paragraph (l)(2) of this AD: Before further flight, replace the affected (RH or LH) MLG fixed fairing forward attachment assembly, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1163, dated February 4, 2014; or Airbus Service Bulletin A320–52–1165, dated November 3, 2014.

(n) Terminating Action

(1) Replacement of parts on an airplane, as required by paragraph (g), (k), or (l)(1) of this AD, does not constitute terminating action for the repetitive inspections required by paragraph (i) of this AD, except as specified in paragraph (n)(3) of this AD.

(2) The repetitive replacements required by paragraph (g) of this AD may be terminated by modification of the airplane to post-modification 27716 configuration, including a resonance frequency inspection for debonding of the composite insert and delamination of the honeycomb area around the insert, and all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1100, Revision 01, dated March 12, 1999, provided all applicable corrective actions are done before further flight. Thereafter, refer to paragraph (i) of this AD to determine the compliance time for the next detailed inspection required by this AD.

(3) Modification of an airplane, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1165, dated November 3, 2014, constitutes terminating action for actions required by paragraphs (g) through (m) of this AD for the airplane on which the modification is done.

(o) Exception to Certain AD Actions

An airplane on which Airbus Modification 155648 has been embodied in production is not affected by the requirements of paragraphs (g) and (i) of this AD, provided that no affected component, identified by part number as listed paragraphs (g)(1) through (g)(5) and (i)(1) through (i)(3) of this AD, has been installed on that airplane since first flight of the airplane.

(p) Parts Installation Prohibition

(1) For airplanes in pre-Airbus-Modification 27716 and pre-Airbus-Service-Bulletin A320–52–1100 configuration: No person may install a component identified in paragraphs (g)(1) through (g)(5) of this AD on any airplane after doing the actions provided in paragraph (n)(2) of this AD.

(2) For airplanes in post-Airbus-Modification 27716 and post Airbus Service Bulletin A320–52–1100 configuration: As of the effective date of this AD, no person may install a component identified in paragraphs (g)(1) through (g)(5) of this AD on any airplane.

(3) For airplanes in pre-Airbus-Modification 155648 and pre-Airbus-Service-Bulletin A320–52–1165 configuration: No person may install a component identified in paragraphs (g)(1) through (g)(5) and (i)(1) through (i)(3) of this AD on any airplane after doing the actions provided in paragraph (n)(3) of this AD.

(4) For airplanes in post-Airbus-Modification 155648 and post-Airbus-Service-Bulletin A320–52–1165 configuration: As of the effective date of this AD, no person may install a component identified in (g)(1) through (g)(5) and (i)(1) through (i)(3) of this AD on any airplane.

(q) Credit for Previous Actions

This paragraph provides credit for optional actions provided by paragraph (n)(2) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–52–1100, dated December 7, 1998, which is not incorporated by reference in this AD.

(r) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(s) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0001R1, dated January 15, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2458.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 30, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–16583 Filed 7–7–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 33–9862; 34–75344 File No. S7–13–15]

RIN 3235–AL70

Possible Revisions To Audit Committee Disclosures

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: The Commission is publishing this concept release to seek public comment regarding audit committee reporting requirements, with a focus on the audit committee's reporting of its responsibilities with respect to its oversight of the independent auditor. Some have expressed a view that the Commission's disclosure rules for this area may not result in disclosures about audit committees and their activities that are sufficient to help investors understand and evaluate audit committee performance, which may in turn inform those investors' investment or voting decisions. The majority of these disclosure requirements, which exist in their current form principally in Item 407 of Regulation S–K, were adopted in 1999. Since then, there have been significant changes in the role and responsibilities of audit committees arising out of, among other things, the Sarbanes-Oxley Act of 2002, enhanced listing requirements for audit committees, enhanced requirements for auditor communications with the audit committee arising out of the rules of the Public Company Accounting Oversight Board, and changes in practice, both domestically and internationally.

DATES: Comments should be received on or before September 8, 2015.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/concept.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number S7–13–15 on the subject line; or

• Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

• Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–13–15. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/concept.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Duc Dang, Special Counsel at (202) 551–3386; Jennifer McGowan, Professional Accounting Fellow, at (202) 551–8736; Kevin Stout, Senior Associate Chief Accountant, at (202) 551–5930, Office of the Chief Accountant; or Lindsay McCord, Associate Chief Accountant, at (202) 551–3417, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

Table of Contents

I. Introduction

The Commission has a long history of promoting effective and independent audit committees. The role and responsibilities of audit committees related to oversight of the independent auditor have evolved due to changes in both the securities laws and the national securities exchanges' listing requirements related to audit committees. Today, the audit committee of a listed issuer is directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer, and the independent auditor reports directly to the audit committee.[1] In addition, in connection with these oversight responsibilities, the audit committee has ultimate authority to approve all audit engagement fees and terms [2] and is responsible for resolving disagreements between management and the auditor regarding financial reporting.[3]

Requirements for the audit committee's reporting to shareholders are principally contained in Item 407 of Regulation S–K,[4] which have not changed substantively since 1999. As a result, some have expressed a view that the Commission's disclosure rules do not provide investors with sufficient useful information regarding the role of and responsibilities carried out by the audit committee in public companies.[5] The audit committee has a vital role in oversight of auditors, and the independent audits performed by those auditors have long been recognized as important to credible and reliable financial reporting and the functioning of our capital markets.[6] The reporting of additional information by the audit committee with respect to its oversight of the auditor may provide useful information to investors as they evaluate the audit committee's performance in

[1] *See* Section 10A(m) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [15 U.S.C. 78j–1(m)]. As noted in Section II.B., audit committees of listed issuers also have responsibilities with respect to the receipt, retention, and treatment of complaints regarding accounting, internal accounting controls, or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

[2] *See* Release No. 34–47654, *Standards Relating to Listed Company Audit Committees* (Apr. 9, 2003) [68 FR 18788].

[3] *See* Section 10A(m)(2) of the Exchange Act.

[4] 17 CFR 229.407

[5] *See* 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* (''A Call to Action''). This collaboration consisted of the following organizations: The National Association of Corporate Directors, Corporate Board Member/NYSE Euronext, Tapestry Networks, the Directors' Council, the Association of Audit Committee Members, Inc., and the Center for Audit Quality (''CAQ'').

[6] *See* Release No. 33–8177, *Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002* (Jan. 23, 2003) [68 FR 5110] (acknowledging the audit committee's vital role in financial reporting, public disclosure, and corporate governance); and Release No. 34–14970, *Proposed Rules Relating to Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally,* (Jul. 18, 1978) [43FR 31945] (citing Report to Congress on the Accounting Profession and the Commission's Oversight Role, Jul. 5, 1978).

connection with, among other things, their vote for or against directors who are members of the audit committee, the ratification of the auditor, or their investment decisions.

Through this Concept Release, the Commission seeks public comment regarding the audit committee's reporting requirements, with a focus on the audit committee's reporting of its responsibilities and activities with respect to its oversight of the independent auditor. This concept release is focused on the audit committee and auditor relationship, but commenters may also provide views on other aspects of audit committee disclosures, such as those related to roles and responsibilities, audit committee qualifications, oversight of financial reporting, or oversight of internal control over financial reporting.

II. Background

A. The Importance of Audit Committees

The 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. Since as early as 1940, the Commission, along with the auditing and corporate communities, has had a continuing interest in promoting effective and independent audit committees.[7] Largely with the Commission's encouragement,[8] the national securities exchanges and national securities associations (self-regulatory organizations or ''SROs'') first adopted audit committee requirements in the 1970s.[9] Since that time, there has been support for strong, independent audit committees, including from the National Commission on Fraudulent Financial Reporting, also known as the Treadway Commission,[10] the General Accounting Office,[11] and others.[12]

In 1998, the New York Stock Exchange (the ''NYSE'') and the National Association of Securities Dealers (the ''NASD'') sponsored the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (the ''Blue Ribbon Committee''). In its 1999 report, the Blue Ribbon Committee recognized the importance of audit committees and issued ten recommendations to improve their effectiveness.[13] In response to these recommendations, the NYSE and the NASD, among others, revised their listing standards relating to audit committees,[14] and the Commission adopted new rules requiring disclosure relating to the functioning, governance and independence of corporate audit committees.[15]

Academic literature suggests that strong corporate governance, including the composition and actions of the audit committee, has a positive effect on the quality of the audit.[16] For example, some studies note that audit committee independence is associated with lower incidences of earnings management [17] and internal control problems at those issuers benefitting from independent audit committees,[18] while also shielding the external auditor from management's influence.[19]

B. The Impact of the Sarbanes-Oxley Act of 2002 and SRO Listing Standards on Audit Committees

In the early 2000's, multiple incidences of serious misconduct by corporate executives and independent auditors occurred in the financial markets raising concerns about the integrity and reliability of financial disclosures, and the adequacy of regulation and oversight of the accounting profession. This highlighted the need for strong, competent, and vigilant audit committees. In response, the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'') was enacted.[20] Among other things, the Sarbanes-Oxley Act mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures, and combat corporate and accounting fraud. The Sarbanes-Oxley Act also created a new regulatory and oversight regime for auditors of public companies, including the creation of the Public Company Accounting Oversight Board (the ''PCAOB''), a nonprofit corporation, to oversee the audits of public companies in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit

[7] In 1940, the Commission investigated the auditing practices followed by the auditors of McKesson & Robbins, Inc., and the Commission's ensuing report prompted action on auditing procedures by the auditing community. *In the Matter of McKesson & Robbins,* Accounting Series Release (ASR) No. 19, Exchange Act Release No. 2707 (Dec. 5, 1940).

[8] For example, in 1972, the Commission recommended that companies establish audit committees composed of outside directors. *See* ASR No. 123 (Mar. 23, 1972). In 1974 and 1978, the Commission adopted rules requiring disclosures about audit committees. *See* Release No. 34–11147, *Notice of Amendments to Require Increased Disclosure of Relationships Between Registrants and Their Independent Public Accountants* (Dec. 20, 1974) and Release No. 34–15384, *Shareholder Communications, Shareholder Participation in Corporate Electoral Process and Corporate Governance Generally* (Dec. 6, 1978).

[9] *See, e.g.,* Release No. 34–13346, *In the Matter of New York Stock Exchange, Inc.* (Mar. 9, 1977) [42 FR 14793] (Commission order approving NYSE rule change related to the audit committee).

[10] The Treadway Commission was sponsored by the American Institute of Certified Public Accountants, the American Accounting Association, the Financial Executives Institute (now Financial Executives International), the Institute of Internal Auditors and the National Association of Accountants (now Institute of Management Accountants). Collectively, these groups were known as the Committee of Sponsoring Organizations, or COSO. The Treadway Commission's report, the Report of the National Commission on Fraudulent Financial Reporting (October 1987), is available at *www.coso.org.*

[11] *See e.g.,* U.S. General Accounting Office (now Government Accountability Office), ''CPA Audit Quality: Status of Actions Taken to Improve Auditing and Financial Reporting of Public Companies,'' at 5 (GAO/AFMD–89–38, March 1989). The report is available at *http://www.gao.gov/products/AFMD-89-38.*

[12] *See, e.g.,* Preliminary Report of the American Bar Association Task Force on Corporate Responsibility (July 16, 2002) reprinted in 58 Bus. Law. 189 (2002).

