

Dear Chairman Gensler:

We write to express our profound concern about the current state of the Public Company Accounting Oversight Board (PCAOB) after the deleterious effects of the Trump administration on our financial regulatory system. You and your colleagues will surely conduct an immediate review of the workings of the PCAOB. Should the majority of the Securities and Exchange Commission (SEC) ultimately concur with our conclusions, we call upon the SEC to fire all four of the current Board members. Rather than retaining Board members who facilitated the demise of the PCAOB's commitment to its mission, the SEC should install five new PCAOB board members fully committed to high standards in American public firm auditing.

As you are aware, the PCAOB, borne out of a bipartisan compromise in the wake of the Enron accounting scandal, has collapsed into a pattern of non-enforcement and retaliation against whistleblowers or internal objectors over the past few years. As you are also no doubt aware, that collapse has occurred under a Board constructed by your predecessor Jay Clayton to empower William Duhnke, the current chair of the PCAOB Board and the individual most culpable for its recent atrophy.

We hold Duhnke, who was appointed in 2017 by the SEC, largely liable for the PCAOB's chaos in recent years. Duhnke has no prior background in financial services. His sole qualification was a career of loyalty to the influential Republican Senator Richard Shelby (AL), whose many former staffers have traded on their connections to secure lucrative and powerful positions in the federal bureaucracy. They are sometimes known as the "Shelby mafia."

Under Duhnke's leadership, the PCAOB's senior career staff — including the heads of inspections, enforcement, and the general counsel — all left the agency. These former staffers signed non-disparagement agreements amidst rumors that the firings were retaliatory in nature. Duhnke allowed the enforcement director and general counsel positions to remain vacant for over 16 months, a testament to his low prioritization of the Board's most essential enforcement duty. Indeed, inspector reports were down 27 percent in 2019, and required public meetings went unheld. Duhnke also reportedly fought with Commissioner Kathleen Hamm over basic hiring decisions, which may have contributed to her losing her position in October 2019. Reportedly, Hamm was unaware that she was losing her position until a communications staffer called her to confirm a resignation quote other PCAOB staffers had drafted for her.

While the PCAOB's status as a semi-private non-profit under the oversight of the SEC means it has none of the partisan diversity mandates required of federal agencies, both Republican and Democratic administrations had kept PCAOB leadership to the general formula for an executive commission since its creation — namely, that the President's party shall control three seats and the opposition party shall control two. Today, though, Republican appointees control four seats and Democrats control none.

This is in line with a broader trend across the federal government of Republican administrations, and especially the Trump administration, using any and all legal — and sometimes illegal —

means to install their ideological allies in power while depriving opposition figures of their mandatory or customary roles. Through aggressive litigation in cases like *Seila Law v. Consumer Financial Protection Bureau*, the conservative movement has weakened or eliminated much of the independence and insulation from politics once enjoyed by executive branch agencies. It was only through another Supreme Court case, *Free Enterprise Fund v. PCAOB*, that the Trump administration gained the power to entirely eliminate Democratic-nominated appointees from the PCAOB's board. Across the 39 agencies tracked by the Revolving Door Project and Demand Progress' Independent Agency Tracker, 43 seats are currently vacant, while 30 have occupants serving expired terms.

This all leads to tremendous harm to the agencies themselves, but more importantly, to the policy functions which the agencies were designed to carry out. As it relates to the PCAOB, Duhnke driving this agency into atrophy through hard-knuckle conservative politics cannot come at a worse time. Retail investing is newly popular among the general public, and not just with widely-reported "meme stocks." Retail investors are among the least likely to ascertain information about firms outside of their public disclosures, which if fraudulent, could lead inexperienced investors to gamble and lose their savings. Stocks are also on track for their strongest recovery since the Great Depression, which will likely exacerbate general investor exuberance and potential market froth.

The broader financial regulatory system is also struggling to reckon with new potential sources of fraud. To take one example, firms like Tesla have reported massive new revenues off of speculating on Bitcoin valuation. The PCAOB should be ensuring that the new potential liabilities or opportunities posed by institutional cryptocurrency investment are conveyed clearly and accurately to prospective Tesla investors, but under Duhnke, we can be sure that the agency will do as little as possible.

Investors remain in tremendous danger the longer Duhnke constrains his own agency from scrutinizing public company auditing standards. As the agency with oversight of the PCAOB, and an agency specifically obligated to do everything in its power to prevent financial fraud, it falls to the SEC to intervene. We therefore call upon you to act in the public's interest by firing all four PCAOB Board members and recommending new appointees who shall serve out the agency's duty.

Such action will no doubt prompt hypocritical accusations of partisanship and authoritarianism from the political right. Few good-faith actors would doubt that a Republican SEC Chair would do exactly the same thing if the situations were reversed: indeed, this is what your predecessor, Jay Clayton, did over the course of the Trump administration. Moreover, the SEC's duty is not to satisfy partisan critics. It is to safeguard investors from fraud and preserve the security of the financial system. The longer Duhnke and his cohorts remain in control of the PCAOB, the greater danger investors face, due to his deliberate inaction.

Moreover, it is entirely within yours and your fellow SEC Commissioners' legal power to fire all of the PCAOB Commissioners and recommend new nominees who shall serve the agency's actual

duty. This is again thanks to *Free Enterprise Fund v. PCAOB*, which, like it or not, is the law of the land. SEC Commissioners have an obligation to do everything in their power to safeguard the investing public from fraud, and choosing not to utilize certain powers where warranted for the sake of appeasing insatiable critics, or for some personal nobility, only ensures that preventable frauds will be perpetrated under your watch.

Repairing the harms done by the Trump administration to the financial regulatory system, and indeed creating new rules that will better protect the American economy, requires regulators to take bold action in the public's interest, even when doing so prompts bad-faith criticism from ideologues opposed to any economic rules of the road whatsoever. These ideologues especially cannot be allowed to undermine the duties of the regulatory system from within, particularly not under a justification as flimsy as maintaining a bipartisan comity which the same ideologues prevent from being achieved in the first place. We urge you to set a new example for your colleagues within the SEC, across the executive branch, and for the American people, by modeling pro-social regulation unburdened by fears of bad-faith critics' responses. This should begin by firing the PCAOB Board, and replacing them with new appointees committed to the public interest.

Sincerely:

Action Center on Race and the Economy  
American Economic Liberties Project  
Americans for Financial Reform  
Amazon Watch  
Consumer Action  
Demand Progress  
Greenpeace US  
Public Citizen  
Progressive Change Institute  
Revolving Door Project  
Take On Wall Street