

The Role of Counsel in the Audit Committee Process

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Today's Agenda

- ◆ Authority and Composition of the Audit Committee
- ◆ Audit Committee Responsibilities
- ◆ Timely Topics for Audit Committees
- ◆ The Auditor's Perspective
- ◆ Questions for Audit Committees to Ask
- ◆ Audit Committee Meeting Agenda Items
- ◆ Role of Counsel in Year-End Review

Authority and Composition of the Audit Committee

Basis of Audit Committee Authority

- ◆ The source of authority for an audit committee is the company's board of directors
- ◆ The board must appoint the members of the audit committee
- ◆ The board must provide the audit committee with a charter
- ◆ The audit committee may only act within its charter

SEC Rule 10A-3

- ◆ Requires national securities exchanges and associations to have rules regarding issuers' audit committees, including:
 - Each member of the audit committee must be independent (subject to limited exemptions, e.g., for companies in their first year of being public)
 - ◆ “Independent” includes that the person, other than in their capacity as a Board or audit committee member, does not receive compensation from the company (other than limited exceptions) and is not an affiliated person of the company.

NYSE Audit Committee Composition Requirements (Section 303A.7(a))

- ◆ A listed issuer *must* have an audit committee comprised of at least 3 directors
- ◆ The audit committee *must* be comprised solely of independent directors
- ◆ Each member *must* be financially literate
- ◆ At least one member *must* have accounting or related financial management expertise, as the board interprets such qualification in its business judgment
 - Note: NYSE does not require that the audit committee include a person who meets the SEC's "audit committee financial expert" definition. However, the board may presume that such a person would meet this requirement

NYSE Audit Committee Member Independence Requirements (Section 303A.2(a))

- ◆ Board *must* affirmatively determine that a director has no material relationship with the listed issuer or any parent or subsidiary of the issuer
 - “material relationships” may be direct, or as a partner, shareholder or officer of an organization that has a relationship with the listed issuer
 - material relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships
 - the board should consider the issue from the standpoint of the director *and* from the standpoint of persons and organizations with which the director has an affiliation

NYSE Audit Committee Member Independence Requirements

- ◆ Audit committees of NYSE listed companies must satisfy the SEC Rule 10A-3 independence requirements
- ◆ In addition, a director is not independent if he or she, or any immediate family member, *within the prior 3 years*:
 - has been an employee (an executive officer in the case of an immediate family member) of the listed issuer or a parent or subsidiary of the listed issuer;
 - has received more than \$120,000 in direct compensation from the listed issuer, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service);

NYSE Audit Committee Member Independence Requirements (cont'd)

- ◆ In addition, a director is not independent if he or she:
 - (A) is a current partner or employee of a firm that is the listed issuer's internal or external auditor or (B) has an immediate family member who is a current partner of such firm or (C) has an immediate family member who is a current employee of such firm and personally works on the listed issuer's audit or (D) was or has an immediate family member who was within the last 3 years a partner or employee at such firm and worked on the listed issuer's audit within that time;
 - is, or has been within the last three years (or has an immediate family member who is, or has been within the last three years), employed as an executive officer by a company whose compensation committee includes an executive officer of the listed issuer or a parent or subsidiary of the listed issuer;

NYSE Audit Committee Member Independence Requirements (cont'd)

- ◆ In addition, a director is not independent if he or she:
 - is a current employee (or an immediate family member is a current executive officer) of a company that has made payments to, or received payments from, the listed issuer or any parent or subsidiary of the issuer for property or services in an amount which, in any of the last three fiscal years, exceeds the greater of \$1 million, or 2% of such other company's consolidated gross revenues
 - ◆ This applies only to current employers; an issuer need not consider former employment of the director or immediate family member
 - ◆ Contributions to charitable organizations shall not be considered "payments" for purposes of this provision, provided that an issuer shall disclose on its website or in its annual proxy statement (or annual report if it does not file a proxy) any charitable contributions made by the issuer to any charitable organization in which a director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year exceeded the greater of \$1 million, or 2% of such charitable organization's consolidated gross revenues

