independent auditor regarding internal quality review and PCAOB inspection reports,[15] and identification of the audit engagement partner and other members of the engagement team.[16]

In this letter, we elaborate further on these three general principles and submit that many of the topics for which comments are requested are problematic when so considered. More specifically, for the reasons described in more detail below, we submit that:

1. Current SEC and exchange listing disclosure requirements sufficiently convey that audit committees are having appropriate and relevant communications with the independent auditor.

2. Mandatory disclosure of the substance of communications between an audit committee and the independent auditor could have detrimental consequences.

3. Mandatory disclosure of the frequency of meetings between an audit committee and the independent auditor would not be helpful to investors, is potentially misleading, and could lead to "one size fits all" practices.

4. Mandatory disclosure of the occurrence of communications between an audit committee and the independent auditor regarding internal quality review and PCAOB inspection report results would not be helpful to investors.

[9] *Id.* at 448-49.
[10] Concept Release, pages 34-35.
[11] Concept Release, page 38.
[12] Concept Release, page 40.
[13] Concept Release, page 40-41.
[14] Concept Release, pages 31-34.
[15] Concept Release, pages 35-37.
[16] Concept Release, pages 42-45.

5. Mandatory disclosure of whether and how an audit committee assesses, promotes, and reinforces the independent auditor's objectivity and professional skepticism is likely to be vague and unhelpful to investors.

6. Any mandatory disclosure requirements relating to auditor selection or retention should be principles-based to accommodate registrant-specific facts and circumstances and should focus on a description of the material factors considered rather than a discussion of the analysis of those factors.

7. Additional mandatory disclosure of the "nature of the audit committee's involvement in approving the auditor's compensation" is immaterial and would not be helpful to investors.

8. Until there is a broader consensus as to the appropriate type and use of Audit Quality Indicators, the Commission should not require their disclosure.

9. Mandatory disclosure about requests for proposals for the independent audit is immaterial and would not be helpful to investors and could result in unwarranted inferences about an audit committee's evaluation of the independent auditor.

10. Voting on the ratification of the independent auditor should continue to be considered a "routine matter" for purposes of New York Stock Exchange Rule 452.

11. Mandatory Registrant identification and disclosure of the audit engagement partner and other members of the audit engagement team is not likely to be useful to investors and may in fact be misleading and impose additional burdens and costs on registrants.

12. Any mandatory disclosure requirements relating to the audit committee's selection of the engagement partner should be principles-based and focus on a description of the material factors considered rather than a discussion of the analysis of those factors or any one partner's attributes versus another partner.

13. Mandatory disclosure of auditor tenure could misleadingly imply SEC acceptance of an otherwise unproved correlation between auditor tenure and audit quality.

Audit Committee Oversight of the Auditor

In the Concept Release, the Commission requests comment on potential additional disclosures about the frequency and nature of communications between a registrant's audit committee and the independent auditor.

Current SEC and Exchange Listing Disclosure Requirements Sufficiently Convey that Audit Committees are Having Appropriate and Relevant Communications with the Independent

Auditor.[17]

Current PCAOB and SEC rules prescribe the minimum communications between an audit committee and the independent auditor. Item 407(d)(3) of Regulation S-K requires the Audit Committee to state, over the signature of its members, whether it has discussed with the independent auditors the matters required by AU 380 (superseded by PCAOB Auditing Standard No. 16 ("AS 16")). AS 16 requires extensive communications between the audit committee and the auditor. This includes, but is not limited to, an overview of the overall audit strategy, including significant risks, and significant changes to risks or strategy; the auditor's evaluation of the quality of the registrant's financial reporting; the use of specialized skills, internal auditors, or other third parties in conducting the audit; any difficult or contentious matters; accounting policies and practices, estimates, and significant unusual transactions; and other matters arising from the audit that are significant to the oversight of the registrant's financial reporting process.

We agree that Item 407(d)(3) should be updated to reference AS 16 rather than AU 380. However, we do not believe that expanding the current disclosure requirements to prescribe disclosure of whether the audit committee has had communications beyond AS 16 would provide material information to a registrant's shareholders. We see no reason to require statements to that effect as they would simply add yet more boilerplate to Exchange Act reports. As reflected in the policy goals underlying the Commission's ongoing disclosure effectiveness project, we believe that there should be no additional disclosure requirements that are not anchored in a clear materiality analysis and demonstrated demand from a wide range of shareholders.