[13] *See* Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees, *Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees,* 54 **The Business Lawyer**, 1067 (1999).

[14] *See, e.g.,* Release No. 34–42231, *Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending Its Audit Committee Requirements* (Dec. 14, 1999) [64 FR 71523]; Release No. 34–42233, *Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Audit Committee Requirements* (Dec. 14, 1999) [64 FR 71529]; Release No. 34–42232, *Order Approving Proposed Rule Change by the American Stock Exchange LLC Amending the Exchange's Audit Committee Requirements* (Dec. 14, 1999) [64 FR 71518]; and Release No. 34–43941, *Order Approving a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Audit Committee Requirements for Listed Companies* (Feb. 7, 2001) [66 FR 10545].

[15] *See* Release No. 34–42266, *Audit Committee Disclosure* (Dec. 22, 1999) [64 FR 73389].

[16] Goh, B.W., *Audit Committees, Boards of Directors, and Remediation of Material Weaknesses in Internal Control,* 26 **Contemporary Accounting Research** 549 (2009); and Hoitash and Hoitash, *The Role of Audit Committees in Managing Relationships with External Auditors After SOX: Evidence from the USA,* 24 **Managerial Auditing Journal** 368 (2009). The positive effects of audit committee oversight are also illustrated in studies using data taken prior to the enactment of the Sarbanes-Oxley Act of 2002 when important characteristics such as the composition and actions of the audit committee were less uniform among companies. *See* Klein, A., *Audit Committee, Board of Director Characteristics, and Earnings Management,* 33 **Journal of Accounting and Economics**, 375 (2002); Krishnan, J., *Audit Committee Quality and Internal Control: An Empirical Analysis,* 80 **The Accounting Review**, 649 (2005); and Carcello, J and Neal. T., *Audit Committee Composition and Auditor Reporting,* 75 **The Accounting Review**, 453 (2000).

[17] Klein, A., *Audit Committee, Board of Director Characteristics, and Earnings Management.*

[18] Krishnan, J., *Audit Committee Quality and Internal Control: An Empirical Analysis.*

[19] Carcello, J. and Neal, T., *Audit Committee Composition and Auditor Reporting.*

[20] Pub. L. 107–204, 116 Stat. 745 (2002); 15 U.S.C. 7201 *et seq.*

reports.[21] During this time, the Commission also adopted significant corporate disclosure and financial reporting rules designed to improve the oversight and review processes of public companies related to their financial and other disclosures.[22]

The Sarbanes-Oxley Act amended the Exchange Act to define an audit committee as ''(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and (B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.'' [23] The Sarbanes-Oxley Act and the Commission's related implementation rules strengthened and expanded the role of the audit committee in overseeing a company's financial reporting process and independent auditor.

For example, Exchange Act Rule 10A–3,[24] which implemented Section 10A(m) of the Exchange Act, mandated that SROs prohibit the listing of any security of an issuer that does not comply with certain requirements, including:

- Each member of the audit committee of the issuer must be independent according to specified criteria;
- the audit committee of each issuer must be directly responsible for the appointment, compensation, retention, and oversight of the work of any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review, or attest services for the issuer, and each such registered public accounting firm must report directly to the audit committee;
- each audit committee must establish procedures for the receipt, retention, and treatment of complaints regarding accounting, internal accounting controls, or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters;
- each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties; and
- each issuer must provide appropriate funding for the audit committee.

The SROs also adopted additional listing requirements related to audit committees and strengthened the independence requirements for audit committee members.[25]

Also, Item 407(d)(5) of Regulation S–K, which was adopted to implement Section 407 of the Sarbanes-Oxley Act, defines the term ''audit committee financial expert.'' This item requires issuers to disclose whether they have at least one audit committee member that satisfies that definition. The Commission defines an audit committee financial expert as a person who has:

- An understanding of generally accepted accounting principles and financial statements;
- the ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;
- 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;
- an understanding of internal control over financial reporting; and
- an understanding of audit committee functions.[26]

In addition to the listing requirements related to audit committees, Rule 2–07 of Regulation S–X was adopted to identify specific matters that auditors are required to report to audit committees.[27] Rule 2–07 requires public company auditors to report all critical accounting policies and practices, all alternative accounting treatments that have been discussed with management, and any other material written communications between the auditor and management.[28]

In the adopting release for Rule 2–07, the Commission referred to cautionary advice it issued in December 2001 regarding the disclosure of those accounting policies that management believes are most critical to the preparation of the issuer's financial statements.[29] These are often a subset of the accounting policies described in the issuer's financial statements. The cautionary advice indicated that ''critical'' accounting policies are those that are both most important to the portrayal of the issuer's financial condition and results and require management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain.[30] As part of that release, the Commission also advised:

Prior to finalizing and filing annual reports, audit committees should review the selection, application and disclosure of critical accounting policies. Consistent with auditing standards, audit committees should be apprised of the evaluative criteria used by management in their selection of the accounting principles and methods. Proactive discussions between the audit committee and the company's senior

[21] Section 101 of the Sarbanes-Oxley Act.

[22] *See, e.g.,* Release No. 33–8124, *Certification of Disclosure in Companies' Quarterly and Annual Reports* (Aug. 28, 2002) [67 FR 57276]; Release No. 34–47890, *Improper Influence on Conduct of Audits* (May, 20, 2003) [68 FR 31820]; Release No. 33–8177, *Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002* (Jan. 23, 2003) [68 FR 5110]; Release No. 33–8182, *Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements and Aggregate Contractual Obligations* (Jan. 28, 2003) [68 FR 5982]; Release No. 33–8183, *Strengthening the Commission's Requirements Regarding Auditor Independence* (Jan. 28, 2003) [68 FR 6006]; and Release No. 33–8212, *Certification of Disclosure in Certain Exchange Act Reports* (Mar. 21, 2003) [68 FR 15600].

[23] *See* Section 3(a)(58) of the Exchange Act [15 U.S.C. 78c(a)(58)].

[24] 17 CFR 240.10A–3.

[25] *See* Release No. 34–48745, *NASD and NYSE Rulemaking: Relating to Corporate Governance* (Nov. 4, 2003); NYSE Listed Company Manual, Sections 303A.02 and 303A.07(a); and NASDAQ Listing Rules 5605(a)(2) and 5605(c)(2). For example, the NYSE requires audit committees to, among other things: (i) At least annually obtain a report from the independent auditor discussing certain quality control issues and relationships with its client, (ii) meet with management and the independent auditor, as applicable, to discuss the company's annual audited and quarterly unaudited financial statements, its press releases and public earnings guidance, and its risk assessment and management policies, (iii) meet separately, periodically, with management, the internal auditors, and the independent auditors, and (iv) review with the independent auditor any audit problems or difficulties and management's response. *See* NYSE Listed Company Manual, Section 303A.07.

[26] Item 407(d)(5)(ii) of Regulation S–K. Neither the NYSE nor NASDAQ use the term audit committee financial expert. However, both amended their listing standards to clarify that a member that satisfies the definition of an audit committee financial expert would also satisfy their respective listing standards that require at least one audit committee member with accounting or related financial management expertise. *See* Release No. 34–48745.

[27] *See* Release No. 34–47265, *Strengthening the Commission's Requirements Regarding Auditor Independence* (Jan. 28, 2003) [68 FR 6005]; 17 CFR 210.2–07.

[28] PCAOB standards also require certain auditor communications with audit committees, as discussed in Section IV.E of this Release.

[29] *See* Release No. 34–47265.

[30] *See* Release No. 33–8040, *Cautionary Advice Regarding Disclosure About Critical Accounting Policies* (Dec. 12, 2001) [66 FR 65013]. *See, also,* Release No. 33–8350, *Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations* (Dec. 19, 2003) [68 FR 75056].

management and auditor about critical accounting policies are appropriate.[31]

The way audit committees execute their oversight of auditors has evolved since the Sarbanes-Oxley Act. For instance, while the PCAOB does not have jurisdiction over audit committees, it collects information through its inspection program that could be useful for audit committees in overseeing their companies' auditors. Among other responsibilities, the PCAOB is required to inspect registered public accounting firms annually (for firms that regularly provide audit reports for more than 100 issuers) or triennially (for firms that regularly provide audit reports for 100 or fewer issuers).[32] Consistent with the limitations of the Sarbanes-Oxley Act, the PCAOB makes certain information available publicly, such as public portions of inspection reports, disciplinary sanctions, and information in annual and special reports filed by audit firms. In addition, in part in response to audit committee members' requests, the PCAOB provides information to help audit committees better understand the PCAOB inspection process, including questions they may wish to ask their audit firms to better understand and assess the firm's inspection results and evaluate audit quality.[33] The PCAOB also includes an executive summary for its general inspection reports and provides insights within Staff Audit Practice Alerts to further assist audit committee oversight of the auditor.[34]

III. Current Audit Committee Disclosure Requirements

A. Audit Committee Report and Other Disclosures About the Audit Committee

In 1999, following the recommendations from the Blue Ribbon Committee's report, the Commission adopted new rules to improve disclosure relating to the functioning, governance and independence of audit committees and to enhance the credibility of financial statements of public companies.[35] These reporting requirements for audit committees[36] predate the Sarbanes-Oxley Act and the SRO listing standards, which expanded the role of the audit committee in the financial reporting process.

Disclosure requirements for the audit committee report are contained in Item 407 of Regulation S–K. The disclosure is only required in the proxy or information statement relating to a registrant's annual meeting where directors are elected or chosen by written consents.[37] An audit committee is required to make certain statements related to its responsibilities for overseeing financial reporting, internal control, and the audit. These statements include that the audit committee has:

- Reviewed and discussed the audited financial statements with management;
- discussed with the independent auditor the matters required by AU sec. 380, *Communication with Audit Committees;*
- received the required written communications from the independent accountant concerning independence, as required by the rules of the PCAOB, and has discussed with the independent accountant his or her independence; and
- recommended to the board of directors that the audited financial statements be included in the company's annual report on Form 10–K (or other form of annual report) for the last fiscal year for filing with the Commission.[38]

The name of each member of the company's audit committee must appear below these required disclosures.