NYSE Audit Committee Member Independence Requirements (cont'd)

- ◆ Immediate family member is broadly defined to include a person's spouse, parents, children, siblings, mother and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home
- ◆ When applying the "look back" period, issuers do not need to consider individuals who are no longer immediate family members

Nasdaq Audit Committee Composition Requirements (Rule 5605(c))

- ◆ A listed issuer *must* have an audit committee comprised of at least 3 directors
- ◆ The audit committee *must* be comprised solely of independent directors
- ◆ No member can have participated in the preparation of the financial statements of the issuer or any current subsidiary at any time during the past three years
- ◆ Each member *must* be able to read and understand fundamental financial statements

Nasdaq Audit Committee Composition Requirements (Rule 5605(c)) (cont'd)

- ◆ At least one member *must* have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a CEO, CFO or other senior officer with financial oversight responsibilities
 - Note: Nasdaq does not require that the audit committee include a person who meets the SEC's "audit committee financial expert" definition. However, such a person would meet Nasdaq's finance or accounting expertise requirement

Nasdaq Audit Committee Member Independence Requirements (Rule 5605(a))

- ◆ Members of audit committees must satisfy SEC Rule 10A-3 independence requirements
- ◆ A director is not independent under Nasdaq rules if the person:
 - is an executive officer or employee of the listed issuer or has any other relationship which, in the opinion of the issuer's Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director;
 - has been employed in any of the past three years by the listed issuer or by any parent or subsidiary of the listed issuer;

Nasdaq Audit Committee Member Independence Requirements (Rule 5605(a)) (cont'd)

- ◆ In addition, a director is not independent under Nasdaq rules if the person:
 - has accepted (or has a family member who accepted) *any compensation* in excess of \$120,000 during any period of twelve consecutive months within the three years preceding, other than the following:
 - ◆ payments for board services;
 - ◆ compensation paid to a family member who is a non-executive employee of the issuer or a parent or subsidiary of the issuer;
 - ◆ payments under certain retirement plans;
 - has a family member who was employed at any time during the past three years by the issuer or by any parent or subsidiary of the issuer as an executive officer

Nasdaq Audit Committee Member Independence Requirements (Rule 5605(a)) (cont'd)

- ◆ In addition, a director is not independent under Nasdaq rules if the person:
 - is, or has a family member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the issuer made, or from which the issuer received, payments for property or services in any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or \$200,000, whichever is more, other than the following:
 - ◆ payments arising solely from investments in the issuer's securities; or
 - ◆ payments under non-discretionary charitable contribution matching programs;
 - is employed, or has a family member who is employed, as an executive officer of another entity where at any time during the past three years any of the executive officers of the listed issuer served on the compensation committee of such other entity;

Nasdaq Audit Committee Member Independence Requirements (Rule 5605(a)) (cont'd)

- ◆ In addition, a director is not independent under Nasdaq rules if the person:
 - is, or has a family member who is, a current partner of the issuer's outside auditor, or was a partner or employee of the listed issuer's outside auditor, who worked on the listed issuer's audit at any time during any of the past three years
- ◆ "Family member" is defined to mean a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home

Nasdaq Audit Committee Member Independence Requirements (Rule 5605(c)(2)(B))

- ◆ An “exceptional and limited circumstances” exception is available for an individual who is not an officer or current employee or a family member of an officer or employee and meets the Securities Exchange Act Section 10A(m)(3) requirements but who otherwise does not meet Nasdaq’s other independence requirements
 - The exception may only be implemented following a determination by the board that the individual’s service on the committee is in the best interest of the listed issuer and its shareholders
 - A member appointed under this exception may not serve longer than two years and may not chair the audit committee

Audit Committee Financial Expert (Item 407(d)(5) of SEC Regulation S-K)