Companies listed on national stock exchanges have appropriately been the focus of numerous new standards applied to audit committees in the years following the adoption of the Sarbanes-Oxley Act, including audit committee independence, regulation and disclosure of non-audit services, financial expertise, and procedures for the receipt and treatment of complaints and concerns on financial reporting matters. For these companies, stock exchange listing standards already impose additional extensive requirements for audit committee communications with the outside auditor. For example, the New York Stock Exchange ("NYSE") listing standards require that the audit committee meet separately with the registrant's outside auditor. A registrant listed on the NYSE must also have a written charter that charges the committee with oversight of the auditor's qualifications, performance, and independence; requires that that the audit committee meet with the auditor to review annual and quarterly financial statements and accompanying Management Discussion and Analysis disclosures; and review a report by the auditor describing the audit firm's internal quality control procedures, any material issues raised by the most recent internal control review or peer review, or by any investigation by governmental or professional authorities, in connection with one or more independent audits conducted by the audit firm, and steps taken to respond to such concerns. This charter is readily accessible to investors.

We are unaware of concerns expressed by investors or other constituencies about any systematic issues with audit committees failing to discharge their duties in a manner required by applicable rules and listing standards. In the Concept Release, the Commission appears to acknowledge as much, but nonetheless poses the question whether it would serve any other purpose to require additional disclosures of the communications between auditors and audit

[17] Concept Release, pages 28-29.

committees beyond those already required, including the audit committee's disclosures of the nature and substance of communications and the audit committee's considerations of matters discussed. We do not believe that such additional disclosures would serve useful purposes, but rather believe that they could have detrimental effects beyond adding to mounting disclosure overload in Exchange Act reports.

Mandatory Disclosure of the Substance of Communications Between an Audit Committee and the Independent Auditor Could Have Detrimental Consequences.[18]

If the Commission were to impose new disclosure requirements relating to the nature and substance of communications between an audit committee and the independent auditor, we believe such requirements could have an adverse effect on the communications between an audit committee and the independent auditor. We believe it would also have an adverse effect on the nature and quality of disclosures to shareholders. More specifically, new disclosure requirements like those suggested in the Concept Release could:

1. <u>Undermine the purpose of AS16 in that it would result in disclosure driving the substance of communications, rather than the reverse</u>: When it adopted AS 16, the PCAOB indicated that AS 16 "is intended to improve the audit by fostering constructive dialogue between the auditor and the audit committee about significant audit and financial statement matters."[19] The PCAOB encouraged candid, two-way communication that is "tailored to the circumstances and informative, rather than 'boiler-plate' or standardized."[20] Rather than communications incidental to the audit, AS 16 "requires the auditor to communicate the audit strategy and results of the audit to the audit committee in a timely manner and prior to the issuance of the auditor's report to provide an opportunity for the audit committee and the auditor to take appropriate action to address the matters communicated."[21]

   Requiring public companies to disclose the nature and substance of communications required by AS 16 undermines the intent of encouraging effective two-way communication between audit committees and auditors. This communication is intended to improve the audit and, ultimately, support the independent auditors' report on the financial statements and effectiveness of internal control over financial reporting. Prior to the release of audited financial statements, audit committee discussions about other matters, such as accounting policies and estimates, may (and frequently do) involve subjective or nuanced considerations that would be difficult if not impossible to describe with material accuracy and completeness in disclosure that would be useful to investors. Discussions of some matters, such as developments involving significant audit risks, could involve facts that are not ripe for public disclosure, or reflect sensitive business issues such as impending corporate transactions, or proprietary plans and strategies. For all of these reasons, a requirement to disclose the substance of audit committee deliberations would move those deliberations away from an open and candid two-way

[18] Concept Release, pages 31-34.
[19] *PCAOB Release No. 2012-004, page 3 (August 15, 2012).*
[20] Id.
[21] Id. at page 4.

communication, and toward a more limited and prescribed set of standard "discussion points" to support its public disclosures. In other words, disclosure would increasingly drive the substance of such deliberations, when the reverse should be the case. This inverted focus would undermine the effectiveness of current required communications and call into question the integrity of the process for an effective audit of the financial statements.