Item 407 also requires disclosure of whether the audit committee members are independent, the number of meetings held, and certain information about member attendance at these meetings, in addition to the following:

- Whether or not the audit committee has a charter; [39]
- The circumstances surrounding any appointment of a director to the audit committee who is not independent; [40]
- Whether there is a separately-designated standing audit committee or a committee performing similar functions, and the identity of each member of such committee; [41] and
- Whether or not the registrant has at least one audit committee financial expert serving on its audit committee.[42]

If the audit committee has a charter, the registrant should either disclose where security holders may access a current copy of the audit committee's charter or include a copy of the charter in an appendix to the registrant's proxy or information statement that is provided to security holders at least once every three fiscal years, or sooner if the charter has been materially amended since the beginning of the registrant's last fiscal year.[43]

B. Disclosure Requirements Regarding Preapproval of Services and Auditor Fees

The Sarbanes-Oxley Act also enhanced the ability of audit committees to promote auditor independence. Section 202 of the Sarbanes-Oxley Act added Section 10A(i) of the Exchange Act, which gave the audit committee responsibility to preapprove all audit and permissible non-audit services provided by the independent auditor.[44] In 2003, the Commission finalized its rules to implement Section 10A(i) of the Exchange Act.[45] Under the rules, the audit committee is required to preapprove all permissible non-audit services and all audit, review, or attest engagements required under the securities laws. Additionally, the issuer must provide disclosure of the audit committee's preapproval policies and procedures in proxy statements related to the election of directors or the ratification of the independent public accountant.[46]

Concurrently, the Commission adopted rules that changed both the types of fees paid to the independent auditor that must be described and the number of years for which the disclosures must be provided.[47] As a result, an issuer is required to disclose the fees paid to its independent auditor for each of the two most recent fiscal years, separated into the following four categories: (1) Audit Fees, (2) Audit-Related Fees, (3) Tax Fees, and (4) All Other Fees.[48] Additionally, registrants are required to describe the nature of the services provided that are categorized as Audit-Related Fees and All Other Fees. The registrant is also required to

[31] Release No. 33–8040.

[32] Section 104 of the Sarbanes-Oxley Act.

[33] *See http://pcaobus.org/Inspections/Documents/Inspection_Information_for_Audit_Committees.pdf.*

[34] *See, e.g. http://pcaobus.org/Inspections/Documents/Executive_Summary_02252013_Release_2013_001.pdf, http://pcaobus.org/Standards/QandA/10-24-2013_SAPA_11.pdf* at 36 and *http://pcaobus.org/Standards/QandA/9-9-14_SAPA_12.pdf* at page 33.

[35] *See, e.g.,* Release No. 34–42266 (stating that additional disclosures about a company's audit committee and its interaction with the company's auditors and management will promote investor confidence in the integrity of the financial reporting process).

[36] Audit committee reports are currently reported by issuers pursuant to the disclosure requirements of Regulation S–K and closed-end investment companies through the proxy statement requirements of Item 22(b)(16) of Schedule 14A.

[37] *See* Instruction 3 to Item 407(d) of Regulation S–K.

[38] *See* Item 407(d)(3) of Regulation S–K.

[39] *See* Item 407(d)(1) of Regulation S–K.

[40] *See* Item 407(d)(2) of Regulation S–K.

[41] *See* Item 407(d)(4) of Regulation S–K.

[42] *See* Item 407(d)(5) of Regulation S–K.

[43] *See* Item 407(d)(1) of Regulation S–K.

[44] Section 202 of the Sarbanes-Oxley Act; 15 U.S.C. 78j–1(i)(1)(A).

[45] *See* Release No. 34–47265.

[46] *See* Item 9(e)(5) of Schedule 14A [17 CFR 240.14a–101].

[47] *See* Release No. 34–47265.

[48] *See* Item 9(e) of Schedule 14A.

disclose the percentage of services in the Audit-Related Fees, Tax Fees, and All Other Fees captions that were approved by the audit committee pursuant to its preapproval policies and procedures.[49]

C. Disclosure Requirements Regarding Proposal To Ratify Selection of Independent Auditors

While the audit committees of listed issuers are required to appoint the issuer's auditors, many issuers solicit the approval or ratification of the independent auditors from shareholders.[50] If such a proposal is solicited, the issuer must provide the information required by Item 9 of Schedule 14A. Specifically, in addition to the fee information and preapproval policies noted above, shareholders of listed issuers must receive disclosure of the following:

- The name of the auditor selected or being recommended for the current year;
- the auditor for the most recently completed fiscal year, if different from the one subject to the ratification;
- whether a representative from the auditor's firm will be present at the meeting, will have the opportunity to make a statement, and be available to respond to questions; and
- information regarding dismissed or resigned auditors as required by Item 304(a) of Regulation S–K.[51]

The rules do not require issuers to provide information about the audit committee's process and reasons that lead to the selection of the independent auditor subject to the ratification solicitation.

IV. Reasons To Seek Comment on the Audit Committee Reporting Requirements

While current audit committee reporting requirements provide information about the role of the audit committee with respect to its oversight of the auditor, these disclosures do not describe how the audit committee executes its responsibilities. The ways in which an audit committee discharges its responsibilities can be influenced by its composition and the environment in which it operates. As discussed below, the fact that a significant number of audit committees voluntarily provide information beyond the disclosures required by our current rules raises a question of whether there may be market demand for such information.[52] Similarly, during a series of roundtables attended by audit committee members from various jurisdictions, participants stated that investors and other stakeholders have requested greater transparency about audit committee activities.[53] However, there appears to be limited research as to why some companies provide voluntary disclosure regarding audit committee activities and whether and how such additional information impacts investors' investment or voting decisions. For instance, variability in the nature and extent of current voluntary disclosures could, to some extent, be the result of tailoring the disclosures to a company's facts and circumstances.

Providing additional disclosure about the audit committee's oversight of the independent auditor could further inform investors about the oversight process and provide them with useful context for audit committee decisions. It may also 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. Therefore, the Commission is seeking 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.[54]

A. Public Discussion of the Need for Updated Audit Committee Reporting

Investors, organizations representing audit committee members, and auditors are among those that have expressed the need for audit committees to evaluate their disclosures and consider whether improvements can be made to provide investors with relevant information that more transparently conveys the oversight responsibilities performed by the audit committee relative to an issuer's auditor. For example, a group of corporate governance and policy organizations has expressed the view that public company audit committee reporting can and should be strengthened.[55] At a meeting in June of 2013, several delegates from the Audit Committee Chair Advisory Council acknowledged that ''[f]rankly, we don't do a good job of communicating what we do. The public doesn't see all the work we do, quarter after quarter.'' [56]

Investors have also increased their focus on the activities and transparency of audit committees, including those activities related to enhancing audit quality through oversight of the independent auditor. Some investors have sought greater disclosure from audit committees of a number of public companies about matters such as the responsibility of the audit committee for the appointment, compensation, and oversight of the external auditor; audit firm tenure; audit firm fee determinations; and audit committee involvement in the selection of the audit engagement partner.[57] Institutional investor groups have called for additional audit committee disclosures as part of their published ''good corporate governance policies.'' [58]

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[49] *Id.*

[50] *See* Ernst & Young, ''Audit Committee Reporting to Shareholders: Going Beyond the Minimum,'' (Feb. 2013), available at *http://www.ey.com/Publication/vwLUAssets/Audit_committee_reporting_to_shareholders%3A_going_beyond_the_minimum/%24FILE/Audit_committee_reporting_CF0039.pdf* (noting that more than 90 percent of Fortune 100 companies seek annual shareholder ratification of the auditor chosen by the audit committee); Ernst & Young, ''Let's Talk: Governance—Audit Committee Reporting to Shareholders 2014 Proxy Season Update,'' (Aug. 2014), available at *http://www.ey.com/Publication/vwLUAssets/ey-lets-talk-governance-august-2014/$FILE/ey-lets-talk-governance-august-2014.pdf.*

[51] Item 9 of Schedule 14A (referring to Item 304(a) of Regulation S–K [17 CFR 229.304(a)]).

[52] *See* CAQ and Audit Analytics, ''2014 Audit Committee Transparency Barometer,'' (Dec. 2, 2014), available at *http://www.thecaq.org/docs/reports-and-publications/2014-audit-committee-transparency-barometer.pdf?sfvrsn=2* (''Audit Committee Transparency Barometer''). In addition, a report based on a 2014 review of proxy disclosures of Fortune 100 companies noted an upward trend in voluntary disclosures by audit committees since 2012. *See also* Ernst & Young, ''Let's Talk: Governance—Audit Committee Reporting to Shareholders 2014 Proxy Season Update,'' (Aug. 2014).

[53] *See* Federation of European Accountants, the Institute of Chartered Accountants Australia and the CAQ, ''Global Observations on the Role of the Audit Committee,'' (May 13, 2013), available at *http://www.thecaq.org/docs/reports-and-publications/globalobservationsontheroleoftheauditcommittee.pdf?sfvrsn=2* (''Global Observations'').

[54] For example, an academic paper indicates that events that negatively impact the image of a company, such as a reporting failure, have a direct impact on turnover of audit committee members, while negative disclosures alone about audit committee members appear to have limited or mixed impact on member turnover. *See* Kachelmeier, S. *et al., Why Do Ineffective Audit Committee Members Experience Turnover*? (September 18, 2013), available at *http://ssrn.com/abstract=1920850.*

[55] *See* A Call to Action *supra* note 2.

[56] *Id.* at 7, (quoting National Association of Corporate Directors (''NACD'') Summary of Proceedings, Audit Committee Chair Advisory Council, at 6 (June 19, 2013), available at *http://www.nacdonline.org/Resources/Article.cfm?ItemNumber=7284*). The Audit Committee Chair Advisory Council is a group of audit committee chairs, shareholder representatives, regulators and other stakeholders that discuss ways to improve communications between corporations and stakeholders, improve audit committee practices, and give voice to audit committee members.

[57] *See* A Call to Action at 6 (describing investors' increasing interest and focus on the audit committee).

[58] *See, e.g.,* Council of Institutional Investors, Policies on Corporate Governance, Section 2.13 (updated Sept. 27, 2013), available at *http://www.cii.org/corp_gov_policies#BOD.*

Internationally, there appears to be interest in improving the communication coming from audit committees. For example, one of the themes that emerged at a 2013 summit hosted by the members of the Audit Committee Leadership Networks in North America and Europe was the recognition that ''[r]egulators, policy-makers, and many investors would benefit from a more robust understanding of what the public company audit committee does and how it oversees the external audit firm and performs its other responsibilities.'' [59]

Some audit committee members, however, see additional reporting as possibly contributing to a state of ''disclosure overload.'' [60] Some are also skeptical whether additional reporting would be helpful to ''stakeholders,'' ''in light of a lack of interest in audit committee reporting currently required.'' [61] Others have suggested the need for principles-based reporting to allow for flexibility and to avoid a ''one size fits all'' approach.[62] Given these varied views on the usefulness and relevance of audit committee disclosures, the Commission is seeking input on whether and how additional reporting may be useful to investors.

B. Divergence in Current Audit Committee Reporting Practice

Some issuers, including their audit committees, already provide disclosures that go beyond the required disclosures.[63] For example, a report by the CAQ and Audit Analytics reviewing the 2014 proxy disclosures of 1,500 Standard & Poor's (''S&P'') composite companies, including the S&P 500 (''S&P 500'') companies, the S&P MidCap 400 (''S&P MidCap'') companies, and the S&P SmallCap 600 (''S&P SmallCap'') companies noted the following:

- 83% of S&P 500, 69% of S&P MidCap, and 58% of S&P SmallCap companies discussed how non-audit services may impact auditor independence;
- 47% of S&P 500, 42% of S&P MidCap, and 50% of S&P SmallCap companies disclosed the length of time an auditor has been engaged;
- 13% of S&P 500, 10% of S&P MidCap, and 8% of S&P SmallCap companies discussed the audit committee's considerations of qualifications, geographic reach, and firm expertise when appointing the auditor;
- 8% of S&P 500, 7% of S&P MidCap, and 15% of S&P SmallCap companies discussed the criteria considered when evaluating the audit firm;
- 3% of S&P 500, 2% of S&P MidCap, and 1% of S&P SmallCap companies disclosed the significant areas addressed with the auditor;
- 13% of S&P 500 and 1% of both S&P MidCap and S&P SmallCap companies included an explicit statement that the audit committee is involved in the selection of the audit engagement partner; and
- 13% of S&P 500, 4% of S&P MidCap and 1% of S&P SmallCap companies discussed audit fees and their connection to audit quality.[64]

These additional disclosures are voluntary, not consistently provided and may vary among registrants, depending on company characteristics.[65] Some audit committees may disclose only what is specifically required, for a variety of reasons, for instance, to avoid legal exposure,[66] to avoid incremental associated efforts of the disclosure process, or because they do not believe such additional information would be useful to investors.

