April 19, 2021

Via Email

The Honorable Gary Gensler
Chairman
United States Securities and Exchange Commission
100 F Street, NE,
Washington, DC 20549-1090

Re: Reform of the Public Company Accounting Oversight Board (PCAOB)

Dear Chairman Gensler:

Congratulations on your appointment to serve as Chairman of the Securities and Exchange Commission (SEC). We hope for your success in protecting investors and maintaining the resiliency and liquidity of United States public capital markets.

We, the undersigned former members of the Public Company Accounting Oversight Board (PCAOB or Board) Investor Advisory Group (IAG), write in our individual capacities to share our perspectives on the urgent need to reinstate investor input into the work of the PCAOB to restore investor trust and confidence in the quality of public company audits in the United States. We are concerned that in this regard the SEC and the PCAOB are failing to carry out their respective roles and responsibilities as set forth by Congress in the Sarbanes-Oxley Act of 2002 (SOX).[1] These failures increase risks to our financial system and require immediate attention.

In SOX, Congress stated the role and responsibility of the PCAOB is "… to oversee the audit of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors."[2] Toward that end, SOX authorized the PCAOB to establish advisory groups to obtain input from investors and others on how best to enhance the quality of public company audits.

As former members of the IAG, we had the privilege of representing investors by sharing our views on the work of the PCAOB and its standard setting activities; however, in 2018 certain members of the PCAOB determined that the Board would no longer seek the views of its established advisory bodies and never hosted another advisory group meeting. Advisory groups are essential participants in the PCAOB's processes for enhancing the quality of audits, and we strongly support reactivating the IAG and including it in PCAOB's standard-setting deliberations and related regulatory processes.

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[1] The Sarbanes-Oxley Act of 2002 (Pub.L. 107-204, 116 Stat.745, enacted July 30, 2002).
[2] Id. at Sec. 101.

Beginning in 2017, the SEC replaced the entire PCAOB. The new Board then instituted a massive change in the leadership of its staff. The PCAOB has four primary divisions: 1) Standards, 2) Registration and Reporting, 3) Inspections, and 4) Enforcement. In each division, a sitting, experienced and long-tenured Director was replaced. In addition, the General Counsel, Chief Auditor, Director of Information Technology, and dozens of other long-serving PCAOB managers were essentially fired. Discharging such personnel has undermined the Board's ability to serve its purpose, and to do so with the expertise investors need.

Furthermore, in 2018, the PCAOB moved to reduce its own budget including for its critical inspections function. The PCAOB initially adopted new operational plans in its 2018 Strategic Plan. The 2018 Strategic Plan mentioned investor protection only once, in stating the PCAOB's mission. It also mentioned enforcement only once, weakened inspection requirements and deemphasized diversity when compared to the PCAOB's prior strategic plan. Interestingly, the PCAOB failed to live up to even its less ambitious strategic plan.

Another troubling development is the Board's multi-year practice of refusing to meet with its advisory groups. To help execute its duties, SOX authorized the PCAOB to establish advisory groups to obtain input from investors and others on how best to enhance the quality of public company audits. Advisory groups are essential participants in the PCAOB's processes for enhancing the quality of audits and have advised the Board for many years. As former members of the IAG, we had the privilege of representing investors and the opportunity to share our views on the PCAOB's work and its standard setting activities. Yet, since 2018, the Board has refused to host an advisory group meeting.

In addition to these issues, we are also concerned by the following:

- The elimination of the solicitation of public comment on PCAOB rulemaking as evidenced by the PCAOB's recent failure to seek public comment on the material revision of the PCAOB's auditor independence rules.

- The reliance on holdover interim auditing standards written by the American Institute of Certified Public Accountants and auditing professionals before the PCAOB was created in 2002, almost 20 years ago. These standards were written in an era of flawed self-regulation that failed to prioritize the interests of investors and the public. In fact, these standards also contributed to the failed audits of companies such as Enron.

- The elevation of standards adopted by the auditing profession through the International Auditing and Assurance Standards Board, rather than developing its own standards. This includes the proposed concept of simply adopting quality control standards developed by the IAASB.

- The failure to act on recommendations from investors with respect to significant auditing standards in need of reform, such as standards for disclosure of audit quality metrics, auditing non-compliance with laws and regulations, going concern audit opinions, and the need for auditor involvement with other information in filings with the SEC such as disclosures of the impact of climate change and Non-GAAP measures.

- The constraints on the PCAOB's budget has significantly hampered the Board's ability to revamp its old interim auditing and quality control standards, inspect the audits of each of the largest public companies on a realistic timetable, and take timely, transparent enforcement actions.

- The lack of transparency as highlighted by the PCAOB ceasing to hold round tables and public meetings where proposed concepts could be discussed and debated in a manner that would provide useful feedback from investors and the public.

