

June 28, 2021

The Honorable Gary Gensler  
Chair  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, D.C. 20549

Dear Chair Gensler:

On June 8, 2021, I requested that you instruct relevant Securities and Exchange Commission staff to preserve documents and communications related to the Commission's decision to remove Chairman William Duhnke III and overhaul the membership of the Public Company Accounting Oversight Board (PCAOB), among other things. I trust you did so. Those records will shed light on what appears to be an unprecedented—and unjustified—attempt to politicize the PCAOB.

I also requested the Commission provide a report prepared by Kalorama Legal Services (KLS) on PCAOB governance issues during the period from January 2018 to December 2020. The taxpayer-funded report was submitted to the SEC in January 2021, but not released. The Commission subsequently authorized the KLS report for release and provided a version to the Committee in response to my request. The KLS report and new information obtained by the Committee raised additional questions about the Commission's decision.

For instance, the documents and information show KLS did not recommend the removal of Chairman Duhnke, or any other Board member.<sup>1</sup> In fact, the evidence shows that a bipartisan Securities and Exchange Commission tasked Duhnke and the current Board with transforming the PCAOB<sup>2</sup> in the wake of a scandal wherein staffers disclosed confidential inspection information in exchange for lucrative jobs at KPMG. The scheme—which occurred from 2015–17 and led to a series of criminal convictions and guilty pleas<sup>3</sup> and a \$50 million administrative

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<sup>1</sup> Kalorama Legal Services, *Report on the Corporate Governance of the Public Company Accounting Oversight Board*, Jan. 10, 2021 (on file with Committee). [hereinafter KLS Report]

<sup>2</sup> See, e.g., Statement on Charges Against Former KPMG and PCAOB Personnel from Hon. Jay Clayton, Chairman, SEC (Jan. 22, 2018, <https://www.sec.gov/news/public-statement/statement-clayton-012218>).

<sup>3</sup> Press Release 18-023, U.S. Attorney's Office, S.D.N.Y., Jan. 23, 2018, <https://www.justice.gov/usao-sdny/pr/5-former-kpmg-executives-and-pcaob-employees-charged-manhattan-federal-court-fraudulent>.

fine against KPMG<sup>4</sup>—exposed misconduct by PCAOB members and staff, and led the SEC to replace the entire Board at the end of 2017.<sup>5</sup>

Duhnke was sworn in to serve a five-year term on January 2, 2018, and the rest of the new Board began assuming their positions in early 2018. According to the KLS report, the Board “committed to work collaboratively in rethinking the way the PCAOB’s efforts had been conducted for the fifteen years preceding their appointment.”<sup>6</sup> The Board created more than forty Transformational Programs “designed to modernize the PCAOB’s efforts, and to make the organization more efficient,” improved both internal and external stakeholder communications, and collectively executed several personnel changes to implement the Board’s new approaches.<sup>7</sup>

Documents and evidence show the vast majority of the Board’s actions pursuant to its mandate to reform the PCAOB were unanimous and bipartisan. It is therefore unclear how the SEC’s partisan vote to remove Duhnke and replace the entire Board offers the PCAOB “an opportunity to live up to Congress’s vision in the Sarbanes-Oxley Act,” as you stated in a June 4, 2021 press release announcing the decision.<sup>8</sup> Indeed, Congress did not envision the PCAOB co-opted by partisans at the SEC.

The evidence obtained by the Committee to date also raises questions about conflicts of interest that may implicate Commissioner Allison Herren Lee, particularly while she served as Acting Chair of the SEC from January to April 2021. The KLS report, which was submitted to the SEC at the onset of her tenure as Acting Chair, described governance issues at PCAOB while her husband served as a member of the Board. Evidence obtained by the Committee shows Commissioner Lee recused herself from votes related to the PCAOB as a matter of practice, but she attended a briefing on the KLS report in mid-January 2021. During Commissioner Lee’s tenure as Acting Chair, which began just days after the briefing, the SEC neither shared the report with the PCAOB nor released it publicly. Instead, Commissioner Lee apparently ordered an additional investigation by SEC staff into various allegations against Duhnke,<sup>9</sup> all of which were covered by previous and/or ongoing independent investigations, including by KLS and the SEC Office of Inspector General.

To date, the available evidence neither supports the SEC’s partisan vote to overhaul the PCAOB nor dispels the appearance of a political motivation for the Commission’s recent actions.

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<sup>4</sup> Press Release 2019-95, SEC, June 17, 2019, <https://www.sec.gov/news/press-release/2019-95>.

<sup>5</sup> Unlike the ongoing effort to remove and replace the entire Board, in 2017 nearly all PCAOB Board members’ terms had expired, and the members were simply holding over. By contrast, in the current case, no Board members’ terms had or have expired to date. In fact, Duhnke’s term was set to expire in 2023. The remaining Board members’ terms run through 2023, 2024, and 2025, respectively.

<sup>6</sup> KLS Report at 1.

<sup>7</sup> *Id.*; KLS Report at 150

<sup>8</sup> Press Release 2021-93, SEC, June 4, 2021, <https://www.sec.gov/news/press-release/2021-93>.

<sup>9</sup> Dave Michaels and Jean Eaglesham, *SEC Investigating Former Chair of Auditing Industry Regulator*, WALL ST. J., June 17, 2021, <https://www.wsj.com/articles/sec-investigating-former-chair-of-auditing-industry-regulator-11623943373>.

To assist the Committee's investigation, please provide the following documents and information:

1. All documents and communications referring or relating to the KLS report since January 1, 2021, including, but not limited to, communications referring or relating to deliberations about whether to provide the KLS report to the PCAOB or otherwise release the report to Congress or the public.
2. All exhibits to the KLS report.
3. All documents and communications to or from any Commissioner and any Commissioner's staff referring or relating to William Duhnke III and/or the PCAOB since January 1, 2021.
4. All communications to or from Gary Gensler or his staff referring or relating to William Duhnke and/or the PCAOB since April 17, 2021.
5. All documents and communications referring or relating to the SEC staff's investigation into William Duhnke III, including, but not limited to, documents and communications referring or relating to the scope and purpose of the SEC staff investigation.
6. All documents and communications referring or relating to conflicts of interest arising from the relationship between Commissioner Allison Herren Lee and Jay Brown, including, but not limited to, documents and communications referring or relating to any formal recusal or withdrawal of recusal, SEC recusal policies, and guidance from the SEC Office of General Counsel or the SEC Office of Ethics Counsel.
7. All communications between and among Commissioner Allison Herren Lee, any staff working for or at the behest of Commissioner Lee, Jay Brown, any staff working for on at the behest of Mr. Brown, and Sue Lee.
8. All documents and communications referring or relating to investigations or audits of the PCAOB conducted by the SEC Office of Inspector General since January 1, 2018, including, but not limited to, a copy of any such investigation or audit.
9. All documents and communications referring or relation to any review conducted by the PCAOB Office of Internal Oversight and Performance Assurance since January 1, 2018, including, but not limited to, a copy of any such review.

Please provide these documents and communications as soon as possible, but no later than July 6, 2021. The Committee prefers to receive records electronically to the extent possible.

Contact McArn Bennett of the Committee's minority staff at [McArn.Bennett@mail.house.gov](mailto:McArn.Bennett@mail.house.gov) to make arrangements to produce the records described herein or with any questions about his request. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Patrick McHenry". The signature is written in a cursive style with a large initial "P" and "M".

Rep. Patrick McHenry

cc: The Honorable Maxine Waters, Chairwoman