C. PCAOB Standard-Setting Projects

The PCAOB is engaged in standard-setting initiatives that could result in additional information being disclosed related to the auditor and its work. One project has been exploring a requirement that the auditor disclose, in the auditor's report, the name of the engagement partner as well as the names, locations, and extent of participation of other independent public accounting firms that took part in the audit and the locations and extent of participation of other persons not employed by the auditor that took part in the audit.[67]

Some investors have indicated that the engagement partner's track record compiled from the disclosure of the partner's name would be relevant in ''overseeing the audit committees and determining how to cast votes on more than two thousand proposals that are presented annually to shareholders on whether to ratify the board's choice of outside auditor.'' [68] Audit firms and other commenters questioned whether the auditor's report is the most appropriate place to provide this information, for example, due to potential liability concerns.[69] As a

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[59] *See* A Call to Action at 7, (citing Tapestry Networks, ViewPoints, Issue 22, p.1 (May 2, 2013), available at *http://www.tapestrynetworks.com/initiatives/corporate-governance/global-audit-committee-leadership-networks/upload/Tapestry_EY_ACLS_Summit_View22-May13.pdf*).

[60] *See* Global Observations at 7; *See also* Center for Capital Markets Competitiveness, Corporate Disclosure Effectiveness: Ensuring a Balanced System that Informs and Protects Investors and Facilitates Capital Formation, (Jul. 28, 2014), available at *http://www.centerforcapitalmarkets.com/wp-content/uploads/2014/07/CCMC_Disclosure_Reform_Final_7-28-20141.pdf.*

[61] *Id.*

[62] *Id.*

[63] *See, e.g.,* A Call to Action at 7.

[64] *See* Audit Committee Transparency Barometer.

[65] According to the observations of an accounting firm, variability in reporting may also be the result of, among other things, differences in regulatory and listing requirements across jurisdictions and interest by investors and others for disclosures that go beyond the minimum. *See* Ernst & Young, ''Enhancing audit committee transparency: Themes in audit committee disclosures in Australia, Canada, Singapore, the UK and the US'' (Mar. 2015), available at *http://www.ey.com/Publication/vwLUAssets/EY-Enhanced-audit-committee-transparency-themes-in-audit-committee-disclosures/$FILE/EY-Enhanced-audit-committee-transparency-themes-in-audit-committee-disclosures.pdf.*

[66] *See* NACD Summary of Proceedings, Audit Committee Chair Advisory Council, (June 19, 2013).

[67] *See* PCAOB Release No. 2013–009, *Improving Transparency Through Disclosure of Engagement Partner and Certain Other Participants in Audits* (Dec. 4, 2013), available at *http://pcaobus.org/Rules/Rulemaking/Pages/Docket029.aspx.* Similar requirements exist in other jurisdictions, including but not limited to, the European Union, United Kingdom, Australia, Sweden, China, and Taiwan. Academic research has supported that, in at least these particular jurisdictions, information about individual audit partners, over and above information about the audit firm, is relevant to financial statement users for both public and private firms. *See* Carcello, J. and C. Li., *Cost and Benefits of Requiring an Engagement Partner Signature: Recent Experience in the United Kingdom,* 88 The Accounting Review, 1511 (2013); Aobdia, D. et al., *Capital Market Consequences of Individual Audit Partners, The Accounting Review*, (forthcoming) available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2321333* (discussing Taiwan's mandate regarding disclosure of individual audit partners); Knechel, R. et al., *Does the Identity of Engagement Partners Matter? An Analysis of Audit Partner Reporting Decisions,* Contemporary Accounting Research, (forthcoming) available at *https://www.caaa.ca/_files/file.php?fileid=filerSDAxJgThx&filename=file_Knechel__Vanstraelen__Zerni__Does_the_Identity_of_Engagement_Partners_Matter.pdf* (discussing Sweden's disclosure requirement); Gul, F.A. et al., *Do Individual Auditors Affect Audit Quality? Evidence From Archival Data,* 88 The Accounting Review, 1993 (2013) (discussing China's disclosure requirement); and The Association of Chartered Certified Accountants and Macquarie University, *The Drivers of Audit Quality: Views From Australian CFOs,* (2014), available at *http://www.accaglobal.com/content/dam/acca/global/PDF-technical/audit-publications/pol-tp-daq1(cfo)-drivers-audit-quality.pdf.*

[68] *See,* Reproposed Rule Comment Letter of the Council of Institutional Investors (Aug. 15, 2014), available at *http://pcaobus.org/Rules/Rulemaking/Pages/Docket029Comments.aspx.*

[69] Some commenters voiced the concern, for example, that the PCAOB's December 2013 reproposal on disclosure of the engagement partner and other participants in the audit may lead to the engagement partner and other participants (other independent public accounting firms and other persons not employed by the auditor) being deemed experts for purposes of liability under Section 11 of the Securities Act of 1933 (''Securities Act''). *See, e.g.,* Reproposed Rule Comment Letters of Deloitte & Touche LLP (Feb. 3, 2014), PricewaterhouseCoopers LLP (Feb 4, 2014), Ernst &

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result, the PCAOB is seeking further comment on whether these concerns would be sufficiently addressed by providing the information in an alternative location, outside of the auditor's report and outside of the issuer's filing.[70]

Commenters on the PCAOB's proposal have also suggested that it may be more appropriate for any requirement for proposed disclosures to be considered by the Commission, rather than the PCAOB, because having these disclosures made by the issuer, in the audit committee report or proxy statement, appears aligned with the responsibilities outlined in Section 10A(m) of the Exchange Act.[71] Requiring any such disclosure by the audit committee would require Commission action because the PCAOB does not have authority over issuer disclosures.

Another PCAOB initiative could result in disclosure of additional information about the audit and the auditor, including the auditor's tenure, in the auditor's report.[72] Some commenters believe the disclosure of auditor tenure in the auditor's report would be useful because it could help investors evaluate the audit committee's oversight of the auditor (including its rationale for selecting or retaining the auditor) and develop a basis for shareholders to ratify the audit committee's selection of the auditor, when applicable.[73] Others raised concerns about the lack of evidence correlating auditor tenure and audit quality and whether the placement of this data in the auditor's report would imply that some correlation exists.[74] Some believe that issuer filings with the Commission would be a more appropriate location for this disclosure.[75]

D. Initiatives in Other Jurisdictions To Enhance Audit Committee Reporting

Other jurisdictions also have been exploring expanded reporting with respect to audit committees. For example, in 2012, the UK Financial Reporting Council adopted amendments to its Corporate Governance Code that require a separate section of the annual report that describes the work of the audit committee in discharging its responsibilities.[76] The report now includes, among other things, the significant issues considered in relation to the financial statements and how they were addressed; how the audit committee assessed the effectiveness of the audit process; the approach to appointing the auditor and how objectivity and independence are safeguarded relative to non-audit services; as well as information on the length of tenure of the current audit firm and when a tender was last conducted.

The International Auditing and Assurance Standards Board (the ''IAASB'') has also acknowledged the merits of enhanced disclosure around the activities of the audit committee. In connection with its efforts to develop a framework for audit quality, it has stated:

> While users are likely to conclude that the active involvement of a high-quality audit committee will have a positive impact on audit quality, there is considerable variability in the degree to which audit committees communicate to users the way they have fulfilled these responsibilities. There is potential for fuller disclosure of the activities of audit committees to benefit both actual audit quality and user perception of it. Consequently, some countries are actively exploring whether to include more information in annual reports about the activities of audit committees in relation to the external audit.[77]

An amendment to the Directive on Statutory Audits adopted by the European Union in April 2014 [78] included measures to strengthen the independence of statutory auditors, make the audit report more informative, and strengthen audit supervision. The Directive amendment reinforces the role of the audit committee by expanding its responsibilities in ensuring the quality of the audit being performed, giving it responsibility for the auditor appointment process, and enhancing the auditor's reporting requirements to the audit committee.[79] Specifically, the Directive requires that the audit committee explain to the issuer's board how the auditor contributed to the integrity of the financial statements and how the committee assessed threats to the auditor's independence and implemented appropriate safeguards, and also requires the audit committee obtain a detailed report from the auditor on the results of the audit.

Corporate governance practices, regulations, and enforcement vary across countries.[80] Therefore, the Commission is interested in understanding whether enhanced audit committee disclosures would result in benefits for U.S. investors.

E. References to PCAOB Auditing Standards

With the Commission's approval of PCAOB Auditing Standard No. 16, *Communications with Audit Committees* (''AS 16'') in 2012, changes

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Young LLP (Feb 12, 2014), Society of Corporate Secretaries & Governance Professionals (Mar. 12, 2014), available at *http://pcaobus.org/Rules/Rulemaking/Pages/Docket029Comments.aspx.*

[70] PCAOB Release No. 2015–004, *Supplemental Request for Comment: Rules to Require Disclosure of Certain Audit Participants on a New PCAOB Form* (June 30, 2015), available at *http://pcaobus.org/Rules/Rulemaking/Pages/Docket029.aspx.*

[71] *See* Reproposed Rule Comment Letters of Dennis R. Beresford (Jan 6, 2014), Institute of Management Accountants (Jan 21, 2014), Charles Noski (Jan 13, 2014), James L. Fuehrmeyer, Jr. (Jan 22, 2014), Audit and Assurance Services Committee of the Illinois CPA Society (Feb 3, 2014), Professional Standards Committee of the Texas Society of Certified Public Accountants (Feb 3, 2014), CAQ (Feb 3, 2014), Auditing Standards and SEC Committees of the New York State Society of Certified Public Accountants (Feb 4, 2014), PricewaterhouseCoopers LLP (Feb 4, 2014), Ernst & Young LLP (Feb 12, 2014), Crowe Horwath (Feb 12, 2014), G. Lawrence Buhl, CPA (Mar 5, 2014), U.S. Chamber of Commerce, Center for Capital Market Competitiveness (Mar 10, 2014), KPMG LLP (Mar 13, 2014), Financial Management and Assurance, U.S. Government Accountability Office (Mar 17, 2014), Robert N. Waxman, CPA (Mar 17, 2014), and CohnReznik LLP (Mar 17, 2014), available at *http://pcaobus.org/Rules/Rulemaking/Pages/Docket029Comments.aspx.*

[72] *See* PCAOB Release No. 2013–005, *Proposed Auditing Standards on the Auditor's Report and the Auditor's Responsibilities Regarding Other Information and Related Amendments* (Aug. 13, 2013), available at *http://pcaobus.org/Rules/Rulemaking/Pages/Docket034.aspx.*

[73] *See, e.g.,* Proposed Rule Comment Letters of Counsel of Institutional Investors (Dec. 16, 2013), CFA Institute (Dec. 30, 2013), and Peter Clapman (Dec. 5, 2013), available at *http://pcaobus.org/Rules/Rulemaking/Pages/Docket034Comments.aspx.*

[74] *See, e.g.,* Proposed Rule Comment Letters of Deloitte and Touche, LLP (Dec. 11, 2013), NAREIT (Dec. 11, 2013), Tyson Foods, Inc. (Dec. 11, 2013), Nucor (Dec. 10, 2013), Williams (Dec. 4, 2013), Acuity Brands (Nov. 26, 2013), available at *http://pcaobus.org/Rules/Rulemaking/Pages/Docket034Comments.aspx.* Despite commenters' views, there is some academic evidence connecting auditor tenure and audit quality, which is discussed in Section VI.C.3.

