

November 30, 2021

The Honorable Maxine Waters
Chair
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Madam Chair:

In a closed meeting on Thursday, June 3, 2021, the SEC's five commissioners voted 3-2 on partisan lines to remove Chairman William Duhnke from the Public Company Accounting Oversight Board (PCAOB). Committee Republicans obtained documents and information that indicate SEC Chair Gary Gensler and Commissioner Allison Herren Lee may have orchestrated a purge of the Board for partisan purposes. Indeed, on November 8, 2021, Chair Gensler announced four handpicked replacements,¹ despite unresolved concerns about the process by which Gensler and Lee created vacancies at the PCAOB in the first place.²

In fact, rather than address those concerns in a transparent manner, the SEC refuses to produce any non-public records whatsoever. According to the agency's lawyers, the SEC will not provide any additional records unless and until you endorse an outstanding request from Committee Republicans. In light of the seriousness of the allegations against Chair Gensler and Commissioner Lee, we respectfully urge you to join Committee Republicans in seeking answers from the SEC.

On June 28, 2021, we issued letters to Chair Gensler and the Acting Chair of the PCAOB, Duane DesParte. You were copied on those letters.³ Committee Republicans requested specific documents and communications regarding the basis for the SEC's decision to terminate Duhnke and replace the entire board.⁴ In response, the SEC provided a single document: a taxpayer-funded report prepared by Kalorama Legal Services (KLS) on PCAOB governance issues that had been withheld by the SEC since January 2021. The KLS report—which did not recommend the removal of Duhnke or any other Board member—raised more questions about how and why the SEC's Democratic majority overhauled the PCAOB. The SEC subsequently advised our staff that the agency would not produce any further responsive documents.

¹ SEC Press Release 2021-228 (Nov. 8, 2021), <https://www.sec.gov/news/press-release/2021-228>.

² Paul Kiernan, *SEC Names New Board Members to Audit Watchdog*, WALL ST. J., Nov. 8, 2021, <https://www.wsj.com/articles/sec-names-new-board-members-to-audit-watchdog-11636405959> (SEC Commissioners Hester Peirce and Elad Roisman stated they “remain concerned about the commission’s actions in June but nevertheless support this new board.”)

³ See enclosures.

⁴ Press Release, House Financial Services Republicans, June 29, 2021, <https://republicans-financialservices.house.gov/news/documentsingle.aspx?DocumentID=408034>.

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. In fact, Committee Republicans obtained information that raises additional questions as to whether Commissioner Lee (who served as Acting Chair of the SEC from January–April 2021) suppressed the KLS report and initiated two investigations of the PCAOB by entities that report to the Chair’s office—one in February 2021 by the SEC Division of Examinations and another in March 2021 by the Division of Enforcement. According to information provided to the Committee, those investigations are ongoing.

The SEC’s Democrat majority, however, did not wait for those investigations to conclude before removing Duhnke and overhauling the Board. On Tuesday, June 1, Chair Gensler contacted PCAOB Member Duane DesParte and inquired whether DesParte would serve as Acting Chair. The SEC did not vote on the matter until Thursday, June 3, which reinforces the appearance that Chair Gensler was involved in planning the action against Duhnke. The documents and communications covered in our outstanding request to the SEC may provide an explanation, but the SEC refuses to produce those records.

The evidence obtained to date suggests there was no valid basis to remove Duhnke, or any other Board member.⁵ In fact, the evidence shows a bipartisan Securities and Exchange Commission tasked Duhnke and the former Board with transforming the PCAOB⁶ in the wake of a scandal wherein staffers disclosed confidential inspection information in exchange for lucrative jobs at KPMG. The scheme exposed misconduct by PCAOB members and staff and led the SEC to replace the entire Board at the end of 2017.⁷

Following the scandal, Duhnke was sworn in to serve a five-year term on January 2, 2018, and the new board began assuming their positions in early 2018. According to the KLS Report, in their short time at the PCAOB, the former Board created more than forty Transformational Programs “designed to modernize the PCAOB’s efforts, and to make the organization more efficient,” and executed several personnel changes to implement the Board’s new approaches.⁸ These reforms improved both internal and external stakeholder communications, and collectively executed several personnel changes to implement the Board’s new approaches.⁹

Despite progress at the PCAOB under Duhnke, Chair Gensler described the abrupt termination of the former Chair and the Board as “an opportunity to live up to Congress’s vision in the Sarbanes-Oxley Act” in a June 4, 2021 press release.¹⁰ Congress certainly did not envision

⁵ 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].

