

MIKE CRAPO, IDAHO, CHAIRMAN

RICHARD C. SHELBY, ALABAMA
PATRICK J. TOOMEY, PENNSYLVANIA
TIM SCOTT, SOUTH CAROLINA
BEN SASSE, NEBRASKA
TOM COTTON, ARKANSAS
MIKE ROUNDS, SOUTH DAKOTA
DAVID PERDUE, GEORGIA
THOM TILLIS, NORTH CAROLINA
JOHN KENNEDY, LOUISIANA
MARTHA MCSALLY, ARIZONA
JERRY MORAN, KANSAS
KEVIN CRAMER, NORTH DAKOTA

SHERROD BROWN, OHIO
JACK REED, RHODE ISLAND
ROBERT MENENDEZ, NEW JERSEY
JON TESTER, MONTANA
MARK WARNER, VIRGINIA
ELIZABETH WARREN, MASSACHUSETTS
BRIAN SCHATZ, HAWAII
CHRIS VAN HOLLEN, MARYLAND
CATHERINE CORTEZ MASTO, NEVADA
DOUG JONES, ALABAMA
TINA SMITH, MINNESOTA
KYRSTEN SINEMA, ARIZONA

United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

GREGG RICHARD, STAFF DIRECTOR
LAURA SWANSON, DEMOCRATIC STAFF DIRECTOR

October 17, 2019

The Honorable Jay Clayton
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair Clayton:

We are writing regarding the troubling developments at the Public Company Accounting Oversight Board (PCAOB). *The Wall Street Journal* reported this week that the PCAOB has been compromised by “internal feuding and personnel issues”¹ resulting in a disturbing whistleblower complaint.² In addition, the SEC’s recent oversight of the PCAOB shows questionable judgment and an alarming lack of transparency.

Whistleblowers are a crucial means to identifying and correcting violations of law, rules, and regulation as well as mismanagement and abuse of authority. Every whistleblower complaint must be seriously considered and evaluated. Reports that the SEC has selected Harvey Pitt to review the PCAOB’s corporate governance, are deeply problematic. Mr. Pitt’s brief tenure as Chair of the SEC was marred by controversies including his oversight failures in the selection of the first PCAOB Chairman. Selecting Mr. Pitt to undertake this review seems unwise. Any credible inquiry into the PCAOB’s governance or the issues raised in the whistleblower complaint must be considered by individuals without any history related to failed oversight of the PCAOB.

The Journal article further highlighted the recent decline in audit-inspection reports and vacant senior staff positions at the PCAOB, including the general counsel and enforcement director positions. These positions are critical for the PCAOB’s ability to carry out its mandate. These vacancies hinder the PCAOB’s ability to conduct meaningful oversight and enforcement, and the prolonged vacancies undermine the long-term effectiveness of PCAOB. As you know, the PCAOB plays an important role in the oversight of accounting professionals who provide independent audit reports for publicly traded companies. The PCAOB’s registration,

¹ Dave Michaels & Jean Eaglesham, *Audit Watchdog Plagued by Internal Strife, Whistleblower Claims*, *The Wall Street Journal* (Oct. 15, 2019), <https://www.wsj.com/articles/audit-watchdog-plagued-by-internal-strife-whistleblower-claims-11571152206>.

² *Id.*

examination, inspection, and enforcement responsibilities help ensure the integrity of public company financial disclosures that the securities markets rely on.

PCAOB's role ensures that our capital markets remain the global gold standard. For this reason, we are requesting additional information on, and clarification of, your announcement last week that "Commissioner Hester Peirce has agreed to lead the Commission's coordination efforts with the Board of the PCAOB".³ That statement, appended at the end of a separate announcement, is troubling because it displays an alarming lack of transparency and raises the potential of undue influence on the Board of the PCAOB. Although Section 107 of the Sarbanes-Oxley Act⁴ provides that "the Commission shall have oversight and enforcement authority over the Board,"⁵ Congress did not mandate a single SEC Commissioner to have the role of "coordinator", or for oversight of the PCAOB Board other than by Commission action. Furthermore, Commissioner Peirce was a longtime colleague of current PCAOB Chairman William Duhnke, which also raises questions about her selection for this role.

Now, more than ever, the PCAOB must enhance its oversight activity, with a particular focus on enforcement. An independent government watchdog group recently found that over "its entire history of more than 16 years, when it comes to some of the biggest firms under its jurisdiction, [the PCAOB] has taken disciplinary action over only a tiny fraction of the apparent violations its staff has identified."⁶ This follows the scandal at KPMG LLP where top executives were "stealing the exam" in connection with the inspections of the firm by the PCAOB, which led to a criminal conviction last month for the second-in-command of KPMG's audit practice.⁷

It appears that the Commission believes additional oversight of the PCAOB is necessary. Given the whistleblower letter, concerns about oversight, and other issues highlighted in the troubling *Journal* article, we agree. Now, it is incumbent on you as Chair to explain how you determined that need and describe how such oversight will be conducted. Accordingly, please respond to the following by October 30, 2019:

1. When were you first made aware of the whistleblower letter?
2. Please describe the process for selecting Mr. Pitt to review the PCAOB's corporate governance and explain the scope of the mandate, including the personnel at the SEC and PCAOB that he may interview.

³ Press Release, Securities and Exchange Commission, SEC Appoints Rebekah Goshorn Jurata to PCAOB; Announces Commissioner Hester Peirce to Lead Commission's Coordination Efforts with PCAOB (Oct. 11, 2019), <https://www.sec.gov/news/press-release/2019-211>.

⁴ Pub. L. 107-204.

⁵ Sarbanes-Oxley Act of 2002 Sec. 107, 15 U.S.C. § 7217.

⁶ David S. Hilzenrath & Nicholas Trevino, How an Agency You've Never Heard of Is Leaving the Economy at Risk, Project on Government Oversight (Sept. 5, 2019), <https://www.pogo.org/investigation/2019/09/how-an-agency-youve-never-heard-of-is-leaving-the-economy-at-risk/#77011>.

⁷ Jean Eaglesham, *Ex-KPMG Partner Sentenced to a Year and a Day in 'Steal the Exam' Scandal*, The Wall Street Journal (Sept. 11, 2019), <https://www.wsj.com/articles/ex-kpmg-partner-sentenced-to-a-year-and-a-day-in-steal-the-exam-scandal-11568217009>.

3. Are you willing to consider replacing Mr. Pitt with a reviewer that does not have a history with the PCAOB that may call into question the reviewer's objectivity?
4. Please provide the process for SEC oversight of PCAOB staffing adequacy, including any consideration of the extended vacancy of senior staff positions, such as the general counsel and director of enforcement.
5. What is the legislative or regulatory authority, if any, for the coordination role you announced last week?
6. Please identify your consultation process with the Administration, including White House staff, other Commissioners, and senior staff prior to establishing the coordination role.
7. Please provide any legal analysis prepared by the SEC's Office of the General Counsel that supports establishing a single Commissioner coordinator role between the SEC and the Board of the PCAOB.
8. Please describe the responsibilities for the coordination role, the scope of the "coordination efforts", and how such efforts will improve the "efficiency and effectiveness" of the SEC's and the PCAOB Board's oversight of public accounting firms. Also, please explain how such activity will be evaluated and how the full Commission will be involved.

We look forward to your response.

Sincerely,



Sherrod Brown
U.S. Senator



Jack Reed
U.S. Senator