[75] *See, e.g.,* Proposed Rule Comment Letters of National Association of Corporate Directors (Dec. 11, 2013) (suggesting that the Commission should consider inclusion of tenure information in proxy statements if there is sufficient investor interests), Federation of European Accountants (Dec. 11, 2013) (stating its belief that an auditor could disclose tenure if it is not already disclosed in management's report or annual financial statements), Institute of Management Accountants (Nov. 12, 2013) (objecting to inclusion in the auditor's report and noting that it may be a corporate governance matter included in the proxy statement), and BlackRock, Inc. (Oct. 30, 2013) (not objecting to the inclusion while noting that inclusion in an issuer filing may be preferable), available at *http://pcaobus.org/Rules/Rulemaking/Pages/Docket034Comments.aspx.*

[76] Section C.3.8 of the UK Corporate Governance Code, available at *https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate-Governance-Code.aspx.*

[77] IAASB, ''A Framework for Audit Quality,'' p. 48 (Jan. 15, 2013), available at *http://www.ifac.org/publications-resources/framework-audit-quality.*

[78] *See* Directive 2014/56/EU of the European Parliament and Council of April 16, 2014, available at *http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0056&from=EN.*

[79] *Id.*

[80] OECD, ''Corporate Governance Factbook,'' (Feb. 2014), available at *http://www.oecd.org/daf/ca/CorporateGovernanceFactbook.pdf.*

to the required audit committee communications by the auditor, among others, were incorporated within PCAOB auditing standards and superseded the prior communication requirements in AU sec. 380.[81] As a result, Item 407(d) of Regulation S–K is no longer current because it references AU sec. 380. In addition to this outdated reference, there are required communications in other PCAOB standards that are not reflected in current audit committee disclosure requirements.[82] Moreover, the existing audit committee report does not address the Commission's communication requirements in Rule 2–07 of Regulation S–X.

The change to the communication requirements within the auditing standards without a corresponding change in the audit committee reporting requirements has resulted in divergent practices. For example, some companies' audit committee reports refer to matters required to be communicated under AS 16; others refer to matters required to be communicated under all PCAOB standards. Still others continue to refer to communications under AU sec. 380, even though AU sec. 380 has been superseded. These differences in reporting may result in confusion among readers of the audit committee reports as to whether appropriate auditor and audit committee communications have occurred and therefore, suggest a need to consider updating the audit committee disclosure requirements.

V. Focus on Audit Committee Oversight of the Auditor

The Commission is interested in understanding whether changes should be made to required disclosures about audit committees regarding oversight of the audit and the auditor relationship. The Commission is also interested in understanding whether this additional information would help inform investment decisions and, where applicable, voting decisions regarding the ratification of auditors and the election of directors who are members of the audit committee.

Request for Comment

1. Do the current audit committee reporting requirements result in disclosures that provide investors with useful information? Why or why not? Are there changes to the current audit committee disclosure requirements that the Commission should consider that would better inform investors about the audit committee's oversight of the audit and the independent auditor?

2. Are there existing disclosure requirements in this area that should be revised, reconsidered or removed? If so, which ones? How and why should they be changed?

3. Would investors find additional or different audit committee reporting requirements useful given the committee's strengthened and expanded role in overseeing a company's independent auditor that resulted from the Sarbanes-Oxley Act? For example, to what extent is information regarding how the audit committee discharges its responsibilities useful to investors given the nature of the requirements and likely variability in performance? Also, are there particular audit committee responsibilities for which information would be likely more or less useful and why?

4. What, if any, are potential challenges that issuers or audit committees may face that the Commission should consider as it assesses potential changes to disclosures in this area?

5. Are there other areas where changes to the current audit committee disclosure requirements would be desirable? If so, what are they?

6. Should the audit committee provide disclosure of its work in other areas, for example, its oversight of the financial reporting process or the internal audit function? If so, what types of disclosures would be most useful and why?

VI. Potential Changes to Disclosures

The Commission is seeking comment on potential changes to required disclosures regarding an audit committee's role and responsibilities relative to the audit and the auditor, and other potential related changes. The Commission is seeking feedback on the disclosure requirements to determine the extent to which adding, removing, or modifying certain audit committee disclosures would enhance the usefulness of such disclosures for investors.

The purpose of the disclosures discussed below would be to address the audit committee's responsibilities with respect to the appointment, compensation, retention, and oversight of the work of the registered public accounting firm and better inform investors about how the audit committee executes those responsibilities. The Commission is seeking feedback on the content and scope of the audit committee disclosures, as well as commenters' views on which of these disclosures, if any, would be most useful in conveying how the audit committee executes its oversight of the auditor and whether such enhanced disclosures would be useful to investors' investment or voting decisions.

Such disclosures could provide information that frequently is either not readily available or inconsistently available today to investors. These disclosures could also minimize the ''expectations gap'' that some have expressed exists between investors and the audit committee regarding the role of the audit committee.[83] In a series of roundtables organized by the CAQ, the Federation of European Accountants, and the Institute of Chartered Accountants Australia in January and February of 2013, participants noted that stakeholders' expectations are not consistent with the audit committee's actual responsibilities and how they are discharged, which results in the current expectations gap.[84]

For purposes of this concept release, the Commission has categorized the specific audit committee disclosures about which the Commission is interested in receiving comment into three groups: the audit committee's oversight of the auditor, the audit committee's process for selecting the auditor, and the audit committee's consideration of the qualifications of the audit firm and certain members of the engagement team when selecting the audit firm. The Commission is also interested in receiving comments on where the audit committee disclosures should be located and whether there are specific concerns relating to smaller reporting companies [85] and emerging growth companies.[86] In Section VII of this release, the Commission also asks more general questions with respect to any potential new disclosures.

[81] *See* Release No. 34–68453, *Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rules on Auditing Standard No. 16, Communications with Audit Committees, and Related and Transitional Amendments to PCAOB Standards* (Dec. 17, 2012) [77 FR 75689].

[82] Appendix B to AS 16 identifies other PCAOB rules and standards that require audit committee communications, such as communications related to an audit of internal control over financial reporting that is integrated with an audit of financial statements, related party transactions, fraud considerations, and illegal acts, among others.

[83] *See* Global Observations.

[84] *Id.*

[85] *See* Rule 12b–2 of the Exchange Act [17 CFR 240.12b–2].

[86] *See* Section 2(a)(19) of the Securities Act [15 U.S.C. 77b(a)(19)] and Section 3(a)(80) of the Exchange Act [15 U.S.C. 78c(a)(80)].

A. Audit Committee's Oversight of the Auditor

1. Additional Information Regarding the Communications Between the Audit Committee and the Auditor

As noted in Section III.A, the audit committee report today discloses whether certain communications have occurred. Potential additional disclosures about the communications might provide additional information about the actions the audit committee has taken during the most recently completed fiscal year to oversee the auditor and the audit. Also, as previously discussed, current requirements for the audit committee report contain an outdated reference to AU sec. 380, which was superseded by AS 16. In addition to correcting this reference, the Commission is considering whether to require additional qualitative disclosures about the nature and timing of the required communications between the audit committee and the auditor.

For instance, the PCAOB has required that the auditor communicate with the audit committee prior to the issuance of the auditor's report.[87] The disclosure rules could require the audit committee to discuss not just whether and when all of the required communications occurred, but also the audit committee's consideration of the matters discussed. Such communications and related disclosures could address, for instance, the nature of the audit committee's communications with the auditor related to items such as the auditor's overall audit strategy, timing, significant risks identified, nature and extent of specialized skill used in the audit, planned use of other independent public accounting firms or other persons, planned use of internal audit, basis for determining that the auditor can serve as principal auditor, and results of the audit, among others, and how the audit committee considered these items in its oversight of the independent auditor.

Request for Comment

7. Should the Commission consider modifying any of the existing audit committee disclosure requirements regarding communications with the auditor? If so, which disclosure requirements should the Commission consider modifying and what modifications should be made?

8. Should the Commission update the existing disclosure requirements to include all communications required by Commission rules and PCAOB standards rather than only those required by AS 16? Would expanding the requirements to encompass all required communications create difficulties for issuers or audit committees in complying with the disclosure requirements? Why or why not?

9. Should there be disclosure about the audit committee's consideration beyond a statement that they have received and discussed the matters communicated by the auditor as required by PCAOB Rule 3526, *Communication with Audit Committees Concerning Independence*? If so, what should be included in the disclosure?

10. Currently, audit committees are only required to disclose whether the required communications occurred. Are statements confirming that required communications have occurred helpful disclosure? Why or why not?

11. Should there be disclosures regarding the nature or substance of the required communications between the auditor and the audit committee? Are there other types of communications between the audit committee and the auditor about which the Commission should consider mandating disclosure?

12. Should such discussion be required to address all required communication topics or a subset of overarching topics related to how the auditor planned and performed the audit? For instance, should the audit committee disclose information regarding how the audit committee considered the nature of the required communications that were made under paragraphs 9 and 10 of AS 16 as it relates to significant risks identified, nature and extent of specialized skill used in the audit, planned use of the company's internal auditors, involvement by other independent public accounting firms or other persons, and the basis for determining that the auditor can serve as the principal auditor in its oversight of the independent auditor? Should the audit committee disclose how it dealt with disagreements between company management and the auditor? If so, what should be included in the disclosure? Are there other categories of the communications between auditors and the audit committee that should be considered for disclosure?

13. For audits involving multiple locations, should the audit committee report disclose information regarding how the audit committee considered, in its oversight of the auditor, the scope of the audit, locations visited by the auditor, and the relative amount of account balances related to such locations compared to the consolidated financial statements?

14. Communications between the auditor and the audit committee may not be limited to the items required by Commission rules and PCAOB standards. Should the audit committee report be required to disclose any information about the extent to which additional matters were discussed with the auditor? If so, what level of detail should be required?

15. Are there benefits, costs or unintended consequences that could result from requiring disclosure that goes beyond a statement that the required discussions have occurred? How would the disclosures be used by institutional and retail investors, investment advisers, and proxy advisory firms in making voting decisions and recommendations on matters such as director elections, executive compensation, or shareholder proposals, among others?

