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September 8, 2015

The Honorable Brent Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549



Dear Secretary Fields:

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

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers of leading U.S. companies. With $7.2 trillion in annual revenues and more than 16 million employees worldwide, Business Roundtable companies comprise more than a quarter of the total value of the U.S. stock market.

We are submitting this letter in response to the July 1, 2015 Concept Release issued by the U.S. Securities and Exchange Commission (the Commission), soliciting comments on the possibility of requiring enhanced audit committee disclosures. We appreciate the opportunity to provide our input on this important topic.

The Concept Release solicits comments on a range of questions relating to three principal topics identified as possible areas for additional disclosure: (1) the audit committee's oversight of the independent auditor, (2) the audit committee's process for selecting the independent auditor, and (3) the audit committee's consideration of the independent auditor's qualifications.

Audit committees of public companies play a number of important roles within the governance structure, including aiding in selecting, overseeing, and communicating with the independent auditor. However, we do not believe that mandating additional disclosure requirements related to the audit committee's oversight in these areas would prove productive or would provide investors material information.

First, as discussed more fully below, the disclosure contemplated by the Concept Release will have a number of potential adverse effects. This is of particular concern in light of the fact that no empirical evidence is identified in the Concept Release to suggest that additional disclosures would "help investors understand and evaluate audit committee performance" or "inform those investors' investment or voting decisions." *See* Concept Release, at 1. Relatedly, we are concerned that an extensive set of required additional disclosures would add to the length and complexity of proxy statement disclosures, which could exacerbate concerns about disclosure overload and further run the risk of undermining the materiality standard as the basis for required disclosures. This is a growing concern among companies, investors and policymakers, and unfortunately, a number of the areas described in the Concept Release present another example where immaterial information would have to be disclosed, potentially harming investor protection goals as other more significant information is drowned out – albeit unintentionally – by requirements for disclosure of immaterial information.

Second, requiring disclosure about the "nature and substance" of the extensive interactions that audit committees currently have with their outside auditors could have the perverse effect of chilling the robust discussion that occurs through these interactions. If this proves to be the case, additional concerns might arise about investors' ability to timely access material information.

Third, in the last several years many public companies and their audit committees have voluntarily expanded their audit committee-related disclosures to provide investors additional insight into the multi-faceted work of the audit committee. This evolving trend should be given time to develop, particularly as we believe voluntary disclosures are more likely to result in material, tailored information being provided to investors and other stakeholders, as compared to disclosures that result from one-size-fits-all mandated requirements.

***Mandatory Audit Committee Disclosure Requirements Would Exacerbate Disclosure Overload and Increase Burdens on Audit Committees***

In considering the Concept Release, we think it is important to assess this project in relation to the Commission's Disclosure Effectiveness Initiative – a project which the Business Roundtable supports and which seeks to ascertain if there are means to make disclosure requirements more efficient and effective to help ensure investors have ready access to material information and are not overwhelmed or confused by disclosure of immaterial information. Indeed, as Chair White has noted, the risks of "information overload" have been expressed by investors and issuers, and the Disclosure Effectiveness Initiative is being pursued to address these risks.[1]

The disclosure requirements contemplated in the Concept Release would be at odds with the goals underlying the Disclosure Effectiveness Initiative. The Concept Release contains 74

[1] Speech by Mary Jo White, Chair of the U.S. Securities and Exchange Commission, *The Path Forward on Disclosure: Remarks before the National Association of Corporate Directors – Leadership Conference 2013* (Oct. 15, 2013), *available at* http://www.sec.gov/News/Speech/Detail/Speech/1370539878806.

numbered paragraphs with numerous embedded questions soliciting input on potential disclosures that audit committees might have to make.

For example, one question inquires whether disclosures should be required about the "nature and substance" of the communications that the auditor is required to make to the audit committee under Public Company Accounting Oversight Board (PCAOB) standards. *See* Concept Release at 33 (Question 11). The number of specified matters that the auditor is required to communicate under PCAOB standards covers approximately twenty-five topics, with several having numerous sub-topics.[2] Mandating disclosure about the "nature and substance" of all these required communications would add significantly to the length and complexity of proxy statements, without an assessment of whether the information is material.

These potential adverse effects are particularly notable when considered in view of the fact that the benefits of additional required disclosures are not apparent. No empirical evidence is identified in the Concept Release to support the view that enhanced mandatory disclosures about audit committee-related activities would "help investors understand and evaluate audit committee performance" or "inform those investors' investment or voting decisions,"[3] or that expanded disclosures would enable investors to meaningfully "differentiate between companies based on the quality of audit committee oversight."[4]

Business Roundtable also is concerned that mandating extensive disclosures such as those described in the Concept Release would further burden audit committees. As it stands, audit committees are involved in review and preparation of audit committee reports and related disclosures. Mandating additional disclosures would increase their existing responsibilities as they become enmeshed in the preparation and review of such disclosures – which could prove a time-consuming and resource-intensive process. This concern is heightened if the mandated disclosures would require discussion about the "nature and substance" of particular activities.[5] In addition to the burden associated with drafting disclosures that would satisfy such subjective and analytical requirements, we are concerned that these types of disclosure requirements could lead to increased liability risks for audit committee members. Audit committees already have extensive responsibilities given current requirements and evolving governance best practices. Layering additional mandatory disclosure responsibilities and corresponding expectations on to their agenda would further burden audit committees, potentially resulting in, among other things, increased challenges in identifying and retaining qualified candidates.

