

United States Senate
WASHINGTON, DC 20510

May 25, 2021

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chair Gensler:

We are writing to ask that the SEC use its authority to immediately remove and replace the sitting members of the Public Company Accounting Oversight Board (PCAOB). The PCAOB has long been a troubled agency and has failed to ensure the integrity of public companies' audit reports.¹ But the Trump administration weakened the agency even more, taking deliberate steps to erode the PCAOB's independence and expertise while facilitating the agency's capture by partisan and corporate interests. These developments have completely compromised the PCAOB's ability to fulfill its mission and undermine the SEC's ability to "maintain fair, orderly, and efficient markets."² Reversing the damage done by the previous administration and appointing Board members who are committed to ensuring the integrity of the auditing process and our capital markets is an urgent matter, and we urge you to move quickly to do so.

The Sarbanes-Oxley Act of 2002, enacted in the wake of the Enron scandal, established the PCAOB as an independent body "to oversee the audits of public companies in order to protect investors and further the public interest in the preparation of informative, accurate, and independent audit reports."³ More than 1,700 auditing firms are registered with the PCAOB, including 560 firms that "audit more than 12,000 issuers that file financial statements with the SEC or otherwise play a substantial role in those audits."⁴ Those issuers, which include about 7,400 public companies, represent nearly \$47 trillion in global market capitalization.⁵

By ensuring the reliability and integrity of financial reporting, the PCAOB plays a critical role in protecting investors, strengthening transparency, and promoting confidence in our capital markets. Because audit firms are paid by the companies they audit, a strong and independent

¹ Letter from Senator Elizabeth Warren to the PCAOB Chairman James R. Doty, April 25, 2017, <https://www.warren.senate.gov/oversight/letters/senators-raise-concerns-with-accounting-regulator-about-wells-fargo-auditor-kpmg>.

² U.S. Securities and Exchange Commission, "About the SEC," November 22, 2016, <https://www.sec.gov/about.shtml>.

³ Public Company Accounting Oversight Board, "About the PCAOB," September 30, 2020, <https://pcaobus.org/about>; Reuters, "U.S. SEC Appoints New Chair, Board Members to Accounting Body," Michelle Price, December 12, 2017, <https://www.reuters.com/article/us-usa-sec-accounting/u-s-sec-appoints-new-chair-board-members-to-accounting-body-idUSKBN1E62TT>.

⁴ Public Company Accounting Oversight Board, "About the PCAOB," September 30, 2020, <https://pcaobus.org/about>.

⁵ *Id.*

audit watchdog is essential to ensuring company disclosures are honest and markets are fair.⁶ The Trump administration, however, took deliberate steps to weaken and politicize the PCAOB, leaving it unable to carry out its responsibilities under current leadership.

In 2017, following the leak of confidential PCAOB inspection plans to the auditing firm KPMG, former SEC Chair Jay Clayton fired all five members of the Board.⁷ But rather than appoint replacements with “a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of issuers...and the obligations of accountants” – as required by the Sarbanes-Oxley Act – Clayton appointed partisan cronies with a deregulatory agenda and little relevant experience, rewarding them with one of the highest-paying jobs in government.⁸ Among these cronies is William Duhnke, a long-time congressional aide, who currently serves as chair of the Board.⁹ Clayton also saw fit to appoint an auditor from PricewaterhouseCoopers, one of the “Big Four” firms that collectively audit 99 percent of the companies in the S&P 500 – “marking the first time an auditor has joined the regulator from a Big Four accounting firm.”¹⁰ These appointments have compromised the PCAOB’s independence, weakened its expertise, and reinforced perceptions of its capture by industry.

Under Chairman Duhnke’s leadership, the PCAOB has brazenly abandoned its mission to protect investors and the integrity of our financial system. In his first year on the job, PCAOB enforcement actions plummeted by 63 percent.¹¹ Duhnke has also moved to reduce the PCAOB’s budget for inspections and exclude advisory groups and investor advocates from participating in its policymaking processes,¹² and the agency failed to hold a single advisory meeting in 2019 or

⁶ Project on Government Oversight, “How an Agency You’ve Never Heard of Is Leaving the Economy at Risk,” David S. Hilzenrath & Nicholas Trevino, September 5, 2019, <https://www.pogo.org/investigation/2019/09/how-an-agency-youve-never-heard-of-is-leaving-the-economy-at-risk/>.