16. Would the potential disclosures referenced here be decision-useful to investors? If so, would it be sufficient for the disclosure to address the consideration given by the audit committee without necessarily disclosing the underlying substance? Would disclosing the substance of the communications between the audit committee and the auditor be useful to investors? Why or why not?

17. Could these potential disclosures chill communications between the audit committee and the auditor? If so, how? Could they reveal proprietary information about the issuer or the audit methodology? If so, how?

2. The Frequency With Which the Audit Committee Met With the Auditor

The audit committee and auditor can determine the timing, frequency and forum (*e.g.,* in-person or telephonically and extent of committee participation) for meetings, provided that required communications are made in accordance with PCAOB standards and Commission rules.[88] Also, there are listing requirements that the audit committee meet separately and periodically with management, the internal auditor, and the independent auditor.[89] Recognizing that the number of audit committee meetings is already required to be disclosed,[90] requiring additional disclosure about the specific meetings with the auditor may provide

[87] *See* paragraph 26 of AS 16.

[88] AS 16 and Rule 2–07 of Regulation S–X.

[89] *See* NYSE Listed Company Manual, Section 303A.07(E) and the Commentary to Section 303A.07(E).

[90] *See* Item 407(b)(3) of Regulation S–K.

additional insight into the audit committee's oversight of the auditor.

Request for Comment

18. Should there be additional disclosures required about the meetings the audit committee has had with the auditor? If so, what type of disclosures should be made and why? If not, why not?

19. Should the audit committee report disclose the frequency with which it met privately with the auditor? Would confirmation that private conversations occurred be useful disclosure even if there are no disclosures about the topics discussed? Should there be a requirement to disclose the topics discussed?

3. Review of and Discussion About the Auditor's Internal Quality Review and Most Recent PCAOB Inspection Report

Pursuant to certain listing requirements, the audit committee must obtain and review a report by the independent auditor describing the firm's internal quality-control procedures,[91] any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, with respect to one or more independent audits carried out by the firm.[92] Audit committees not subject to these listing standards may choose to request or discuss this information with their auditors, but they are not required to do so.

Information about the results of internal quality reviews, or a PCAOB inspection of a company's audit, as well as more general inspection results, can help an audit committee in carrying out its oversight role. Inspection reports can inform an audit committee about how its auditor performed in high-risk areas across audits. As the PCAOB has stated, ''[t]he [Sarbanes-Oxley] Act does not permit the [PCAOB] to make public, or otherwise to share with an audit committee, all of the information obtained by the PCAOB that could assist an audit committee in carrying out its role. . . . Beyond the public portion of an inspection report, voluntary disclosure by the inspected audit firm is an audit committee's only means of obtaining information concerning a PCAOB inspection.'' [93] The PCAOB also has provided sample questions an audit committee may wish to ask auditors. Specifically, the PCAOB stated:

> [W]ithout necessarily framing discussions in terms of an inspection or an inspection report, an audit committee might benefit from having an understanding with its audit firm through which the audit committee receives timely information (both during the conduct of the inspection and when the Board has issued a final inspection report) about—
>
> • whether anything has come to the firm's attention suggesting the possibility that an audit opinion on the company's financial statements is not sufficiently supported, or otherwise reflecting negatively on the firm's performance on the audit, and what if anything the firm has done or plans to do about it;
>
> • whether a question has been raised about the fairness of the financial statements or the adequacy of the disclosures;
>
> • whether a question has been raised about the auditor's independence relative to the company;
>
> • whether any of the matters described in the public portion of an inspection report on the firm, whether or not they involve the company's audit, involve issues and audit approaches similar to those that arise or could arise in the audit of the company's financial statements;
>
> • to the extent any such similarity exists, whether and how the firm has become comfortable that the same or similar deficiencies either did not occur in the audit of the company's financial statements or have been remedied; and how issues described by the Board in general reports summarizing inspection results across groups of firms relate to the firm's practices, and potentially the audit of the company's financial statements, and how the firm is addressing those issues.[94]

Disclosure could be required as to whether this type of discussion has occurred. There also could be disclosure required about the nature of any discussions held with the auditor about the results of the firm's internal quality review and most recent PCAOB inspection. These disclosures may provide transparency with respect to the extent of the audit committee's oversight of the auditor.

Request for Comment

20. 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? If so, what types of disclosures should be made in this regard? Would disclosures about the nature and extent of such discussions be useful without disclosure of the specific review or inspection results? Should the disclosures include information about how the audit committee considered any deficiencies described in the PCAOB inspection report on the audit process? If not, why not?

21. Is there a risk that the confidentiality of the nonpublic PCAOB inspection results could be undermined (*e.g.,* if this information is sought and provided through the audit committee)? If so, what type of information could be presented that might be problematic?

22. Should we require disclosure about how the audit committee considered the results described in PCAOB inspection reports in its oversight of the auditor? Why or why not?

23. Are there particular issues or challenges in this area that should be considered? If so, please describe and provide data.

4. Whether and How the Audit Committee Assesses, Promotes and Reinforces the Auditor's Objectivity and Professional Skepticism

Through its interactions with the auditor, the audit committee may be in a position to assess, promote, and reinforce the auditor's objectivity and professional skepticism. Heightened oversight by the audit committee of the auditor's objectivity and professional skepticism should promote greater audit quality. The audit committee could disclose whether, and if so how, as part of its oversight of the auditor, it assesses, promotes, or reinforces the auditor's objectivity and professional skepticism. Additionally, the audit committee could disclose the results of its evaluation of the auditor's objectivity and professional skepticism.

Request for Comment

24. Would investors find disclosure about whether, and if so how, the audit committee assesses, promotes, and reinforces the auditor's objectivity and professional skepticism useful? Why or why not?

25. What specific types of disclosures could the audit committee make in this regard? For example, should the audit committee disclose whether, and if so how, it evaluated the auditor's objectivity and professional skepticism, as well as the results of such an evaluation? Commenters are encouraged to provide examples of such disclosures.

[91] Paragraphs .04–.07 of PCAOB QC Section 30, *Monitoring a CPA Firms Accounting and Auditing Practice,* discuss the requirements related to an audit firm's internal quality-control review.

[92] *See* NYSE Listed Company Manual, Section 303A.07(b)(iii)(A).

[93] *See* PCAOB Release No. 2012–003, *Information for Audit Committees about the PCAOB Inspection Process* (Aug. 1, 2012), available at *http://pcaobus.org/Inspections/Documents/Inspection_Information_for_Audit_Committees.pdf.*

[94] *Id.* at p. 10–11.

B. Audit Committee's Process for Appointing or Retaining the Auditor

For listed issuers, the audit committee is responsible for appointing the auditor and deciding whether to retain an auditor.[95] However, satisfying this requirement can involve a wide range of activities. In fulfilling this responsibility, the audit committee may conduct an assessment of the current auditor. It may also decide to seek requests for proposals from other auditors. Potential disclosures could provide information about the actions the audit committee took in reaching a decision about which auditor to select for the upcoming fiscal year's audit.

1. How the Audit Committee Assessed the Auditor, Including the Auditor's Independence, Objectivity and Audit Quality, and the Audit Committee's Rationale for Selecting or Retaining the Auditor

Disclosure about the process the audit committee undertook and the criteria used to assess the auditor and the audit committee's rationale for selecting or retaining the auditor could provide transparency into how the audit committee oversees the auditor and the rigor with which the audit committee exercises its responsibility to appoint a new, or retain an existing, auditor. In addition to the steps involved in the process to assess the auditor, disclosure also could be provided regarding the specific elements or criteria the audit committee considered during the process. Disclosures could, for example, include a description of the nature of the audit committee's involvement in evaluating and approving the auditor's compensation.

There are also numerous ongoing efforts to identify ways to assess audit quality (''audit quality indicators'') and these efforts may result in published metrics and criteria that could be used for providing insight into audit quality.[96] Audit committees may choose to use the output from these efforts to guide discussion with the auditor about audit quality. To the extent the audit committee uses such indicators or metrics in assessing the quality of the auditor and the audit, disclosure about the use and consideration of such metrics may provide useful information about the audit committee's process for assessing the auditor and determining whether to select or retain the auditor.

Request for Comment

26. 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?

27. Should the disclosures include a description of the nature of the audit committee's involvement in approving the auditor's compensation, including how compensation is determined and evaluated? Should the disclosures include the criteria or elements the audit committee considered? Should the audit committee provide additional disclosure about the nature and extent of non-audit services and its evaluation on how such services relate to its assessment of independence and objectivity?

28. If audit quality indicators are used in the evaluation of the auditor, should there be disclosure about the indicators used, including the nature, timing, and extent of audit quality indicators considered by the audit committee? [97] If audit quality indicators are not used in the evaluation of the auditor, what, if any, disclosures regarding the assessment of audit quality should be provided?

2. If the Audit Committee Sought Requests for Proposal for the Independent Audit, the Process the Committee Undertook To Seek Such Proposals and the Factors They Considered in Selecting the Auditor

The audit committee may periodically seek requests for proposals for the independent audit. Disclosures about the process the audit committee undertook, including the number of auditors that were asked to propose, information on how those auditors were selected, and the information that the audit committee used in its decision, may provide information about the audit committee's process in selecting or retaining an auditor and about the quality and qualifications of the auditor selected. Additionally, academic research is mixed as to whether companies engage in ''opinion-shopping.'' [98] The Commission is interested in knowing whether relevant disclosures of the audit committee's process in selecting the auditor might be useful to investors.

Request for Comment

29. 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?

30. Should there be disclosure as to whether the audit committee sought proposals for the audit (including the reason the request for proposal was made), or whether the audit committee has a policy in this regard?

3. The Board of Directors' Policy, if any, for an Annual Shareholder Vote on the Selection of the Auditor, and the Audit Committee's Consideration of the Voting Results in its Evaluation and Selection of the Audit Firm

In those cases where a company voluntarily seeks ratification of its auditor, requiring additional disclosure may be useful to promote informed voting decisions. The Commission is interested in feedback on potential disclosure about the board of directors' policy, if any, for annual shareholder vote on the selection of the auditor, and the audit committee's consideration of the voting results in evaluating and selecting the audit firm, including situations where the audit firm fails to achieve majority support. Such disclosure could provide useful information to shareholders as to how and why the board is seeking ratification of the auditor, as well as the implication of the shareholder vote being solicited.

Request for Comment

31. Would additional disclosures in this area provide meaningful additional information with respect to the selection of the auditor? If so, what types of disclosures should the Commission require to be made in this regard? For example, in addition to disclosure of whether there is a policy about shareholder ratification, should there

[95] Even for non-listed issuers, the audit committee may have a role in the selection of the auditor. *See, e.g.,* paragraphs 4–7 of AS 16.

[96] Organizations such as the PCAOB, IAASB, and CAQ have discussed projects related to audit quality frameworks or indicators. The CAQ has published, ''The CAQ Approach to Audit Quality Indicators'' available at *http://www.thecaq.org/docs/reports-and-publications/caq-approach-to-audit-quality-indicators-april-2014.pdf?sfvrsn=2.*

[97] *See* PCAOB Release No. 2015–005, *Concept Release on Audit Quality Indicators* (June 30, 2015).