⁶ 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>).

⁷ 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.

⁸ KLS Report at 1.

⁹ *Id.* at 150.

¹⁰ Press Release 2021-93, SEC, June 4, 2021, <https://www.sec.gov/news/press-release/2021-93>.

the SEC's partisan majority co-opting the PCAOB in response to pressure from a small but outspoken faction in the Senate.¹¹

Since January 20, 2021, you have issued 17 statements to “applaud” various actions by the Biden Administration.¹² Meanwhile, you have not initiated a single investigation of any agency within the Committee’s jurisdiction. The Biden Administration appointees leading the SEC appear to have faith that you will similarly forego oversight in this case. In light of the SEC’s posture with respect to congressional oversight, we ask that you join this investigation, or delegate the Chair’s investigative authority to a subcommittee chairperson who is willing to do so. Thank you for considering this request.

Sincerely,



Patrick McHenry
Ranking Member



Bill Huizenga
Ranking Member
Subcommittee on Investor Protection,
Entrepreneurship, and Capital Markets

Enclosures (2)

¹¹ See Letter from Sen. Elizabeth Warren and Sen. Bernie Sanders to Hon. Gary Gensler, Chair, SEC (May 25, 2021), <https://www.warren.senate.gov/imo/media/doc/Letter%20to%20Gensler%20on%20PCAOB.pdf>.

¹² H. Comm. on Fin. Services Press Releases. See, e.g., “Waters Applauds Janet Yellen’s Confirmation as Treasury Secretary” (Jan. 26, 2021); “Waters Applauds Biden Administration Executive Action on Fair Housing” (Jan. 27, 2021); “Waters Applauds Treasury Effort to Help Vulnerable Countries Fight Pandemic Through Global Action” (Mar. 1, 2021); “Waters Applauds Marcia Fudge’s Confirmation as HUD Secretary” (Mar. 10, 2021); “Waters Applauds Consumer Bureau Rule to Enforce Protections Against Discrimination on the Basis of Sexual Orientation and Gender Identity” (Mar. 10, 2021); “Waters Applauds Gary Gensler’s Confirmation as Chairman of the Securities and Exchange Commission” (Apr. 15, 2021); “Waters Applauds the Biden Administration’s New Russia Sanctions” (Apr. 16, 2021); “Waters Applauds HUD’s Withdrawal of Trump Administration Rule that Weakened Fair Housing Protections for LGBTQ+ Community” (Apr. 26, 2021); “Waters Applauds Senate Action to Protect Consumers from Trump-Era Predatory Lending Practices” (May 14, 2021); “Waters Applauds HUD’s Efforts to Restore Obama Era Mandate to Redress Housing Segregation and Inequitable Development” (June 11, 2021); “Waters Applauds Biden Administration Announcement of Final Extension of Federal Eviction and Foreclosure Moratoria” (June 24, 2021); “Waters Applauds President Biden’s Executive Order to Examine Bank Merger Practices, Urges Federal Reserve to Strengthen Merger Reviews” (July 15, 2021); “Waters Applauds OCC, FDIC, and Federal Reserve Efforts to Undo Damage from Trump-Era Community Reinvestment Act Rule” (July 22, 2021); “Waters Applauds SEC’s Approval of a National Stock Exchange Rule to Require Diversity Data Reporting” (Aug. 11, 2021); “Waters Applauds World Bank Decision to Discontinue the Doing Business Report” (Sept. 24, 2021); “Waters Applauds Rohit Chopra’s Confirmation as Director of CFPB” (Sept. 30, 2021); “Waters Applauds Change to SEC Staff Action on Shareholder Proposals” (Nov. 3, 2021).