⁷ The Wall Street Journal, “Audit Watchdog Plagued by Internal Strife, Whistleblower Claims,” Dave Michael and Jean Eaglesham, October 15, 2019, <https://www.wsj.com/articles/audit-watchdog-plagued-by-internal-strife-whistleblower-claims-11571152206?mod=searchresults&page=1&pos=1>.

⁸ 15 U.S.C. 7211; Reuters, “U.S. SEC Appoints New Chair, Board Members to Accounting Body,” Michelle Price, December 12, 2017, <https://www.reuters.com/article/us-usa-sec-accounting/u-s-sec-appoints-new-chair-board-members-to-accounting-body-idUSKBN1E62TT>.

⁹ The American Prospect, “When the Watchers’ Watchers Look the Other Way,” David Dayen, October 29, 2019, <https://prospect.org/economy/when-the-watchers%E2%80%99-watchers-look-the-other-way/>; Bloomberg, “White House Aide Wins \$500,000 Seat on U.S. Accounting Watchdog,” Benjamin Bain and Robert Schmidt, October 11, 2019, <https://www.bloomberg.com/news/articles/2019-10-11/white-house-aide-wins-lucrative-seat-with-u-s-auditing-watchdog>.

¹⁰ Project on Government Oversight, “How an Agency You’ve Never Heard of Is Leaving the Economy at Risk,” David S. Hilzenrath & Nicholas Trevino, September 5, 2019, <https://www.pogo.org/investigation/2019/09/how-an-agency-youve-never-heard-of-is-leaving-the-economy-at-risk/>; The Wall Street Journal, “Government Cleans House at Audit Regulator,” Dave Michaels, December 12, 2017 <https://www.wsj.com/articles/government-cleans-house-at-audit-regulator-1513110178>; Project on Government Oversight, “Captured: Financial Regulator at Risk,” David S. Hilzenrath, January 14, 2020, <https://www.pogo.org/investigation/2020/01/captured-financial-regulator-at-risk/>.

¹¹ Cornerstone Research, “Regulatory Actions Involving Accountants – 2018,” Elaine Harwood and Alison Forman, May 1, 2019, <https://www.cornerstone.com/Publications/Reports/Regulatory-Actions-Involving-Accountants-2018>.

¹² Letter from Former Members of the Public Company Accounting Oversight Board (PCAOB or Board) Investor Advisory Group (IAG) to SEC Chairman Gary Gensler, April 19, 2021, <https://consumerfed.org/wp-content/uploads/2021/04/PCAOB-IAG-Letter.pdf>.

2020.¹³ Additionally, auditor independence standards have been significantly weakened by both the PCAOB and the SEC. For example, in 2018, the PCAOB adopted guidance “permitting firms to falsely claim an audit was independent and conducted in accordance with PCAOB standards when violations of the auditor independence rules have occurred,” while in 2020, the SEC changed its rules to “put the audit firm and audit client – the two parties with the least incentive to take a hard line on independence – in the position of deciding whether something compromises auditor independence.”¹⁴ As SEC commissioners Allison Herren Lee and Caroline Crenshaw wrote when dissenting against the 2020 rule change, “we are concerned that the dial for auditor independence is turning in only one direction, and that is towards loosening standards and reducing transparency.”¹⁵

The depth of the PCAOB’s deterioration under Duhnke was corroborated by a 2019 whistleblower complaint filed by current and former PCAOB employees. According to press reports, the PCAOB “slowed its work amid board infighting, multiple senior staff departures, and allegations that the chairman has created a ‘sense of fear.’”¹⁶ Whistleblowers described Duhnke pushing out long-tenured senior executives, at times “driven by retaliation,” and conditioning severance compensation on signing nondisparagement agreements.¹⁷

