

June 8, 2021

Mr. Duane M. DesParte  
Acting Chair  
Public Company Accounting Oversight Board  
1666 K Street NW  
Washington, D.C. 20006

Dear Mr. DesParte:

In a closed meeting on Thursday, June 3, 2021, a majority of the SEC's five commissioners voted on partisan lines to remove William Duhnke III from the Public Company Accounting Oversight Board (PCAOB). Late the next day—Friday, June 4—the SEC issued a press release to announce the move against Chairman Duhnke, whose term was set to expire in October 2022.<sup>1</sup> The press release also stated the SEC will remove and replace the Board's full membership,<sup>2</sup> even as the three remaining members are in the midst of five-year terms. I am writing to instruct the PCAOB to preserve all documents and information that may shed light on this unprecedented attempt to politicize the Board.

With respect to overhauling its membership and installing hand-picked replacements, SEC Chair Gary Gensler stated: "The PCAOB has an opportunity to live up to Congress's vision in the Sarbanes-Oxley Act."<sup>3</sup> Congress, however, intended the Board to operate independently and without regard for political considerations. Although Congress vested the SEC with certain oversight authorities, including approval of the Board's rules, standards, and budget, Congress also created safeguards to ensure the Board's non-partisan mission is undermined neither by changes to the political composition of the SEC nor from one administration to the next. Most notably, to untether the Board from the political cycle, the five members of the PCAOB Board, including the Chairperson, are appointed to staggered five-year terms.

The brazen attempt by the SEC's Democratic majority to radically alter the PCAOB raises serious questions about whether and why the Biden Administration is eroding the Board's independence and deliberately exposing it to the "vicissitudes of politics."<sup>4</sup> A recent report by former SEC Chair Harvey Pitt on PCAOB governance issues may provide some answers.<sup>5</sup> The SEC hired Pitt in July 2019 to assess the PCAOB's corporate governance policies and practices

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<sup>1</sup> SEC Press Release 2021-93 (June 4, 2021), <https://www.sec.gov/news/press-release/2021-93>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> PCAOB Commissioners Hester Pierce and Elad Roisman, Statement on The Commission's Actions Regarding the PCAOB (June 4, 2021), <https://www.sec.gov/news/public-statement/peirce-roisman-pcaob-2021-06-04>.

<sup>5</sup> Andrew Ramonas and Amanda Iacone, *SEC Paying Ex-Chairman to Help Audit Regulator, Documents Show*, BLOOMBERG, Feb. 5, 2020.

and recommend changes as appropriate.<sup>6</sup> Pitt’s ensuing report, which cost taxpayers \$125,000,<sup>7</sup> may shed light on whether reforms to the PCAOB are necessary and clarify whether the SEC has any legitimate basis for overhauling the Board’s membership, aside from the Democratic majority’s apparent partisan motives. I expect the SEC to assist the Committee’s investigation and formally authorize the report for release.

To further assist the Committee on Financial Services in this matter, it is imperative that you ensure all PCAOB employees and officials take appropriate measures to collect, retain, and preserve all documents, communications, and other records in accordance with federal law, including the Federal Records Act and related regulations.<sup>8</sup> This includes electronic messages involving official business that are sent using both official and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software.<sup>9</sup> Any employee who conceals, destroys, or attempts to conceal or destroy a federal record may be subject to fine and imprisonment for up to three years.<sup>10</sup> Accordingly, ensure your employees and officials do not delete or destroy any official government records, including “information created, manipulated, communicated, or stored” electronically.<sup>11</sup>

In addition to meeting the requirements of federal laws and regulations, preserve all records that may refer or relate to this matter. Specifically, this preservation request should be construed as an instruction to preserve all documents, communications, and other information, including electronic information and metadata, that is or may be potentially responsive to a congressional inquiry, request, investigation, or subpoena that may be initiated or otherwise undertaken by a committee of Congress or any other investigative entity.

For purposes of this request, “preserve” means securing and maintaining the integrity of all relevant documents, communications, and other information, including electronic information and metadata, by taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, mutation, or negligent or reckless handling that could render the information incomplete or inaccessible. This includes preserving all compilations of documents that have already been gathered in response to requests, even if copies of individual documents may still exist elsewhere in the agency. I further request that you or your designee:

1. Exercise reasonable efforts to identify and notify all relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, and

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See 44 U.S.C. §§ 3101-3107 (Chapter 31, Records Management by Federal Agencies); 44 U.S.C. §§ 3301-3314 (Chapter 33, Disposal of Records); and 36 C.F.R., Chapter XII, Subchapter B (Records Management).

<sup>9</sup> 44 U.S.C. § 2911.

<sup>10</sup> 18 U.S.C. § 2071.

<sup>11</sup> 44 U.S.C. § 3301(a)(2) (defining “records” as inclusive of “all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form”).

consultants who may have access to potentially relevant information that they should preserve and return such information to the agency;

2. Exercise reasonable efforts to identify, recover, and preserve any potentially relevant electronic information that has been deleted or marked for deletion but is still recoverable;
3. Remind all relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, and consultants that any federal records sent or received using a nonofficial account must be forwarded to the agency for proper archiving;<sup>12</sup> and
4. If it is the routine practice of any relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, or consultants to destroy or otherwise alter potentially relevant information, either halt such practices as they relate to the potentially relevant information or arrange for the preservation of complete and accurate duplicates (including metadata) of such documents, communications, or other information.

Please advise the Committee in writing as to how the PCAOB will ensure all records relevant to this matter will be preserved. The Committee will identify specific categories of documents and communications to be produced as soon as possible. Thank you for your attention to this request.

Sincerely,



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Patrick McHenry

cc: The Honorable Maxine Waters, Chairwoman

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<sup>12</sup> See 44 U.S.C. § 2911 (requiring disclosure of official business conducted on nonofficial electronic messaging accounts).