- ◆ An issuer must disclose in its annual report the determination of the Board of Directors that the issuer has or does not have at least one audit committee financial expert
 - If the board determines it has such an expert, the issuer must
 - ◆ name the expert in its annual report
 - ◆ indicate whether the expert is independent under the applicable NYSE/Nasdaq standard
 - ◆ if the board determines there is more than one expert, consider whether to disclose the name of each expert or only one expert

Audit Committee Responsibilities

Overseeing accounting and financial reporting processes

- ◆ Reviews major issues regarding accounting principles and financial statement presentations, including significant changes
- ◆ Reviews management analyses containing significant issues involving financial reporting and the preparation of financial statements

Overseeing accounting and financial reporting processes (cont)

- ◆ Reviews the effect of regulatory and accounting initiatives on the financial statements of the company
- ◆ Reviews all related-party transactions required to be disclosed under SEC Regulation S-K Item 404

Overseeing accounting and financial reporting processes (cont.)

- ◆ Financial statements
 - Reviews annual and quarterly financial statements
 - Makes a recommendation to the Board whether the financial statements should be included in the company's annual report

Overseeing accounting and financial reporting processes (cont.)

- ◆ Other financial information
 - Discusses earnings press releases
 - Discusses financial information and earnings guidance provided to analysts and ratings agencies
 - Reviews other relevant reports or financial information submitted to any governmental body or the public, including management certifications (and any related disclosures) as required by Sarbanes-Oxley and relevant reports rendered by the independent auditor

Overseeing compliance with legal and regulatory requirements and adopted ethical standards

- ◆ Reviews and updates the company's code of business conduct and ethics and the company's systems to monitor compliance
- ◆ Reviews with the company's legal counsel any legal compliance and other matters that could have a significant impact on the company's financial statements
- ◆ Establishes and oversees procedures for the handling of complaints regarding accounting, internal controls or auditing matters, including procedures for confidential submissions by company employees

Overseeing internal controls

- ◆ Periodically review the adequacy and effectiveness of the company's disclosure controls and procedures and the company's internal control over financial reporting
 - Reviews internal control reports
 - Reviews the independent auditor's report on the company's assessment of internal control over financial reporting

Overseeing the internal audit function

- ◆ Reviews and advises on the selection of the internal auditor
- ◆ Reviews the activities, organization, budget and staffing of the internal audit function, including qualifications of personnel
- ◆ Reviews the regular internal reports to management prepared by the internal audit function, as well as the response of management

Overseeing the independent auditor

- ◆ Appoints, compensates, and oversees the work performed by the independent auditor
- ◆ Reviews external auditor's independence
- ◆ The independent auditor reports directly to the audit committee
- ◆ The audit committee oversees the resolution of disagreements between management and the independent auditor

Overseeing the independent auditor (cont.)

- ◆ Discusses various matters with the independent auditor, including accounting policies, alternative disclosures and treatments of financial information, and material communications between management and the independent auditor
- ◆ Reviews at least annually a report by the independent auditor of the independent auditor's internal quality-control procedures, material issues, and relationships between the independent auditor and the company

Overseeing risk management

- ◆ Discusses policies with respect to risk assessment and risk management, including appropriate guidelines and policies to govern the process, as well as the company's major financial risk exposures and the steps management has undertaken to mitigate risk

Exercising authority

- ◆ The audit committee has the authority to conduct investigations within its scope of responsibilities
- ◆ The audit committee has the authority to obtain advice and assistance from outside legal, accounting, or other advisors

Exercising authority (cont.)

- ◆ The audit committee has the authority to meet with and seek information from employees, officers, directors, or external parties
 - Meets, at times separately, with each of management, the company's head of internal audit, and the external auditors
- ◆ The company will provide appropriate funding as determined by the audit committee for the independent auditor, for any advisers, and for administrative expenses

Timely Topics for Audit Committees

SEC: Dodd-Frank Whistleblower Program

- ◆ For whistleblowers that report violations of securities laws
- ◆ Rewards tipsters with payments ranging from 10% to 30% of any monetary sanctions of \$1 million or more
- ◆ Whistleblower can report to SEC up to 120 days after reporting internally and still get credit for reporting to SEC as of the earlier date
- ◆ Potential problem: Will make internal reporting of problems (e.g., company hotlines) less effective

SEC: Dodd-Frank Whistleblower Program (cont.)