While the PCAOB’s current leadership has decimated the agency’s ability to serve as an effective watchdog, the agency has long struggled to live up to its mission. According to an investigation by the Project On Government Oversight, between 2003 and 2019, the PCAOB found 808 instances in which the Big Four “performed audits that were so defective that the audit firms should not have vouched for a company’s financial statements, internal controls, or both. Yet despite those 808 alleged failures, the audit cop has brought only 18 enforcement cases against” those firms or its employees.¹⁸ The small number of cases is especially surprising given that an estimated 30 percent of the Big Four firms’ audits are deficient.¹⁹ What’s more, “since it began working the beat, the audit cop has fined the U.S. Big Four a total of just \$6.5 million.... That’s less than one half of one percent of the potential fines” had the agency enforced

¹³ Reuters, “Former PCAOB Advisers Urge SEC Chair Gensler to Reform Audit Regulatory Board,” Soyoung Ho, April 21, 2021, <https://tax.thomsonreuters.com/news/former-pcaob-advisers-urge-sec-chair-gensler-to-reform-audit-regulatory-board/>.

¹⁴ Letter from Organizations and Individuals to SEC Secretary Vanessa A. Countryman, December 16, 2020, <https://ourfinancialsecurity.org/wp-content/uploads/2020/12/pcaob-auditor-independence-group-comment-12.16.20.pdf>; Letter from Barbara Roper, the Director of Investor Protection at the Consumer Federation of America, to SEC Secretary Vanessa A. Countryman, May 4, 2020, <https://www.sec.gov/comments/s7-26-19/s72619-7146025-216304.pdf>.

¹⁵ U.S. Securities and Exchange Commission, “Who Watches the Watchers? Joint Statement on Auditor Independence Amendments,” Commissioner Allison Herren Lee and Commissioner Caroline A. Crenshaw, October 16, 2020, <https://www.sec.gov/news/public-statement/lee-crenshaw-who-watches-watchers>.

¹⁶ The Wall Street Journal, “Audit Watchdog Plagued by Internal Strife, Whistleblower Claims,” Dave Michael and Jean Eaglesham, October 15, 2019, <https://www.wsj.com/articles/audit-watchdog-plagued-by-internal-strife-whistleblower-claims-11571152206?mod=searchresults&page=1&pos=1>.

¹⁷ *Id.*

¹⁸ Project on Government Oversight, “How an Agency You’ve Never Heard of Is Leaving the Economy at Risk,” David S. Hilzenrath & Nicholas Trevino, September 5, 2019, <https://www.pogo.org/investigation/2019/09/how-an-agency-youve-never-heard-of-is-leaving-the-economy-at-risk/>.

¹⁹ The New York Times, “The S.E.C.’s Clayton Turns Oversight Partisan,” Arthur Levitt, October 24, 2019, <https://www.nytimes.com/2019/10/24/opinion/clayton-sec-pcaob.html>.

all alleged audit failures.²⁰ “In aggregate, the fines the accounting oversight board collected over the past decade and a half were figurative pocket change for the Big Four.”²¹

We have previously raised particular concerns about the PCAOB’s oversight of KPMG, the auditor that cleared Wells Fargo’s financial statements from 2011-2015, a time period in which the company was unable to prevent or detect a wide range of illegal and unethical behavior by Wells Fargo and its employees.²² It’s long past time the PCAOB clean up its act, and the SEC must use its authority to ensure the agency does so.

The SEC’s oversight authority over the PCAOB includes the approval of the Board’s rules, standards, and budget.²³ As affirmed by a 2010 Supreme Court decision – a ruling that your immediate predecessor used to remove Board members in 2017 – it also has the authority to remove PCAOB members at-will with a majority vote by SEC commissioners.²⁴ We ask that you make full use of these authorities to undo the Trump administration’s damage and begin the serious work of rebuilding the PCAOB. This must start with a clean slate and a new direction in leadership.