2. Chill audit committee and auditor communications: Compelled disclosure of the nature and substance of required or other types of communications between an audit committee and the independent auditor could dissuade committee members from raising issues or relevant considerations that could involve sensitive or proprietary information, or reflect corporate developments that are unripe for public disclosure. Disclosure at this level of detail is not only inconsistent with AS16, as discussed above, but also calls into question the fundamental purpose of the requirement that listed company audit committees meet in executive sessions with the independent auditors. As contemplated by the *1999 Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees*, which was a precursor to the more extensive exchange listing requirements regarding audit committees, the audit committee/independent auditor executive session requirement was specifically designed to promote open, regular, frank, and confidential dialogue to position the audit committee to utilize the knowledge of the outside auditors in assessing internal controls, management, the internal auditor, and the impact of each on the quality and reliability of the financial statements. If the nature and substance of those communications were to be disclosed, such disclosure could discourage direct and candid discussions in executive sessions.

3. Encourage boilerplate disclosures: If the Commission were to impose new requirements to provide detailed disclosure of the nature and substance of communications, we are concerned that the resulting disclosure would devolve to standard or boilerplate language that is not meaningful. It would be difficult to categorize and describe accurately the discussions among audit committee members into clear-cut "factors" that were material to a particular determination. For example, in evaluating the performance of the auditor, committee members often make a personal judgment based on their overall experience in determining whether they have confidence in the firm going forward. To classify those types of discussions would be difficult, particularly because each committee member may have approached this issue from his or her own perspective, and considered different types of concerns or prior experiences. Any attempt to describe these types of discussions in a manner that is not misleading could result in disclosure that is too vague to be helpful to investors.

Mandatory Disclosure of the Frequency of Meetings Between an Audit Committee and the Independent Auditor Would Not Be Helpful to Investors, Is Potentially Misleading, and Could Lead to "One Size Fits All" Practices.[22]

We do not believe that additional disclosure on the frequency of meetings would be material to investors. The number of times that an audit committee meets with the independent

[22] Concept Release, pages 34-35.

auditor in private should vary depending on the circumstances of a given registrant, and could range from the minimum number of meetings required by applicable rules and listing standards, to numerous meetings that could be made necessary by particular developments or issues. Moreover, in our experience, as the responsibilities of audit committees have increased, it is the length of meetings between an audit committee and the independent auditor that has increased, more than the number of meetings.

Further, we believe that the disclosure of the number of such meetings could be potentially misleading to investors. If a registrant's audit committee met privately with the auditor four times one year, then 10 times the next, investors might inaccurately speculate on the reasons, such as an impending transaction or an issue with financial reporting.

Finally, we are concerned that disclosure of the frequency of meetings could lead to "one size fits all" governance guidelines applied by proxy advisors and other third parties, guidelines that emphasize a quantitative assessment of audit committee performance rather than an approach that takes into account the complexity of audit committee responsibilities. We believe this would be detrimental to shareholders. For example, proxy advisory firms could conclude that because the SEC requires such disclosure the disclosure is therefore material and the proxy advisory firm could thus adopt standards prescribing a minimum number of meetings between an audit committee and the independent auditor each year. Such standards could have negative consequences, since the number of meetings may legitimately vary at a given registrant from year to year, and because any "ideal" number of meetings should also vary depending on the size and circumstances of the registrant, its governance structure, and possibly its industry. To illustrate, some committees hold two or more meetings (combination of telephonic and in-person) before each earnings press release, earnings call and filing of the Form 10-Q or 10-K, whereas other committees arrange their meeting content and timing to cover all of the necessary and desired review and discussions in one meeting. We do not believe that companies that hold one meeting should be effectively penalized for holding one meeting rather than two or more in this context.