- ◆ Elements of SEC rules intended to limit abuse include:
 - Allow SEC to consider awarding a higher percentage to individuals who report allegations internally first, and a lower percentage to individuals who undermine the internal compliance program
 - Legal, compliance, audit, supervisory and governance officials not eligible for the whistleblower program in many circumstances

SEC / DOJ:

Foreign Corrupt Practices Act (FCPA)

- ◆ Applies to bribery of foreign officials
- ◆ Includes books and records provisions applicable to public companies
- ◆ Prosecutions of FCPA violations are at an all-time high
- ◆ Prosecution of executives
- ◆ New whistleblower rules probably will increase the number of investigations

UK Bribery Act

- ◆ July 1, 2011: The Act took effect
- ◆ March 30, 2011: The UK government issued final form guidance
 - While the Act has a very broad jurisdictional scope, this guidance suggests that the focus will be on companies with a “demonstrable business presence in the UK”
 - In establishing “adequate procedures” as a corporate defense, business should adopt a “risk-based approach” (i.e., procedures that are proportionate to the risk)
 - Exempts “reasonable and appropriate” hospitality and promotional or similar business expenditures
 - Retains the prospect of prosecution for “facilitating payments”

Material Differences Between the UK Bribery Act and the FCPA

- ◆ The UK Bribery Act extends criminal liability to the receiver of the bribe, as well as the giver of the bribe
- ◆ The UK Bribery Act does not allow “facilitating payments”
- ◆ The UK Bribery Act applies to corrupt dealings between private companies as well as dealings with governments and public sector entities
- ◆ It is a defense to corporate offences under the UK Bribery Act if a company has in place “adequate procedures” to prevent bribery and corruption

Reserves

- ◆ Recording reserves (e.g., litigation reserves) in financial statements is always a central issue for audit committees

ASC 450 (formerly SFAS 5)

- ◆ If a loss is probable:
 - Accrue (unless the amount cannot be reasonably estimated)
 - Disclose the nature of the contingency
 - Disclose amount accrued only if needed to make the financial statements not misleading
- ◆ If a loss is reasonably possible:
 - Disclose the nature of the contingency
 - Disclose an estimate of the possible loss or range of loss (or state that such an estimate cannot be made)
 - “Reasonably possible” losses include those in excess of accrued “probable” losses

SEC: ASC 450

- ◆ It became standard practice not to disclose estimates of “reasonably possible” litigation losses, but instead to have boilerplate language on the difficulty of predicting litigation outcomes
- ◆ Spring 2010: The SEC, through its comment process, starting insisting on additional disclosure
- ◆ Companies pushed back
- ◆ The compromise:
 - Disclose an estimate of the **aggregate** possible loss (or range of loss)
 - Provide disclosure regarding litigation matters not included in estimate

IRS: Disclosing Uncertain Tax Positions

- ◆ Companies with audited financials and more than \$100 million in assets now have to disclose uncertain tax positions to the IRS as part of federal income tax returns
- ◆ This change will impact financial statements and financial statement disclosures

Additional Issues for 2011 Year End Audits



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- **Executive Compensation:** Growing attention to executive compensation
- **Board Transparency:** Managing and reporting on potential conflicts
- **Complexity:** How well does the board understand operations and their awareness and involvement in risk management
- **Expertise:** Appropriate composition of professionals on audit committees
- **Increased Enforcement:** Foreign Corrupt Practices, Whistleblower Provisions

An Auditor's Perspective

Helping the Audit Committee with its Responsibilities



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- For each area of Audit Committee responsibility, how can general counsel be helpful?
- Accounting and financial reporting processes
 - See questions for Audit Committees to ask management
 - Refer to AICPA Audit Committee Effectiveness Center as a resource for additional tools and questions (<http://www.aicpa.org/ForThePublic/AuditCommitteeEffectiveness/Pages/ACEC.aspx>)
- Compliance with legal and regulatory requirements and adopted ethical standards
 - Conduct a compliance risk assessment

Helping the Audit Committee with its Responsibilities (cont.)



