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Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1000

File No. S7-18-16

Dear Secretary:

This letter represents my comments on the SEC's Request for Comment on Subpart 400 of Regulation S-K Disclosure Requirements Relating to Management, Certain Security Holders and Corporate Governance Matters. I recognize that the Request is part of an initiative "to review the disclosure requirements in Regulation S-K to consider ways to improve them for the benefit of investors and registrants." Therefore, the Division of Corporation Finance (and Commission) is probably more interested in comments directed specifically to existing financial and other disclosure requirements or ones that should be considered. However, included in current Item 407 of Regulation S-K is an important definition of "audit committee financial expert (ACFE)." The purpose of this letter is to urge you to make a simple change to this definition as part of the current project as I believe that can result in better qualified members of audit committees and more effective oversight of corporate accounting and auditing.

To provide context for my comments, from 2001 through 2013 I served on five large public company boards and chaired the audit committee of each. For two of those – WorldCom and Fannie Mae – I joined the board and audit committee to help the company deal with what were two of the largest financial reporting misstatements in history. I continue to serve on the Board of Directors of the National Association of Corporate Directors and in 2010 I co-chaired the Commission that developed the NACD Blue Ribbon Commission Report on the Audit Committee. Presently I am an Executive in Residence at the University of Georgia, having previously taught graduate level accounting classes for sixteen years. Before joining the UGA faculty I was Chairman of the Financial Accounting Standards Board for ten years and a senior

partner with Ernst & Young for 26 years. While my comments in this letter are informed by all of those experiences, the comments are mine alone.

The Current Definition of Audit Committee Financial Expert

Section 407 of the Sarbanes-Oxley Act of 2002 requires the Disclosure of Audit Committee Financial Expert. More specifically:

(a) RULES DEFINING “FINANCIAL EXPERT”.—The Commission shall issue rules, as necessary or appropriate in the public interest and consistent with the protection of investors, to require each issuer, together with periodic reports required pursuant to sections 13(a) and 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reasons therefor, the audit committee of that issuer is comprised of at least 1 member who is a financial expert, as such term is defined by the Commission.

(b) CONSIDERATIONS.—In defining the term “financial expert” for purposes of subsection (a), the Commission shall consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions—

(1) an understanding of generally accepted accounting principles and financial statements;

(2) experience in—

(A) the preparation or auditing of financial statements of generally comparable issuers; and

(B) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) experience with internal accounting controls; and

(4) an understanding of audit committee functions.

In its subsequent rulemaking in response to this part of the Sarbanes-Oxley Act, the Commission adopted part (d) 5 of Item 407 of Regulation S-X that states:

(5) Audit committee financial expert. (i)(A) Disclose that the registrant's board of directors has determined that the registrant either:

(1) Has at least one audit committee financial expert serving on its audit committee; or

(2) Does not have an audit committee financial expert serving on its audit committee.

(B) If the registrant provides the disclosure required by paragraph (d)(5)(i)(A)(1) of this Item, it must disclose the name of the audit committee financial expert and whether that person is independent, as independence for audit committee members is defined in the listing standards applicable to the listed issuer.

(C) If the registrant provides the disclosure required by paragraph (d)(5)(i)(A)(2) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to Item 407(d)(5)(i). If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons. A registrant choosing to identify such persons must indicate whether they are independent pursuant to paragraph (d)(5)(i)(B) of this Item.

(ii) For purposes of this Item, an audit committee financial expert means a person who has the following attributes:

(A) An understanding of generally accepted accounting principles and financial statements;

(B) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(C) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(D) An understanding of internal control over financial reporting; and

(E) An understanding of audit committee functions.

(iii) A person shall have acquired such attributes through:

(A) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(B) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(C) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(D) Other relevant experience.

Analysis

While there are some other minor wording differences between the Sarbanes-Oxley Act and the regulations adopted by the SEC, the principal differences between the two are in (a) the clause at the end of (C) in the SEC attributes section dealing with "experience actively supervising" and (b) the last three points in the SEC section dealing with how those attributes are acquired - (B), (C), and (D). The language of SOX clearly provides that the expertise necessary to be qualified as an ACFE must come from specified accounting or auditing positions (which are repeated in the regulations) or from "a position involving the performance of similar functions (emphasis added)." The wording added in the SEC regulations referred to in the first sentence of this paragraph allows ACFE qualifications to come from experience "activity supervising" specified functions, "overseeing or assessing the performance of companies or public accountants," or "other relevant experience." Each of these broadens the qualifying experience from actually performing a function to some form of oversight of that function. A principal result of this expansion of the law by the SEC is that a very large number of those presently designated as ACFEs gain that designation through experience as a chief executive officer or other senior executive supervising or overseeing the performance of a registrant's accounting functions, rather than having direct, personal accounting and auditing expertise themselves.

Note also that both SOX and Item 407 require that all five of the aforementioned attributes must be met in order to qualify as an ACFE. Notwithstanding this requirement, the identification of many ACFEs based on supervision or oversight rather than performance appears to approach this as a "multiple choice" process – that is, classifying some as ACFEs based on meeting some requirements but not all five.

I understand that nearly all registrants report that they have an ACFE, and many report more than one¹. Presumably, this provides comfort to investors that audit committees include true experts in the accounting and auditing matters that are so important in insuring that financial reports are properly presented. However, other than those audit committee members who have gained experience as corporate financial officers or auditing firm executives, it is questionable whether others designated as ACFE are capable of understanding and challenging many of the extremely complicated accounting and auditing matters companies face today. New revenue recognition, leasing, and financial instrument impairment standards from the FASB, continuing challenges of internal control reporting by PCAOB inspectors, and revised interpretations on non-GAAP presentations by the SEC are just a few of the many new developments that audit committee members must be informed about and able to assess

¹ For example, according to information compiled by the Center for Audit Quality and Audit Analytics, all S&P 500 companies had at least one ACFE. Eighteen percent of them reported two ACFEs and 51% reported three or more.

intelligently for their companies. Investors may well be receiving a false sense of security in many cases through belief that all identified ACFEs are true accounting and auditing experts.