Mandatory disclosure of the Occurrence of Communications Between an Audit Committee and the Independent Auditor Regarding Internal Quality Review and PCAOB Inspection Report Results Would Not Be Helpful to Investors.[23]

While we believe that it is appropriate for the PCAOB and other groups to encourage robust communications between an audit committee and the independent auditor about internal quality reviews, peer reviews, or PCAOB inspection results, we do not believe that required disclosure that the communications have occurred would be helpful or material to investors. For the reasons addressed above, compelling disclosure of the details of such discussions could result in partial, misleading disclosures, compromise confidential or proprietary information (including confidential PCAOB inspection results), and chill open and candid discussions between an audit committee and the auditor.

[23] Concept Release, pages 35-37.

Mandatory Disclosure of Whether and How an Audit Committees Assesses, Promotes, and Reinforces the Independent Auditor's Objectivity and Professional Skepticism Is Likely to be Vague and Unhelpful to Investors.[24]

We agree that an audit committee should promote an objective and professionally skeptical auditor, but we do not believe that the means of doing so are easily captured in meaningful disclosure. A properly functioning audit committee that takes its role and that of the auditor seriously, and acts in a manner that encourages rather than discourages questions and a reasonable level of skepticism, reinforces such values. How this is done is not a check-the-box exercise, nor is it easily described or meaningfully captured in disclosure to investors, other than to say that it is being done. Any disclosure on the subject is likely to be vague and unhelpful to investors.

Audit Committee Retention of the Auditor

In the Concept Release, the Commission requests comment on potential additional disclosures concerning the actions an audit committee takes in reaching a decision about which independent auditor to select for the upcoming fiscal year's audit.

Any Mandatory Disclosure Requirements Relating to Auditor Selection or Retention Should be Principles-Based to Accommodate Registrant-Specific Facts and Circumstances and Should Focus on a Description of the Material Factors Considered Rather Than a Discussion of the Analysis of Those Factors.[25]

As the Concept Release indicates, voluntary disclosure concerning auditor selection and retention has increased.[26] The Concept Release further indicates that the voluntary disclosures vary among registrants based on registrant-specific characteristics. We recognize that consistency in this area may be helpful to investors, but we believe that an appropriate principles-based approach to these disclosures would allow registrants the flexibility to tailor disclosure appropriately to their own facts and circumstances.

Any recommendation for disclosure should be principles-based and focused on a description of the material factors considered by the audit committee when evaluating or selecting the auditor, and not require a discussion of the audit committee's analysis of those factors. For example, the audit committee could disclose that it conducts an annual evaluation of the auditor and describe the factors that the audit committee considered, such as the auditor's historical and recent performance on the registrant's audit, the extent and quality of the auditor's communications with the audit committee, qualifications of the audit firm (such as geographical reach of the firm's practice, industry or sector specific expertise and its depth of understanding of the registrant's businesses), appropriateness of fees, etc. This disclosure would amply demonstrate the robustness of the audit committee's oversight, without providing immaterial process-related details as to how the actual assessment was implemented. This approach also

[24] Concept Release, page 38.
[25] Concept Release, pages 38-41.
[26] Id. citing Audit Committee Collaboration, *Enhancing the Audit Committee Report, A Call to Action*, (Nov. 20, 2013) and Center for Audit Quality and Audit Analytics, *2014 Audit Transparency Barometer* (Dec. 2, 2014)]

addresses our concern that disclosure of the audit committee's underlying analysis of the factors it considered could not possibly capture all material aspects of the committee's consideration, and could have a chilling effect on audit committee communications and conduct by exposing audit committees' business judgment to inappropriate scrutiny that lacks proper context. As we discuss further below, we do not support including "audit quality indicators" as part of any required disclosure.

Additional Mandatory Disclosure of the "Nature of the Audit Committee's Involvement in Approving the Auditor's Compensation" is Immaterial and Would Not Be Helpful to Investors.[27]

We do not believe that additional disclosure about the "nature of the audit committee's involvement in approving the auditor's compensation" is material or helpful to investors. After Sarbanes-Oxley, listing standards were amended to require audit committees to be directly responsible for the compensation of any registered public accounting firm engaged by the registrant. Registrants are already required to disclose independent auditor fees for audit, audit-related and non-audit services, as well as an audit committee's preapproval policies for these services. These registrant disclosures frequently relate to and are presented in the context of an audit committee's evaluation of the independent auditor's independence and objectivity. It is unclear what material, much less meaningful, information additional disclosure requirements like those suggested in the Concept Release would convey. Moreover, Society members have not generally seen demand from investors, particularly institutional investors, for such disclosure.