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- Internal controls and internal audit function
 - Serve as a resource and guide to internal audit
 - Interface with internal auditors to provide context
- Facilitate evaluation of internal audit function
- Risk management
 - Provide a central viewpoint on risk management
- Exercising authority
 - Provide investigative resources
- Independent external auditor
 - See tips for enhancing external auditor interaction with the Audit Committee

Roles Considerations for Financial Statement Audit



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External auditors, internal auditors, and general counsel have varying roles

External Independent Auditor	General Counsel	Internal Auditor
Duty to the reader of client's financial statements; it is public	Duty to the client is private; attorney represents client in defined capacity	Duty is to Audit Committee of Board of Directors
Auditor must properly account for loss contingencies known by legal counsel	Attorney must provide information the auditor needs to form an opinion	Objectives are to provide assurance and inspire improvement in risk management and process efficiency

Enhancing External Auditor Interaction with the Audit Committee



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- Facilitate regular meetings
 - The Audit Committee should make itself available to the external auditor
 - Understand the audit team's working style
 - Establish preferred communication channels
- Develop an Audit Committee work plan that keeps the audit team apprised of issues or concerns (e.g., financial statements, subsidiaries, financial vehicles)

Enhancing External Auditor Interaction with the Audit Committee (cont.)



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- Disclose corporate governance practices to shareholders (e.g., Audit Committee's role, fees, auditor's independence)
- Conduct an evaluation of the external auditor; communicate observations
 - Remember that the Audit Committee is responsible for overseeing the external auditor's performance
 - Ensure auditor credentials (e.g., qualifications, independence)

Legal Representation Letters

– The Basics



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- Auditor's primary means of corroborating the information furnished by management concerning the accuracy and completeness of litigation, claims, and assessments
- Include matters that existed at the balance sheet date and through the end of fieldwork
- Indicate the disposition of cases included in the prior year's letter that are no longer contingencies

Legal Representation Letters – What External Auditors Want to Know



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- Are there claims, litigation, and assessments that may affect a client's assets and/or liabilities?
- What is management's intended response to the issue?
- Information auditors need includes:
 - **Existence** of the condition, situation, or set of circumstances in question
 - **Time period** in which the condition occurred
 - **Likelihood** of an unfavorable outcome
 - **Amount** or range of potential loss

Legal Representation Letters

– Best Practices



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- Set a pre-determined materiality threshold with the auditors ahead of time
- Use established definitions for the likelihood of events
 - **Probable** – the future event or events are likely to occur
 - **Reasonably possible** – the chance of the future event or events occurring is more than remote but less than likely
 - **Remote** – the chance of the future event or events occurring is slight
- Implement a template to use for the legal representation letter
- Establish a procedures for the development of the legal representation letter to address common issues (e.g., client consent, publication, conflict search, filing, central control, deviations)

Legal Representation Letters

– Resources



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- *ABA/AICPA Treaty - Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information*
 - Standards to be followed by lawyers in responding to audit inquiry letters
 - Objective is to balance
 - Protecting confidential information and the attorney-client privilege and
 - The importance of maintaining public confidence in the auditing process
- *Statement of Auditing Standards No. 12 - Inquiry of a Client's Lawyer Concerning Litigation, Claims, and Assessments*

Questions for Audit Committees to Ask

Questions to Ask

- ◆ Which of our accounting practices do you think you would have the most difficulty in explaining/justifying to a third party (e.g., SEC) and why?
- ◆ What area of financial reporting was the most discussed and debated this year by our senior financial management? What were the views expressed and how was it settled?
- ◆ Has the company allocated sufficient resources?