As an experienced audit committee chairman, I fully support diverse membership of such committees. While I think having a truly qualified ACFE is essential, also having other members with broad business experience is important. Those members often can bring their understanding of the business and experience to bear to challenge whether what the company reports and discloses makes sense or should be changed, expanded upon, etc.

Further, audit committee charters since the passage of SOX have expanded to include such responsibilities as:

- Oversight of risk management policies and compliance therewith
- Oversight of compliance with laws and regulations
- Oversight of information technology controls and effectiveness, including cybersecurity

Skills beyond those gained through experience working as a financial executive or auditor are no doubt important for effective audit committee performance of these evolving responsibilities. This is another reason why diversity of backgrounds can contribute positively to audit committees. However, I believe the number one responsibility of an audit committee is oversight of the company's financial reporting. And the objective of SOX's requirement to disclose whether the company has an ACFE was clearly to identify for investors whether the audit committee includes a person who "speaks accounting." That is, a member who is sufficiently familiar with generally accepted accounting principles (GAAP) and generally accepted auditing standards (GAAS) to be an effective overseer of the company's financial reports.

In addition to general oversight of periodic filings, to be a truly effective ACFE a person must be able to carry out other technical accounting responsibilities generally assigned to audit committees, including:

- Overseeing the resolution of any disagreements between management and the independent auditors
- Reviewing any alternative treatments of GAAP that have been considered by management
- Reviewing any changes in the selection or application of accounting principles
- Reviewing the application of and disclosure for new accounting pronouncements
- Reviewing company responses to SEC comment letters about accounting and financial disclosures on 10-K, 10-Q, etc.
- Monitoring fair value estimates, impairments, and judgments of key assumptions underlying other critical accounting estimates

We neither expect nor want audit committees to micromanage the accounting and auditing practices of their companies. But if an ACFE has been identified, I believe shareholders should be entitled to expect that audit committee member to perform effective technical accounting and auditing oversight.

Recommendation

Given the above analysis, I recommend that the SEC revise the definition of ACFE to remove the language referred to above regarding ways that the designation can be acquired through supervision or oversight. That would make the definition more congruent with the Sarbanes-Oxley Act and result in only those with substantial background in accounting or auditing qualifying.

If this change is adopted by the Commission, all companies would be required to reassess ACFE designations and a very large number of those previously so classified would no longer qualify. I believe the "spirit" of SOX was to strongly encourage but not require that all companies have a financial expert as part of their audit committee. That's presumably why the law was written as a disclosure requirement rather than overriding corporate governance practices with a legal requirement for such an expert. Following this thought process, it is possible that many of the companies that otherwise would lose their designated expert would seek to find a new director meeting the more specific definition.

While I am sure that a significant number of companies losing their designated expert under the new definition would not seek to replace her/him, they would then be required to disclose to shareholders that they do not have such an expert. That would be a more accurate portrayal of the state of the art than exists today and would put shareholders more on alert as to the quality of audit committee oversight.

Another idea

Even those ACFEs who have gained such designation by performance as a corporate financial executive or external auditor do not necessarily stay current indefinitely. While many directors of public companies continue as corporate officers (e.g., Chief Financial Officer) of other public companies, a very large segment of directors are retired from current accounting or auditing responsibilities. In my own case, I last served as a public accounting firm partner in 1986, was Chairman of the FASB for ten years, and didn't join my first board until 2001 while teaching at the University of Georgia. However, I stayed up to date during my post-public accounting years through my FASB service and then through regular attendance at continuing education sessions, both as a speaker and an audience member. And I served on a number of professional committees that interacted with the various standards setting bodies. I've kept my CPA license as well as my CMA designation current through regularly exceeding continuing education requirements.

It is my belief, however, that a substantial number of those retired from practice do not keep up with continuing education or otherwise renew themselves in order to serve as audit committee members in the most effective manner. In other words, while some of these individuals meet the letter of the ACFE qualifications, they have become out of date.

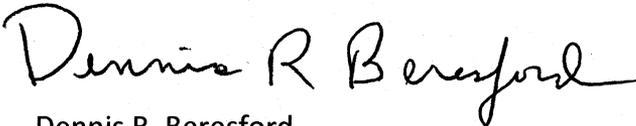
Therefore, I suggest the SEC adopt requirements that in order to continue designation as an ACFE an individual must obtain a certain amount of accounting and auditing related continuing education each year – preferably, at least forty hours. As an alternative, consistent with the disclosure approach of SOX for ACFEs, a requirement could be adopted to disclose whether those designated as ACFEs have obtained a certain level of continuing education credit hours.

Summary

We have had the ACFE requirement for almost fifteen years and I believe that it generally has resulted in improved performance by audit committees. However, a simple modification of the definition to make it more congruent with SOX arguably will lead to better qualified ACFEs – or at least better informed shareholders about audit committee oversight. And continuing education for ACFEs would enhance this important role even more.

Thank you for considering these suggestions and please let me know if I can answer any questions about this letter or provide further information.

Sincerely,

A handwritten signature in cursive script that reads "Dennis R. Beresford". The signature is written in black ink and is positioned above the printed name.

Dennis R. Beresford