Until There is a Broader Consensus as to the Appropriate Type and Use of Audit Quality Indicators, the Commission Should Not Require Their Disclosure.[28]

The Concept Release acknowledges that there are "numerous ongoing efforts to identify ways to assess audit quality," noting projects by the PCAOB, International Auditing and Assurance Standards Board ("IASB") and the Center for Audit Quality ("CAQ") in this area.[29] In fact, in discussing what it refers to as "other AQI Projects," the PCAOB identifies more than ten separate projects globally that aim to improve transparency about audit quality.[30] These projects are in various stages of development and reflect different approaches to the issue of promoting audit quality. As the CAQ states in its white paper, "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 how and to whom they should be communicated."[31]

Moreover, there are significantly divergent views on the potential usefulness of audit quality indicators, given the inherent limitations in the use of quantitative data that are not necessarily comparable across audit firms or across audit engagements or meaningful without context to understand the differences.[32] At this stage, requiring or even encouraging disclosure

[27] Concept Release, page 40.
[28] Concept Release, pages 39-40.
[29] Concept Release, page 39.
[30] See PCAOB Release No. 2015-005, *Concept Release on Audit Quality Indicators* (July 1, 2015), at 31-34.
[31] See Center for Audit Quality, *CAQ Approach to Audit Quality Indicators* (April 2014) (available at http://www.thecaq.org/docs/reports-and-publications/caq-approach-to-audit-quality-indicators-april-2014.pdf?sfvrsn=2), at 1.
[32] See PCAOB Release No. 2015-005, *Concept Release on Audit Quality Indicators* (July 1, 2015), at 7.

of an audit committee's assessment of audit quality using audit quality indicators places undue emphasis on this emerging concept before any such metrics or indicators have proven reliable or effective for evaluating auditor performance.

Accordingly, until there is a broader consensus as to the appropriate use of audit quality indicators and what any such audit quality indicators should be, it is premature for the Commission to consider imposing disclosure requirements relating to audit quality indicators. We recommend that the Commission actively monitor developments relating to the PCAOB proposal and other such projects, to provide more time for the Commission, as well as registrants, to evaluate audit quality indicators as they evolve.

Mandatory Disclosure about Requests for Proposals for the Independent Auditor is Immaterial and Would Not Be Helpful to Investors and Could Result in Unwarranted Inferences About an Audit Committee's Evaluation of the Independent Auditor.[33]

We do not believe that disclosure concerning requests for proposals for audit services is appropriate or even material or helpful to investors. Most issuers design their RFP process to be confidential. Confidentiality helps preserve the integrity of the RFP process. In our view, issuers should be reticent to disclose the nature of any RFP in detail as doing so would undermine this confidentiality. Additionally, an RFP is generally a preliminary step in the process for selecting the independent auditor and may not in fact result in a change in auditor. In addition, disclosure about requests for proposals could result in unwarranted inferences about the audit committee's evaluation of the current auditor. We are likewise concerned that a disclosure requirement implies a Commission preference for periodic RFPs as a "best practice," which in our view suggests a back door to mandatory retendering, a topic beyond the scope of the Concept Release and one that the Society does not support.

Different audit committees use different processes for determining whether to select a new auditor. If a new auditor is selected, a discussion of factors for choosing the new auditor (such as the scope and complexity of the audit or the new auditor's industry expertise) would be sufficient to enable investors to assess the audit committee's oversight of the auditor selection process; details of the selection process itself, such as a request for proposals, would only add immaterial information. Moreover, Society members have not generally seen demand from investors, particularly institutional investors, for such disclosure.

Voting on the Ratification of the Independent Auditor Should Continue to be Considered a "Routine Matter" for Purposes of New York Stock Exchange Rule 452.[34]

Although the list of non-routine matters that are not appropriate for broker discretionary voting was expanded in 2009, 2010 and again in 2012, the SEC and NYSE have consistently deemed auditor ratification to be routine under NYSE Rule 452 ("Rule 452"). We believe that this treatment continues to be appropriate and avoids increased costs for companies and shareholders.