[98] *See* Lennox, C., *Do Companies Successfully Engage in Opinion-Shopping? Evidence from the UK,* 29 Journal of Accounting and Economics, 321 (2000); and Chan, H.K. et al., *A Political-Economic Analysis of Auditor Reporting and Auditor Switches,* 11 Review of Accounting Studies, 21 (2006), both of which provide evidence that opinion shopping may occur. In contrast, in the United States, a study of auditor changes from the four largest U.S. accounting firms to small, not mid-market, audit firms found market reactions that support the notion of auditor changes in the post-Sarbanes-Oxley Act and PCAOB inspection era as being driven by better services. These results refute a notion of opinion shopping or shopping for lower audit fees. These authors also note that academic research in the 1980s and 1990s indicated that opinion shopping is generally unsuccessful. Chang, H. et al., *Market Reaction to Auditor Switching from Big 4 to Third-Tier Small Accounting Firms,* 29 Auditing: A Journal of Practice and Theory, 85 (2010).

also be disclosure of the factors the board considered in establishing the policy?

32. If there are a significant number of votes against the ratification, and the board nevertheless proceeds with the auditor in question, should the audit committee report provide the reasons why the board determined to go forward with that auditor? If not in the audit committee report, where should this information be provided and when should it be provided?

33. If it is determined that additional disclosure is required in this area, should voting on ratifications of independent auditors continue to be considered a ''routine matter'' allowing for discretionary voting by brokers on such ratifications pursuant to NYSE Rule 452? [99]

C. Qualifications of the Audit Firm and Certain Members of the Engagement Team Selected By the Audit Committee

In the course of carrying out its responsibilities related to auditor oversight, an audit committee is likely to gain an understanding of the key participants in the audit, their experience, and their qualifications to perform a high-quality audit. The key participants in the audit can vary, but at a minimum include the engagement partner and engagement quality reviewer. Given this knowledge, the audit committee is in a position to evaluate the independence and qualifications of both the audit firm and key members of the engagement team, including the engagement partner, and determine whether to select or retain the auditor. Disclosures could convey the factors the audit committee considered most relevant in selecting or retaining the auditor and provide information about the auditor selected by the audit committee for the upcoming fiscal year's audit.

1. Disclosures of Certain Individuals on the Engagement Team

Disclosure could be provided with the name of the engagement partner, alone or with the name(s) of other key members of the audit engagement team (*e.g.,* the engagement quality reviewer), the length of time such individual(s) have served in that role and any relevant experience.[100] Regarding experience, information could be provided about the number of prior audit engagements performed and whether they were in the same industry. To the extent it is known that the individual(s) disclosed will be changing for the upcoming year's audit, that information could also be disclosed.

Request for Comment

34. 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 there be other disclosures about the engagement team or others involved in the audit? If so, what additional information should be disclosed? Are there any costs to such disclosure?

35. Are there incremental benefits to disclosing the name (such as increased accountability)? Is disclosure of the name helpful in promoting audit quality? Are current risks of potential legal liability, regulatory sanction and significant reputational costs strong enough incentives to develop a team that is capable of executing the audit in accordance with professional standards? Why or why not? In addition to disclosure of the name, there could be disclosure regarding other qualifications, such as the length of time the individual has served in that role, professional licenses, or his or her experience. What, if any, additional information should be disclosed? Why?

36. Is the audit committee the appropriate party to provide such disclosure? If not, what other party or parties should provide the disclosure and why?

37. Would such disclosure be more appropriately disclosed in the auditor's report? Why or why not? Would it be better disclosed in a separate filing with the PCAOB? Why or why not? If the disclosure is provided in a separate filing with the PCAOB, what information should the disclosure include?

38. If the name of the engagement partner is available elsewhere (*e.g.,* included in the auditor's report or a supplemental filing with the PCAOB), would investors benefit from having it also reported as part of the audit committee's disclosures? Why or why not? Also, if the name of the engagement partner is available elsewhere, should the audit committee's report refer to where the disclosure is otherwise located?

39. If the name of the engagement partner is reported in the audit committee report, would investors benefit from this information also being available in one location for all audits?

40. If disclosures are required and it is known that the person(s) disclosed will change for the next audit, should there be disclosure of this fact including who will, or is expected to, take on the role for the next audit? Why or why not?

41. If there is a change in the engagement partner during the year, should this be disclosed sooner than in the next annual update? If other named individuals change during the year, should this be disclosed as well?

42. Are there any liability implications (*e.g.,* for engagement partners, audit committee members, the company or other participants) with respect to disclosure of participants in the audit? If so, what are these implications? Do the implications change based on where or how the disclosure is made?

2. Audit Committee Input in Selecting the Engagement Partner

The audit committee may provide input into an audit firm's assignment of the individual who will serve as the engagement partner for the upcoming audit. Disclosures about the involvement of the audit committee in this selection, and any input the audit committee had in the decision, may provide transparency and insight into the exercise of the audit committee's responsibilities in overseeing the auditor.

Request for Comment

43. Should the audit committee be required to disclose what it considered in providing input to the firm's assignment of the engagement partner? If so, what information should such disclosures contain?

44. Should the disclosures be limited to whether the audit committee participated in the selection of the engagement partner, or should there be more detail regarding the audit committee's input?

3. The Number of Years the Auditor Has Audited the Company

The number of years the auditor, or its predecessor(s) in the case of merged audit firms, has audited the company may be a relevant consideration to the audit committee's determination of

[99] NYSE General Rules, Operation of Member Organizations, Rule 452 available at *http://nyserules.nyse.com/nysetools/PlatformViewer.asp?SelectedNode=chp_1_2&manual=/nyse/rules/nyse-rules/*.

[100] Both the PCAOB and the IAASB have been pursuing projects that would require naming the engagement partner in the audit report. *See* PCAOB Release No. 2013–009; PCAOB Release No. 2015–004; and the IAASB final rule *International Standard on Auditing (ISA) 700 (Revised), Forming an Opinion and Reporting on Financial Statements),* including paragraph 45 of ISA 700, available at *http://www.ifac.org/publications-resources/international-standard-auditing-isa-700-revised-forming-opinion-and-reporting.*

whether or not to engage or retain the auditor. The role of auditor tenure in audit quality has attracted significant attention over the past few years.[101] Most academic research indicates that engagements with short-term tenure are relatively riskier or that audit quality is improved when auditors have time to gain expertise in the company under audit and in the related industry.[102] However, some academic research suggests that both short and long tenure can have detrimental effects on audit quality.[103] Audit committees may view auditor tenure as a positive or negative influence on audit quality, depending on the length of such tenure. In light of the public interest in the subject of auditor tenure, disclosure of this data could provide insight into the audit committee's overall decision to engage or retain the auditor.

Request for Comment

45. 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?

46. Should there also be disclosure as to whether and, if so, how auditor tenure was considered by the audit committee in retaining the auditor? Should there be disclosure of how tenure was considered in evaluating the auditor's independence and objectivity? Why or why not?

47. Would disclosure of auditor tenure be more appropriately disclosed in the auditor's report? Why or why not? Would it be better disclosed somewhere else (such as in a form filed with the PCAOB)? Why or why not?

4. Other Firms Involved in the Audit

In many audits, especially audits of companies with multiple locations and international operations, the firm signing the auditor's report involves other affiliated accounting firms, non-affiliated accounting firms, and other third-party participants, such as tax advisors or actuaries, in the conduct of a portion of the audit work. The auditor is required to communicate to the audit committee the names, locations, and planned responsibilities of other independent public accounting firms or other persons, who are not employed by the auditor, that perform audit procedures in the current period audit. Specifically, paragraph 10 of AS 16 requires:

As part of communicating the overall audit strategy, the auditor should communicate the following matters to the audit committee, if applicable:

- The nature and extent of specialized skill or knowledge needed to perform the planned audit procedures or evaluate the audit results related to significant risks;
- the extent to which the auditor plans to use the work of the company's internal auditors in an audit of financial statements;
- the extent to which the auditor plans to use the work of internal auditors, company personnel (in addition to internal auditors), and third parties working under the direction of management or the audit committee when performing an audit of internal control over financial reporting;
- the names, locations, and planned responsibilities of other independent public accounting firms or other persons, who are not employed by the auditor, that perform audit procedures in the current period audit; and

Note: The term ''other independent public accounting firms'' in the context of this communication includes firms that perform audit procedures in the current period audit regardless of whether they otherwise have any relationship with the auditor.

- the basis for the auditor's determination that the auditor can serve as principal auditor, if significant parts of the audit are to be performed by other auditors.[104]

After receiving the above information from the auditor, the audit committee may choose to meet with and discuss with the auditor, the other firms, or other persons who will be performing work on the audit. The audit committee is not required to disclose these communications with the auditor to investors.

Request for Comment

48. Should the Commission require any additional disclosures in this regard? For example, should the names of the other independent public accounting firms and other persons involved in the audit be disclosed? Should the extent of involvement by these other participants be disclosed? Why or why not?

49. Should the names of other participants be included in the required disclosure instead of in the auditor's report? Should the names be disclosed elsewhere? If so, why? Would investors benefit from having all of the information located in the audit committee report?

D. Location of Audit Committee Disclosures in Commission Filings

As noted in Section III, current audit committee disclosures can appear in different places. None of the disclosures are specifically listed in the registration statement forms used for public offerings. As such, audit committee disclosures are not generally included in the prospectus delivered to investors for initial public offerings. Some of the audit committee disclosures are required in an issuer's annual report on Form 10–K filed with the Commission.[105] These disclosures would be considered part of the prospectus when the registration statements incorporate an issuer's annual report by reference.[106]

The audit committee report[107] and the disclosure of the function and number of meetings held by the audit committee[108] is not generally considered part of the prospectus in a registered offering, since it is not required by the Securities Act registration forms or the annual report on Form 10–K.[109] As the audit committee disclosures may inform investors' investment decisions, the Commission solicits feedback regarding the placement of current and potential additional audit committee disclosures, including the audit committee report.

[101] *See, e.g.,* PCAOB Release No. 2011–006, *Concept Release on Auditor Independence and Audit Firm Rotation* (Aug. 16, 2011), available at *http://pcaobus.org/Rules/Rulemaking/Pages/Docket037.aspx;* and PCAOB Release No. 2013–005, *Proposed Auditing Standards on the Auditor's Report and the Auditor's Responsibilities Regarding Other Information and Related Amendments* (Aug. 13, 2013), available at *http://pcaobus.org/Rules/Rulemaking/Pages/Docket034.aspx.*

[102] *See* Myers, J. et al., *Exploring the Term of the Auditor-Client Relationship and the Quality of Earnings: A Case for Mandatory Auditor Rotation?* 78 The Accounting Review, 779 (2003); and Carcello, J. and Nagy, A., *Audit Firm Tenure and Fraudulent Financial Reporting,* 23 Auditing: A Journal of Practice and Theory, 55 (2004).

[103] *See, e.g.,* Davis, L. et al., *Auditor Tenure and the Ability to Meet or Beat Earnings Forecasts,* 26 Contemporary Accounting Research, 517 (2009).

[104] AS 16.

[105] Item 10 of Form 10–K references the disclosure requirements in Items 407(d)(4) and (5) of Regulation S–K. A similar requirement is also included in Item 7(b) of Schedule 14A.