These changes are necessary and urgent. The Trump administration’s neutering of the PCAOB comes at a particularly risky time, heightening the need for a strong and independent audit watchdog. The record surge in markets over the course of the coronavirus disease 2019 pandemic is “stirring up fresh fears that global markets are in a bubble. Rarely have so many assets been up this much at once.”²⁵ This exuberance – extending from the mania surrounding GameStop and other “meme stocks,” to the boom in cryptocurrency trading, to the growing popularity of Special Purpose Acquisition Companies (SPACs) – has spurred the Federal Reserve to warn about rising financial stability risks.²⁶ Indeed, the rush of private companies into the public market through mergers with SPACs has already exposed several severe accounting errors: since the start of the year, three companies that went public through SPAC mergers “have made mistakes big enough to require them to restate their financial statements.”²⁷

These trends are even more concerning given that retail investors have piled into the stock

²⁰ Project on Government Oversight, “How an Agency You’ve Never Heard of Is Leaving the Economy at Risk,” David S. Hilzenrath & Nicholas Trevino, September 5, 2019, <https://www.pogo.org/investigation/2019/09/how-an-agency-youve-never-heard-of-is-leaving-the-economy-at-risk/>.

²¹ *Id.*

²² Letter from Senator Elizabeth Warren to KPMG Chairman and CEO Lynne Doughtie, October 27, 2016, https://www.warren.senate.gov/files/documents/2016-10-27_Ltr_to_KPMG_re_Wells_Fargo_Audits_FINAL.pdf.

²³ 15 U.S.C. 7211

²⁴ The New York Times, “Justices Uphold Sarbanes-Oxley Act,” Floyd Norris and Adam Liptak, June 28, 2010, <https://www.nytimes.com/2010/06/29/business/29accounting.html>; The Wall Street Journal, “Government Cleans House at Audit Regulator,” Dave Michaels, December 12, 2017 <https://www.wsj.com/articles/government-cleans-house-at-audit-regulator-1513110178>.

²⁵ The Wall Street Journal, “Wild Market Ride Lifts Everything From Lumber to Stocks to Bitcoin,” Akane Otani and Michael Wursthorn, April 25, 2021, <https://www.wsj.com/articles/wild-market-ride-lifts-everything-from-lumber-to-stocks-to-bitcoin-11619343001>.

²⁶ The New York Times, “Meme Stocks and Archegos: Fed Calls Out Financial Weak Spots,” Jeanna Smialek, May 6, 2021, <https://www.nytimes.com/2021/05/06/business/economy/financial-stability-report.html>.

²⁷ Bloomberg, “SPAC IPOs Tripped Up by Accounting Mistakes in Speed to Market,” Nicola M. White, April 14, 2021, <https://news.bloombergtax.com/financial-accounting/spac-ipos-tripped-up-by-accounting-mistakes-in-speed-to-market>.

market over the last year. Stock holdings among U.S. households increased to 41% of their total financial assets in April 2021 – the highest level on record.²⁸ While “small investors accounted for roughly a tenth of trading activity in the stock market” in the decade before the pandemic, “they have become responsible for close to a quarter” of the trading activity in the last year.²⁹ Failure to ensure the accuracy of company financial statements and audits risks harming individual investors – who are less likely to have access to information or analysis beyond public disclosures when making their investment decisions – most.

Given the critical role the PCAOB plays in protecting investors and safeguarding the integrity of our capital markets, we ask that the SEC use its authority to remove the sitting Board members and appoint individuals with a “demonstrated commitment to the interests of investors and the public” as the law requires.³⁰ You have an opportunity and an obligation to strengthen the PCAOB, protect its independence, and ensure it lives up to its responsibilities – all of which are central to the SEC’s mandate to “promote a market environment that is worthy of the public’s trust.”³¹ Aligning the PCAOB Board with the agency’s mission requires immediate attention, and we ask that you move quickly to address this important matter.

Sincerely,



Elizabeth Warren
United States Senator



Bernard Sanders
United States Senator

²⁸ The Wall Street Journal, “Americans Can’t Get Enough of the Stock Market,” Gunjan Banerji, May 2, 2021, <https://www.wsj.com/articles/americans-cant-get-enough-of-the-stock-market-11619947800>.

²⁹ The New York Times, “Recast as ‘Stimmies,’ Federal Relief Checks Drive a Stock Buying Spree,” Matt Phillips, March 21, 2021, <https://www.nytimes.com/2021/03/21/business/stimulus-check-stock-market.html>.

³⁰ 15 U.S.C. 7211.

³¹ U.S. Securities and Exchange Commission, “About the SEC,” November 22, 2016, <https://www.sec.gov/about.shtml>.