[33] Concept Release, pages 40-41.
[34] Concept Release, page 42.

When addressing the issue in 2009, the SEC acknowledged concerns raised by commenters about the costs to companies that would arise from an elimination of routine matters.[35] Specifically, without routine matters on the ballot that would enable broker discretionary votes to be counted towards a quorum, it may be difficult for corporations (especially those with a large retail investor base) to establish a quorum for their annual shareholder meeting.[36] At the time, such efficiency concerns were avoided because routine matters like auditor ratification remained subject to broker discretionary voting, and, in fact, many companies added an auditor ratification vote to their proxies following the amendments in 2009 for the purpose of using broker discretionary votes to ensure that a quorum would be obtained. A change to the treatment of auditor ratification under Rule 452 would likely mean that the cost of obtaining a quorum absent broker discretionary voting would substantially increase for a significant number of companies, particularly mid and small-cap companies.[37]

More fundamentally, we believe that there is little evidence to suggest that broker discretionary voting on auditor ratification inappropriately disenfranchises shareholders or is the subject of widespread investor criticism. This is borne out by the exceptionally high vote percentage auditor ratification receives each year, which we believe is consistent with the conclusion that auditor ratification is also treated as a routine, uncontested matter by investors. A recent study unequivocally shows this phenomenon, further proving that auditor ratification is considered a routine matter by investors.[38] The study analyzed 6,373 shareholder votes between January 2012 and September 2013 and showed that almost 98% of votes cast on average were in favor of auditor ratification. In almost 30% of these cases, vote support was at least 99.5%, an unprecedented level of almost unanimous support on the proposal. There is no other stockholder or management proposal that consistently gets such support.

Accordingly, we believe there is no need to change the treatment of auditor ratification for purposes of Rule 452 at this time.

Auditor Qualifications

In the Concept Release, the Commission seeks input on possible additional disclosure about key auditor participants, related audit committee considerations, and auditor tenure.

Mandatory Registrant Identification and Disclosure of the Audit Engagement Partner and Other Members of the Audit Engagement Team is Not Likely to Be Useful to Investors and May In Fact

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[35] See Release No. 34-60215, *Order Approving Proposed Rule Change, as modified by Amendment No. 4, to Amend NYSE Rule 452 and Corresponding Listed Company Manual Section 402.08 to Eliminate Broker Discretionary Voting for the Election of Directors*, 74 FR 33293 (July 1, 2009).

[36] Under state law, the standard for establishing a quorum for the conduct of business at a shareholder meeting is often that a majority of the shares entitled to vote are present in person or by proxy. Broker discretionary votes are counted for quorum purposes, as long as there is at least one routine item to be voted upon at the meeting for which brokers can exercise discretionary voting power.

[37] Of course, if management's auditor ratification proposal were subject to a counter-solicitation by a shareholder, that proposal would not be considered routine under current Rule 452.

[38] See Audit Analytics, *Auditor Ratification: Shareholders Appear Content* (Oct. 21, 2013), available at http://www.auditanalytics.com/blog/auditor-ratification-shareholders-appear-content/.

Be Misleading and Impose Additional Burdens and Costs on Registrants.[39]

We do not believe that issuer identification and disclosure of the engagement partner and other members of the audit team is useful for investors and we are concerned that such disclosure would likely mislead or confuse investors about the engagement partner's role in the audit process. Among other things, it is the audit firm that is engaged by the audit committee, rather than the individual partner, and the firm is responsible for conducting the audit of the registrant's financial statements and signs the audit report that is disclosed to shareholders. Publication of the name of the individual partners of the firm who are involved in the audit would be inconsistent with this fundamental principal and could create confusion about who is responsible for performing the audit.

The audit of a public company involves extensive work by multiple parties, including those within the audit firm itself, and the public company's management and financial reporting team. The audit itself is also the product of the audit firm, not the engagement partner, and is subject to the firm's quality control standards. Disclosing the identity of the engagement partner could have the unintended consequence of significantly overemphasizing the role of that individual in the execution and results of the audit. Moreover, there could be some other unintended detrimental consequences, such an when an audit firm rotates an audit partner for personal or other reasons that are unassociated with an individual registrant's audit, which could be misinterpreted by investors as implying that there are problems with the audit process or with the registrant's prior financial reports.