[106] In practice, many registrants provide the Items 407(d)(4) and (5) disclosures in their definitive proxy statements in reliance on General Instruction G(3) of Form 10–K. Once the definitive proxy statements are filed, the information is incorporated by reference into their Form 10–K, which is then incorporated by reference into any currently effective Form S–3 or other registration statement subsequently filed, as applicable.

[107] Item 407(d)(3) of Regulation S–K.

[108] Item 407(b)(3) of Regulation S–K.

[109] Pursuant to Instruction 1 to Item 407(d) of Regulation S–K, the information required by Items 407(d)(1), (2), and (3) is not deemed to be soliciting material or filed with the Commission, except to the extent that a registrant specifically requests such information be treated as soliciting material or is incorporated by reference into a Securities Act registration statement.

Request for Comment

50. Would investors benefit from the audit committee disclosures being presented in one location? If so, where should the disclosures appear and how would investors benefit? If not, why is the existing location of the various audit committee disclosures appropriate?

51. Should all or any of the audit committee disclosures, including the audit committee report, be included in registration statements filed pursuant to the Securities Act? If not, why not? If so, why and should the disclosure requirements be included within Securities Act registration statement forms or as a Form 10–K disclosure requirement that may then be incorporated by reference into Securities Act registration statements?

52. With respect to the additional disclosures discussed in this release, where should they be made? If required, should they be in the audit committee report, a separate section of the proxy statement, the annual report, on the company's Web site, or elsewhere? Please provide an explanation as to why the disclosure should be made in a suggested location. If required, should the disclosure be furnished but not filed? Why or why not?

E. Smaller Reporting Companies and Emerging Growth Companies

Item 407(g) of Regulation S–K provides the only audit committee disclosure accommodation within Item 407 that is specific to smaller reporting companies.[110] The Jumpstart Our Business Start-Ups Act (the ''JOBS Act'') [111] did not change the audit committee disclosure requirements for emerging growth companies. As such, the Commission is soliciting feedback regarding the application of the current and potential audit committee disclosure requirements to smaller reporting companies and emerging growth companies.

Request for Comment

53. Should current audit committee disclosure requirements be changed for smaller reporting companies or emerging growth companies? If so, which requirements and why? Would investors in smaller reporting companies or emerging growth companies find this information any more or less useful than similar disclosure requirements for other issuers? If so, how, and why?

54. With respect to the additional disclosures discussed in this release, should any disclosure requirements, if adopted, apply to smaller reporting companies or emerging growth companies? If so, which requirements and why? If not, why not? Would different disclosure requirements impact the issuers (*e.g.,* secondary market liquidity)?

VII. Additional Request for Comment Regarding Audit Committee Disclosures

In addition to seeking public comment on the foregoing topics for disclosure, the Commission seeks public comment in response to the following questions about the disclosures as a whole. If views of these questions would differ based on what type of disclosure is being considered, please differentiate and explain why.

Request for Comment

55. Should additional disclosures, such as those presented in Section VI, be required, or should they be voluntary as they are today? Should the Commission consider requiring specific disclosures, or requiring certain categories of disclosures? If so, which categories?

56. Are there specific issuer, industry, audit committee member, or auditor characteristics that should be considered in establishing new disclosure requirements? Are there particular disclosures that should always be required and, if so, which? Are there particular disclosures that should only be required if certain conditions or characteristics are present and, if so, which disclosures and under what circumstances? Are there particular disclosures for which specificity in the requirement is important and, if so, for which disclosures and elements of disclosures should the requirements be specific?

57. Would the disclosures prompt the audit committee to change how it oversees the auditor? If so, how?

58. Would such disclosures provide insight into the nature, timing, and extent of the audit committee's oversight of the auditor?

59. Would the disclosures promote audit quality? If so, how?

60. Would the disclosures discussed herein result in boilerplate information? If so, how could the requirements be crafted to avoid boilerplate disclosure?

61. Would any of the additional disclosures discussed in this concept release result in disclosure that is not useful to investors? Why or why not?

62. Would additional information need to be disclosed in order to place any or all of the disclosures discussed above in the appropriate context? If so, what additional disclosures might be needed, and should they be required or discretionary?

63. If the Commission were to proceed with requiring some or all of the disclosures proposed above, should the disclosures be made by all issuers? For example, should the disclosures be required only for those subject to the proxy rules? Should they be required for foreign private issuers? [112] Why or why not? Should there be accommodations made for certain types of companies or certain circumstances? If so, what should they be?

64. If the Commission proceeds with requiring some or all of the disclosures proposed above, should there be a requirement to update these disclosures for changes between proxy or information statements? If so, what should trigger amended disclosures? Should any such updates be made quarterly or more frequently?

65. If the Commission proceeds with requiring some or all of the disclosures discussed above, should the disclosures be required to be provided in an interactive data format? If so, what elements of disclosure should be provided in that manner and in what format should the information be provided?

66. The audit committee disclosure requirements may reference other documents, such as an audit committee charter. Should such documents be provided along with the required disclosures? If not, should information be provided to help locate the information referenced? Why or why not? Should information be hyperlinked? If so, are there any unintended consequences or implementation challenges that may result from information being presented in this manner?

67. If the Commission proceeds with requiring some or all of the disclosures proposed above, under existing reporting deadlines, would there be sufficient time to prepare these disclosures? Would there be difficulties in making these disclosures?

68. Would the additional disclosures discussed above help minimize information asymmetries that may exist between management and investors? If so, how? What other benefits may accrue from providing this information?

69. Expanded disclosures may have direct and indirect economic impacts on market participants. What direct and indirect economic impacts would these disclosures have on market participants? Are there any unintended

[110] 17 CFR 229.407(g).

[111] Public Law 112–106, 126 Stat. 306 (2012).

[112] Foreign private issuers are not subject to the proxy rules. *See* Rule 3a12–3(b) of the Exchange Act [17 CFR 240.3a12–3(b)].

consequences that could result from such disclosures with respect to audit firms, individual audit partners, audit committee members, audit committees, issuers, investors, or others? For instance, could potential changes chill or overly formalize audit committee communications with auditors? Are there specific liability implications with respect to additional disclosure made by the audit committee? If so, please describe.

70. Would other categories of disclosures about the audit committee's role relative to the auditor be useful? If so, what other categories?

71. How should the Commission address potential changes in the auditor's report with respect to audit committee oversight of the auditor?

72. If audit committees are required to provide disclosure that relates to information provided by the auditor (and it is not currently required to be communicated by the auditor under existing PCAOB auditing standards), would changes to PCAOB auditing standards be necessary to ensure that additional information beyond existing required communications is provided to the audit committee?

73. Are there improvements that the Commission should consider to the reporting on the audit committee's oversight of the accounting and financial reporting process or internal audits? For instance, should the audit committee disclose how it interacts with the company's management?

74. Should the Commission consider the potential for changes that would affect the role and responsibilities of the audit committee, such as those related to qualifications of members of the audit committee or areas for which audit committees should (or should not) be responsible? Should the audit committee disclose its role, if any, in risk governance? Should the audit committee report on other areas of oversight? For example, audit committees may be charged with overseeing treatment of complaints, cyber risks, information technology risks, or other areas. Would this disclosure distract from the report's focus on oversight of the audit function? In this regard, we note that commentators have recently indicated concern that audit committees are becoming the catch all of board committees by overseeing anything related to risk.[113]

In addition to the areas for comment identified above, we are interested in any other issues that commenters may wish to address and the benefits and costs relating to investors, issuers and other market participants of revising disclosure rules pertaining to the audit committee and the audit committee report included in Commission filings. Please be as specific as possible in your discussion and analysis of any additional issues. Where possible, please provide empirical data or observations to support or illustrate your comments.

By the Commission.

Dated: July 1, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–16639 Filed 7–7–15; 8:45 am]

BILLING CODE 8011–01–P

[113] Michael Rapoport & Joann S. Lublin, *Meet the Corporate Board's ''Kitchen Junk Drawer,'' Wall St. J.* (Feb. 3, 2015).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 342

[Docket No. RM15–20–000]

Five-Year Review of the Oil Pipeline Index

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) invites comments on its proposed five-year review of the index level used to determine annual changes to oil pipeline rate ceilings. The Commission proposes an index level between the Producer Price Index for Finished Goods (PPI–FG)+2.0 percent and PPI–FG+2.4 percent for the five-year period commencing July 1, 2016. The Commission invites interested persons to submit comments regarding this proposal and any alternative methodologies for calculating the index level.

DATES: Initial Comments are due August 24, 2015, and Reply Comments are due September 21, 2015.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

• *Agency Web site: http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. All supporting workpapers must be submitted with formulas and in a spreadsheet format acceptable under the Commission's eFiling rules.

• *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Monil Patel (Technical Information); Office of Energy Market Regulation; Federal Energy Regulatory Commission; 888 First Street NE.; Washington, DC 20426; (202) 502–8296; Andrew Knudsen (Legal Information); Office of the General Counsel; Federal Energy Regulatory Commission; 888 First Street NE.; Washington, DC 20426; (202) 502–6527.

SUPPLEMENTARY INFORMATION:

1. The Commission annually applies an index to existing oil pipeline transportation rate ceilings to establish new rate ceiling levels. The Commission reexamines this index every five years.[1] In this notice of inquiry (NOI), the Commission invites comments on its proposal to use an index level between the Producer Price Index for Finished Goods [2] (PPI–FG)+2.0 percent and PPI–FG+2.4 percent for the next five years beginning July 1, 2016.[3] This proposal is based upon the Kahn Methodology established in Order No. 561 and applied in subsequent five-year review proceedings.[4] The Commission proposes a range because not all pipelines have filed Form No. 6 data for 2014. The Commission will select a final index level at the conclusion of this proceeding. Commenters are invited to submit comments on, and justify alternatives to, the proposed index level. In addition to inviting comments, the Commission plans to hold a conference on July 30, 2015, to discuss the issues raised by this notice. A subsequent notice will provide

[1] The five-year review process was established in Order No. 561. *See Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act,* Order No. 561, FERC Stats. & Regs. ¶ 30,985 (1993), *order on reh'g,* Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 (1994), *aff'd, Assoc. of Oil Pipelines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996).

[2] The PPI–FG represents the Producer Price Index for Finished Goods. The PPI–FG is determined and issued by the Bureau of Labor Statistics, U.S. Department of Labor.

[3] As provided by 18 CFR 342.3(d)(2) (2014), ''The index will be calculated by dividing the PPI–FG for the calendar year immediately preceding the index year by the previous calendar year's PPI–FG.'' Multiplying the rate ceiling on June 30 of the index year by the resulting number gives the rate ceiling for the year beginning the next day, July 1.

[4] *Five-Year Review of Oil Pipeline Index,* 133 FERC ¶ 61,228, at PP 5–9, 60–63 (2010), *order on reh'g,* 135 FERC ¶ 61,172 (2011). *See also Five-Year Review of Oil Pipeline Index,* 102 FERC ¶ 61,195 (2003), *aff'd, Flying J Inc., et al.,* v. *FERC,* 363 F.3d 495 (D.C. Cir. 2004); *Five-Year Review of Oil Pipeline Index,* 114 FERC ¶ 61,293 (2006).