Questions to Ask

- ◆ Are there any areas of the financial statements where the external auditor and financial management had a difference of opinion? If so, what was the area and how was it resolved?
- ◆ What area of internal control over financial reporting do you consider to be the weakest link? Why is that and what needs to be done to strengthen it?

Questions to Ask

- ◆ What are the key benchmarks we use to evaluate our performance relative to peer competitors?
- ◆ Have we benchmarked our financial practices against our competitor peer group? How do we compare and are there any major differences?
- ◆ Does the company use a consistent competitor peer group?

Questions to Ask

- ◆ What are the company's top risks/priorities? Who in management has responsibility and when does the audit committee get involved?
- ◆ What alternative accounting policies could be chosen and why?
- ◆ Are there non-material issues that could, if unaddressed, become material?
- ◆ Are there questions we should have asked?

Audit Committee Meeting Agenda Items

Audit Committee Meeting Agenda Items

- ◆ Oversight of Accounting and Financial Reporting Process
 - Review any changes in accounting principles or policies
 - Review major issues regarding accounting principles and financial presentations
 - Review management analyses containing any significant issues with financial reporting or preparation of financial statements

Audit Committee Meeting Agenda Items

- ◆ Oversight of Accounting and Financial Reporting Process
 - Review effect of regulatory and accounting initiatives on financial statements of the Company
 - Review all related-party transactions required to be disclosed under SEC Regulation S-K Item 404
 - Review accounting treatment of any unique events such as mergers and acquisitions

Audit Committee Meeting Agenda Items

- ◆ Oversight of Accounting and Financial Reporting Process
 - Review annual and quarterly financial statements with management and auditors
 - Recommend to the Board whether financial statements should be included in the Company's annual report
 - Review and discuss earnings press release with management

Audit Committee Meeting Agenda Items

- ◆ Oversight of Accounting and Financial Reporting Process
 - Review earnings guidance provided to analysts and rating agencies and any deviations from actual results
 - Review other relevant reports or financial information submitted to any governmental body or the public, including management certifications as required by Sarbanes-Oxley

Audit Committee Meeting Agenda Items

- ◆ Oversight of Legal/Regulatory/Ethical Compliance
 - Review code of business conduct and ethics and the Company's system to monitor compliance
 - Review codes of conduct applicable to directors, officers, and employees and identify any waivers of the code for executive officers and directors

Audit Committee Meeting Agenda Items

- ◆ Oversight of Legal/Regulatory/Ethical Compliance
 - Review with the Company's legal counsel any legal compliance and other matters that could have a significant impact on the Company's financial statements
 - Review and update procedures for receipt of complaints about accounting, internal controls or auditing matters, including procedures for confidential employee submissions

Audit Committee Meeting Agenda Items

- ◆ Oversight of Legal/Regulatory/Ethical Compliance
 - Review audit committee charter to assess whether it incorporates specific responsibilities mandated by Sarbanes-Oxley, the NYSE, and NASDAQ
 - Review implications of new financial laws and regulations and ensure that they are effectively understood and managed

Audit Committee Meeting Agenda Items

- ◆ Oversight of Internal Controls
 - Review adequacy and effectiveness of disclosure controls and procedures and discuss with management
 - Review internal controls over financial reporting and discuss with management
 - Review independent auditor's report on the Company's assessment of internal control over financial reporting
 - Ask management if it has sufficient resources

Audit Committee Meeting Agenda Items

- ◆ Oversight of Internal Audit Function
 - Review and advise on selection of internal auditor
 - Review activities, organization, and budget of internal audit function
 - Review performance and qualifications of internal audit function personnel
 - Review internal reports to management prepared by internal audit function and management's response

Audit Committee Meeting Agenda Items

- ◆ Oversight of Independent Auditor
 - Appoint independent auditor
 - Review and update policies overseeing independent auditor
 - Review and evaluate independent auditor's performance
 - Review and evaluate compensation procedures and policies regarding independent auditor