In addition, any benefit resulting from publication of the information would be significantly outweighed by the associated burdens, liabilities, and costs to provide the information. The costs and burdens would be especially concerning if new disclosure requirements—either in a registrant's disclosure or in the independent auditor's report—resulted in the need for registrants to obtain and file the formal consent of those named as experts. Such disclosure also may raise issues of registrant and auditor liability for any material errors or misstatements and could subject such individuals to liability under Securities Act Sections 11 and Section 12(a) (2), as well as increase their potential liability under Exchange Act Section 10(b) and Rule 10b-5. In this particular respect, the potential benefits of identifying and disclosing the engagement partner and other members of the audit engagement team are far outweighed by the potential liabilities.

There are also numerous other practical, logistical and timing issues and corresponding increased costs that would result if engagement partners and audit participants were required to provide their consent to be named in an auditor's report. These issues and costs, which we discussed in our 2014 letter to the PCAOB on its proposal to disclose names certain participants in the audit report,[40] would be even more significant and complicated when a registrant is seeking to file a Securities Act registration statement subsequent to the date of a recent auditor's report and include:

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[39] Concept Release, pages 42-45.

[40] See http://pcaobus.org/Rules/Rulemaking/Docket029/047c_SCSGP.pdf,

1. the challenge of obtaining in a timely fashion consents from engagement partners that are unavailable for any reason, including but not limited to resignation or retirement from the audit firm, or because they have rotated off the engagement;

2. the challenges of obtaining at all, or at least obtaining in a timely fashion, consents from numerous non-U.S. audit participants in different jurisdictions, each of which may have different procedures and legal requirements associated with giving consent for an SEC filing;

3. the potential that individual participants in the audit may insist upon extensive sub-certification processes internally and possibly from third parties prior to providing any consent, which could delay an offering and increase overall costs.

Any new consent requirements have the significant potential of disrupting the timing of securities offerings. Timing delays in any securities offering can result in missed opportunities and significant costs for companies and their security holders. We believe that these costs ultimately would be borne by the very investors to whom the Commission seeks to provide new disclosure.

Finally, we are concerned that a requirement to identify public company engagement partners will have a chilling effect on the willingness of audit firm partners to serve as engagement partners for public companies facing business, financial, legal, or regulatory challenges that may result in stock price declines and resulting shareholder litigation. This is due to the risk of being improperly associated with an adverse event (e.g., a restatement) and the unintended professional and personal consequences of such improper association. If this is the case, such companies would therefore potentially face increased audit costs and fewer audit firm and engagement partner candidates who are willing to take on clients that may be in most need of quality assistance. We also believe it is possible that a small group of engagement partners who are willing to be named, and who have not been associated with a registrant that has restated its financials, will emerge and may engage in individual self-promotion and in some cases even seek a premium for being willing to be named, similar to the phenomenon that impacted the investment analyst industry in the 1990's .

Society members have not generally seen demand from investors, particularly institutional investors, for disclosure about the engagement partner, other members of the audit team and other firms involved in the audit, and we do not believe that disclosure of the names, background, and experience of these individuals or firms is material to the investment and voting decisions of shareholders. We are also concerned that time spent by the audit committee on these disclosures may distract from the committee's important oversight tasks. Ultimately, we recommend that such information not be required to be disclosed by issuers. We note that the PCAOB has proposed that auditors file a Form AP, *Auditor Reporting of Certain Audit Participants*, [41] with the PCAOB, which would include the name of the engagement partner and other participants in the audit.

[41] PCAOB Release No. 2015-004, June 30, 2015.

Any Mandatory Disclosure Requirements Relating to the Audit Committee's Selection of the Engagement Partner Should Be Principles-Based and Focus on a Description of the Material Factors Considered Rather Than a Discussion of the Analysis of Those Factors or Any One Partner's Attributes Versus Another Partner.