- The PCAOB has failed to hold regular Board meetings, and when it has held meetings, has failed to make public its meeting agendas. It also failed to follow transparency standards followed by the SEC when its Commissioners meet with individuals or groups to discuss potential rule-making projects. Finally, it has failed to adopt a whistleblower system such as required for public companies. In essence, the PCAOB has reverted to the same lack of transparency that led Congress to eliminate self-regulation and establish greater accountability for the auditing profession and its overseer.

We share these concerns about the overall direction of the PCAOB, including a significantly diminished emphasis on maintaining sufficient investor protections in the oversight of the financial reporting process. This concern is further intensified by the appointment of PCAOB Board members who lack independence and the PCAOB's recent move to reduce auditor independence rules <u>without any investor input whatsoever</u>. The PCAOB did not subject its weakening of the auditor independence rules to public comment, choosing instead to rely on the SEC's related work as a sufficient basis to act, in breach of SOX and its stated mission of protecting investors.[3]

We believe the PCAOB has drifted away from its core mission of investor protection, as evidenced by its failure to address investor protection with respect to long-term strategic planning, operations, PCAOB Board refreshment and weakening rules on auditor independence. A first step in enhancing the Board's investor protection focus is to reactivate the PCAOB's IAG. The reactivated IAG should be comprised of diverse members who are knowledgeable about accounting and auditing issues and have a record of advocating on behalf of investors, including with regard to strengthening auditing and accounting standards.

[3] SEC Rule 2-01, 17 C.F.R. Section 210.2-01, in Regulation S-X.

In March 2021, the Board created and adopted a charter for its new Standards Advisory Group ("SAG") which replaced members of its former SAG. The new charter (1) will make the meetings of the SAG private, whereas for the past 16 years, when held, SAG meetings were public; (2) will grant the AICPA Center for Audit Quality the right to pick the SAG members who are auditors, a right no other organization is receiving; (3) appears to limit the ability of investor advocates to serve on the SAG and (4) gives the PCAOB Board the authority to unilaterally set the agenda for the advisory group. In the past, the SAG (as well as the IAG) set its own agenda.

In line with its mission, we expect the PCAOB to further the public interest in the preparation of informative, accurate, and independent audit reports. Each of the undersigned recognizes the importance of this work for market transparency and risk reduction. Our investor focused view has not been incorporated in the deliberative activities of the PCAOB in recent years. Given the significant personnel changes, budget reductions and anti-regulatory activity at the PCAOB, there is considerable heavy lifting ahead to return the PCAOB's focus to its primary mission of investor protection. Given their track record, we do not believe the current PCAOB Board members are up to the task of re-focusing the PCAOB on its core mission because they are responsible for the dramatic shift away from what investors expect.

The circumstances surrounding the PCAOB compel the SEC to take immediate and assertive action to reverse the damage done over the past four years. To that end, we propose the following initial action items:

- Act quickly to fill the vacancy on the Board with someone who is independent of auditing firms, highly competent and historically supportive of investors' concerns relating to audit firm oversight and independence;

- Install the new appointee as the chair of the Board; and

- Reinstate the PCAOB's advisory groups, including the IAG and the Standing Advisory Committee, and fill them with competent, diverse, and investor-focused voices. Members should be knowledgeable about accounting and auditing issues and have a record of advocating on behalf of investors, including with regard to strengthening auditing and accounting standards.

Together, these initial actions should begin to restore investors' confidence in the public company audit process in the United States, however, more reforms will ultimately be needed.

We would welcome the opportunity to engage further on investor protection issues at the PCAOB. Thank you for your consideration of our recommendations. If you have any questions, please do not hesitate to contact Barbara Roper at bnroper@comcast.net, or Anne Simpson at Anne.Simpson@calpers.ca.gov.

Sincerely,

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cc: The Honorable Sherrod Brown, Chairman, Committee on Banking, Housing, and Urban Affairs, United States Senate

The Honorable Maxine Waters, Chairwoman, Committee on Financial Services, U.S. House of Representatives

The Honorable Patrick Toomey, Ranking Minority Member, Committee on Banking, Housing, and Urban Affairs, United States Senate

The Honorable Patrick McHenry, Ranking Minority Member, Committee on Financial Services, U.S. House of Representatives

The Honorable Caroline A. Crenshaw, Commissioner, Securities and Exchange Commission

The Honorable Elad L. Roisman, Commissioner, Securities and Exchange Commission

The Honorable Hester M. Peirce, Commissioner, Securities and Exchange Commission

The Honorable Allison Herren Lee, Commissioner, Securities and Exchange Commission

The Honorable William D. Duhnke III, Chairman, Public Company Accounting Oversight Board