

Securities Regulation and Compliance Alert

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SEC Considers Possible Revisions to Audit Committee Disclosures

On July 1, 2015, the U.S. Securities and Exchange Commission (SEC) issued a concept release soliciting public comment on possible revisions to its existing disclosure requirements related to audit committees. The release focuses on the audit committee's reporting of its responsibilities with respect to oversight of the independent auditors. The release is intended only to invite public feedback on this topic. Any changes to SEC rules in response to the feedback received will require the SEC to propose for public comment and then adopt rule changes — a process that often takes at least a year.

Assessing the Need for Change

The SEC's consideration of its audit committee disclosure requirements follows requests from a number of groups for improvements in disclosures in this area. For instance, in late 2013 a group of corporate governance organizations, including the Center for Audit Quality, the National Association of Corporate Directors and the Association of Audit Committee Members, issued a "Call to Action" that requested public company audit committees to "voluntarily and proactively improve their public disclosures to more effectively convey to investors and others the critical aspects of the important work that they currently perform."¹ A number of other jurisdictions, such as the European Union, also have considered changes to audit committee disclosure requirements.

The SEC noted in the concept release that it has a "long history of promoting effective and independent audit committees" and that audit committees play "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." Nevertheless, the SEC's current disclosure requirements related to audit committees have remained largely unchanged since they were first adopted in 1999. Since that time, a number of key developments have impacted the role of public company audit committees, including the adoption of the Sarbanes-Oxley Act of 2002 and the creation of the Public Company Accounting Oversight Board (PCAOB). The SEC believes that these developments warrant seeking public feedback to "better understand whether additional audit committee reporting requirements related to oversight of the auditor would be useful to investors and if so, what information would be useful."

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Areas of Focus

The concept release focuses on potential changes to required disclosures in the following four areas:

- the audit committee's oversight of the auditor;
- the audit committee's process for appointing or retaining the auditor;
- the qualifications of the audit firm and certain members of the engagement team selected by the audit committee; and
- the location of audit committee disclosures in SEC filings.

In each of these areas, the SEC asked very specific questions about the current requirements and potential changes and whether and why any such changes may be useful to investors. A number of the questions posed by the SEC will most likely lead to significant debate. Those questions include:

- Would disclosure of the name of the engagement partner be useful to investors? Would disclosure of any additional members of the engagement team be useful and, if so, which? (For example, should the names of all partners who are required to rotate under SEC independence rules be disclosed? Why or why not?)
- Should the audit committee's report include information about the length of the audit relationship? What types of disclosures could the audit committee make in this regard? Should it be just the years of auditor tenure?
- Should there be disclosures regarding the nature or substance of the required communications between the auditor and the audit committee? Should the audit committee report disclose the frequency with which it met privately with the auditor?
- Would disclosure about the audit committee's review and discussion of the audit firm's internal quality-control review and most recent PCAOB inspection report be useful to investors?
- What types of disclosures could be made regarding the process the audit committee undertook to evaluate the external audit and performance and qualifications of the auditor, including the rationale for selecting or retaining the auditor?
- What types of disclosures could be made about requests for proposals for the audit, including the process undertaken and the factors considered in selecting the audit firm?

Related PCAOB Developments

The SEC issued its concept release shortly after the PCAOB issued a supplemental request for comment on its 2013 reproposal of rule changes that would require public disclosure by auditors of the name of the engagement partner and information about certain other audit participants involved with a company audit. Under the proposal presented in the supplemental request for comment, auditors would have the option of providing this information in a new PCAOB form (Form AP) rather than in the auditor's report. PCAOB hopes that this approach, if adopted, would provide greater transparency about the participants in a public company's audit while addressing concerns raised about increased auditor liability and litigation risks. The information included in Form AP would be publicly available in a searchable database on the PCAOB's website. The PCAOB is currently considering making the disclosure requirements effective for auditors' reports issued or reissued on or after June 30, 2016, or three months after approval by the SEC, whichever occurs later.

Next Steps

Concept releases are preliminary steps designed to gather feedback for assessing the need for SEC rulemaking. Companies therefore will not be subject to any of the possible disclosure requirements discussed in the concept release until such time as the SEC proposes for public comment new or amended rules and subsequently adopts the changes. In many cases, years pass between the issuance of a concept release and proposed rule changes. Nevertheless, the publication of the concept release highlights the SEC's heightened interest in audit committees and the manner in which audit committees are fulfilling their obligations, with the possibility of SEC action in the future.

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The public comment period for the concept release is expected to end in early September 2015. The concept release can be found [here](#), and a copy of the press release issued by the SEC announcing the release of the concept release is available [here](#).

The public comment period for the PCAOB's supplemental request for comment ends on August 31, 2015. The PCAOB's supplemental request for comment can be found [here](#).

¹ See, e.g., Audit Committee Collaboration, "Enhancing the Audit Committee Report, A Call to Action," (Nov. 20, 2013), available at <http://www.thecaq.org/reports-and-publications/enhancing-the-audit-committee-report-a-call-to-action>.