For the reasons indicated above, we do not support a requirement that a registrant identify and disclose the audit engagement partner and other members of the audit team. If, however, the Commission decides to propose such disclosure, we believe that any disclosure should be principles-based and limited to a discussion of the primary factors that are considered in selecting the engagement partner but not a prescriptively detailed description of the audit committee's analysis of those factors or any one partner's attributes versus another partner. For example, the audit committee could disclose that it considers various enumerated factors when evaluating a potential engagement partner, such as the partner's prior audit experience, industry knowledge, communication skills, etc. This disclosure would amply demonstrate the robustness of the audit committee's evaluation process while at the same time preserving an appropriate level of confidentiality to foster candid communications and a robust selection process. This approach also addresses our concern that disclosure of the audit committee's underlying analysis of the factors it considered could be inherently incomplete and misleading, and could have a chilling effect on audit committee communications and conduct by exposing audit committees' business judgment to inappropriate scrutiny that lacks proper context.

Mandatory Disclosure of Auditor Tenure Could Misleadingly Imply SEC Acceptance of an Otherwise Unproved Correlation Between Auditor Tenure and Audit Quality.

Given the lack of evidence demonstrating a correlation between auditor tenure and audit quality, we believe that requiring disclosure of auditor tenure is inappropriate. The required inclusion of this information could imply that the SEC believes it is material in all cases, and more importantly, that there is a negative correlation between audit tenure and audit quality. As indicated in the Concept Release, "most academic research" in fact "indicates that engagements with short term tenure are relatively riskier" and that "audit quality is improved when auditors have time to gain expertise in the registrant under audit and in the related industry."[42] In addition, disclosure of tenure, without more, would have significant potential to trigger unintended and damaging inferences, including questioning the auditor's independence without proper basis. Further, focusing on the tenure of the outside auditor, especially if a specific term of years is presumed to render the firm no longer independent, would encourage auditor changes even where that is not in the best interest of the registrant.

We are also concerned that disclosure of auditor tenure could encourage "one size fits all" guidelines by special interests and proxy advisors. Auditor tenure is, in our view, something that should vary among companies and industries. It should vary, indeed, at any given individual registrant depending on the changing circumstances impacting the registrant. For instance, a registrant that is going through a period where it is facing challenges in its financial reports, or that otherwise is experiencing change in its governance structure or a transaction, may be better off delaying any rotation in its independent auditor until its situation stabilizes. Another registrant may decide that only one audit firm has specialized expertise in its industry. Yet

[42] Concept Release at 46.

another registrant may elect to rotate its auditor on a faster timeframe.

A system that encourages auditor changes under a one-size-fits-all approach, rather the informed business judgment of a registrant's audit committee, could result in unnecessary costs and risk, including the appointment of an audit firm that may not discharge its responsibilities as effectively and independently as its predecessor firm. This is especially true given the costs and risks of auditor change that include:

1. The potential for limited choices of experienced and eligible successor audit firms;

2. The costs related to the search for and selection of a new audit firm, including the complexity of transition under auditor independence rules;

3. The costs and disruption associated with transition to a new audit firm;

4. The potential for increases in audit fees related to the transition; and

5. The risks of decreased audit quality with more frequent changes in auditors.

We believe that any concerns with auditor tenure—valid or not—are in large part mitigated by Sarbanes-Oxley prescribed lead audit partner rotation. Rotation is prescribed precisely to address many of the same concerns that animate the debate over audit tenure, i.e., relationships between auditors and registrants that impair the auditor's independence and discourage professional skepticism. In our experience, mandatory rotation of the lead audit partner is often coupled with changes in the other members of the audit engagement team, further mitigating concerns with tenure of the audit firm generally.

The PCAOB's 2011 Concept Release on *Auditor Independence and Audit Firm Rotation* raised important questions about how to best support auditor independence and audit quality. We urge the Commission to heed the results of the thoughtful public discussion started by the PCAOB, which determined that tenure was not the most relevant factor, and instead underscored the importance of the audit committee's prescribed role by Congress through the Sarbanes-Oxley Act in choosing and overseeing the outside auditor.

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We appreciate the opportunity to provide comments on this Concept Release.

Respectfully Submitted,

/s/ Rick E. Hansen

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Chair, Securities Law Committee

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