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[2] *See* PCAOB Auditing Standard No. 16, *Communications With Audit Committees*.

[3] *Id.* at 1.

[4] *Id.* at 19.

[5] Questions about potential disclosure calling for discussion of the "nature and substance" (or something similar – e.g., the "nature and extent" or the "substance") of a particular matter recur throughout the Concept Release. *See, e.g.,* Questions 11, 16, 19, 20 and 27.

***Audit Committees and Auditors – Maintaining a Robust and Candid Dialogue***

One of the hallmarks of the Sarbanes-Oxley Act of 2002 (the Sarbanes-Oxley Act) and related SEC and PCAOB rulemakings has been the enhanced level of dialogue and interaction that has resulted between the audit committee and auditor. In the wake of the Sarbanes-Oxley Act, the robust and candid nature of these discussions about accounting, financial reporting and other risk issues indisputably has improved the quality and integrity of public company financial statements and benefitted investors.

In considering any proposal, the Commission should assess the adverse effects mandatory disclosures might have on the current informative and interactive discussion with the outside auditor. For instance, mandatory disclosure about the nature and substance of communications between the auditor and audit committee could retrain and negatively impact the exchange of ideas and information. Discussion about sensitive areas could be curtailed as the prospect of disclosure, and the corresponding risk of second guessing, overhangs each discussion. The Concept Release neither sets forth any compelling arguments or data that demonstrates that enhanced mandatory disclosure would benefit investors nor does it adequately address the risk to investors that enhanced mandatory disclosure could have a chilling effect on auditor and audit committee communications. Given this, the Commission should not to pursue additional mandatory disclosures.

Again, this potential risk for investors stands out given that the benefits of enhanced mandatory disclosures about audit committee activities seem so nebulous. Given the absence of this data, we urge the Commission not to pursue additional mandatory disclosures in this area.

***The Evolving Trend Toward Enhanced Voluntary Disclosure Of Audit Committee-Related Activities Should Be Encouraged***

As noted in the Concept Release, many public companies and their audit committees have recently voluntarily expanded their audit committee-related disclosures beyond those required by the Commission's rules. *See* Concept Release, at 21. The Concept Release highlights a 2014 survey showing, among other things, that 83 percent of S&P 500 companies discussed how non-audit services may impact auditor independence; 47 percent of such companies disclosed the length of time the auditor has been engaged; and 13 percent discussed audit committee involvement in the selection of the audit engagement partner. *See* Concept Release, at 22.

Another recent survey noted in the Concept Release also highlights a significant upward trend in the number of Fortune 100 companies that have expanded their audit-committee related disclosures, finding that between 2012 and 2014:

- The number of companies that specified the audit committee is "responsible for the appointment, compensation and oversight of the auditor" increased from 40 percent to 65 percent;

- The number of companies that "explicitly state their belief that their selection of the external auditor is in the best interest of the company and/or shareholders" increased from 4 percent to 46 percent;

- The number of companies that "disclosed that the audit committee was involved in the selection of the audit firm's lead engagement partner" increased from 1 percent to 44 percent;

- The number of companies that disclosed the tenure of the auditor increased from 26 percent to 50 percent; and

- The number of companies that "explained the rationale for appointing their auditor, including the factors used in assessing the auditor's quality and qualifications," increased from 16 percent to 31 percent.[6]

Allowing audit committees and management to continue developing enhanced disclosures based on evolving practices and circumstances that are relevant to the specific company will help promote thoughtful, tailored disclosures that should prove more useful to investors. This approach will encourage audit committees to pursue disclosures that reflect consideration of specific types of activities that the audit committee undertook during the course of the year, including oversight related to the outside auditor, and to make voluntary disclosure with respect to those matters that the company's investors have signaled are important (and which the audit committee in its discretion views as significant to disclose).

Thank you very much for considering our comments. We would be happy to discuss our concerns and recommendations or any other matter that you believe would be helpful. Please contact Michael J. Ryan, Jr. of the Business Roundtable at [redacted].

Sincerely,

John A. Hayes
Chairman, President and Chief Executive Officer, Ball Corporation
Chair, Corporate Governance Committee, Business Roundtable

[6] EY Center for Board Matters, "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.