Audit Committee Meeting Agenda Items

- ◆ Oversight of Independent Auditor
 - Review and evaluate independence of external auditor; request auditor to confirm its independence
 - Ensure that auditor is ultimately accountable to Audit Committee
 - Review non-audit services provided by independent auditor to ensure compliance with Sarbanes-Oxley and other applicable rules

Audit Committee Meeting Agenda Items

- ◆ Oversight of Independent Auditor
 - Review and update policies governing Audit Committee pre-approval of all audit and permitted non-audit services to be provided by the independent auditor
 - Disclose pre-approval policies in 10-Ks and proxy statements
 - Ensure regular rotation of lead and concurring audit partners and other significant audit partners as required by Section 203 of Sarbanes-Oxley

Audit Committee Meeting Agenda Items

- ◆ Oversight of Independent Auditor
 - Resolve disagreements between management and auditor
 - Discuss and review accounting policies, alternative disclosures and treatments of financial information, and material communications between management and independent auditor

Audit Committee Meeting Agenda Items

- ◆ Oversight of Independent Auditor
 - Review reports by independent auditor regarding independent auditor's internal quality-control procedures, material issues, and relationships between the independent auditor and the Company
 - Meet separately with outside independent auditor

Audit Committee Meeting Agenda Items

- ◆ Other Committee Responsibilities
 - Report to Board issues with respect to financial statements, regulatory compliance, auditor independence, and performance of internal auditor
 - Engage independent counsel and other advisers
 - Conduct private sessions with internal and outside auditors and with management

Role of Counsel in Year-End Review

Role of Counsel in Year-End Review

- ◆ Review audit committee charter
- ◆ Reconfirm independence of audit committee members
- ◆ Review any internal control issues and management's assessment of internal control over financial reporting; compare 2011 with 2012

Role of Counsel in Year-End Review

- ◆ Review minutes of prior 2011 audit committee meetings to determine any open or unresolved items
- ◆ Review any changes in accounting principles applicable to the company
- ◆ Review any changes in accounting policy

Role of Counsel in Year-End Review

- ◆ Review draft financial statements and become familiar with key changes in financial statements and underlying reasons
- ◆ Review reserves
- ◆ Assess contingent liabilities and their disclosure
- ◆ Understand key financial benchmarks relative to peers
- ◆ Review related-party transactions

Role of Counsel in Year-End Review

- ◆ Review the management representation letter to auditors
- ◆ Review any disagreements between management and external auditors
- ◆ Review internal audit reports and management's responses
- ◆ Review communications from external auditor

Role of Counsel in Year-End Review

- ◆ Review earnings press release
- ◆ Review earnings guidance to earnings results
- ◆ Review company's compliance systems and complaint procedures in light of the Whistleblower Rules and UK Bribery Act and FCPA developments
- ◆ Review disclosure controls and procedures

Role of Counsel in Year-End Review

- ◆ Review codes of conduct and any waivers
- ◆ Review non-audit services of independent auditor
- ◆ Assist the audit committee in setting its agendas
- ◆ Prepare audit committee minutes that reflect audit committee deliberations
- ◆ Update audit committee on possible future developments

Appendix: Possible Future Developments

SEC: IFRS

- ◆ SEC still in the process of deciding whether to incorporate IFRS for U.S. issuers
- ◆ FASB and IASB have been undertaking convergence projects, with mixed results

PCAOB: Considering Changes to the Auditor's Report

- ◆ Concept Release in June 2011; comment period closed in Sept. 2011; Roundtable held in Sept. 2011
- ◆ Could require expanded discussion in the auditor's report about risks faced in the audit and about the judgments and estimates management used in the financial statements

PCAOB: Considering Changes to Auditor Independence Requirements

- ◆ Concept Release in Aug. 2011; comment period closed in Dec. 2011; Roundtable planned for Mar. 2012
- ◆ Could require auditor rotation/“term limits”
- ◆ Could limit firms’ non-audit services

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