

## [Securities Regulation Daily Wrap Up, PCAOB NEWS AND SPEECHES— PCAOB's Brown calls for improved accountability, transparency, \(Nov. 12, 2020\)](#)

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Brown suggested that the Board could improve investor input and outreach by adopting requirements for advisory groups similar to the SEC's, noting that the last PCAOB advisory group meeting was held in November 2018.

In remarks to the 50th World Continuous Auditing & Reporting Symposium, PCAOB Member Jay Brown outlined a series of steps the Board should take to implement specific policies that encourage investor input and outreach. Too much is left to the Board's discretion, he said, [advising](#) that polices concerning transparency, accountability, and public input be made mandatory by inserting these mechanisms into the rules or bylaws of the PCAOB.

**PCAOB's mission.** Harkening back to the PCAOB's creation, Brown noted that firms which audited public companies were self-regulated prior to 2003. This system ended following the Enron and WorldCom scandals and the passage of the Sarbanes-Oxley Act establishing the PCAOB as an independent audit oversight regulator. Unlike the self-regulatory system, under PCAOB oversight investors and the public were given a seat at the audit standard-setting table, Brown said. In addition to letting the public comment on standard setting projects, the PCAOB also engaged in outreach on specific matters and formed advisory groups such as the Standing Advisory Group and the Investor Advisory Group.

However, Brown advised that outreach to investors is not enshrined in the PCAOB's rules or bylaws and can be set aside at the Board's discretion. He noted that the PCAOB has not convened a meeting of its advisory groups since November 2018 and that it did not reach out to investors when it [revised](#) its standard-setting and research [agendas](#), a step he has [criticized](#). He added that the PCAOB's December 2019 [concept release](#) on quality control did not discuss outreach to investors.

**Accountability and transparency.** To rectify these issues, the PCAOB must improve its accountability and transparency, Brown said. He noted that SOX did not make mandatory for the PCAOB certain laws designed to ensure transparency by government agencies, such as the Sunshine Act, the Freedom of Information Act (FOIA), or the Administrative Procedure Act (APA). Brown remarked that just because Congress did not mandate that these laws encompass the PCAOB, it did not prohibit it either. Even though the PCAOB is not a government agency, investors and the public are still entitled to a level of transparency comparable to government agencies, he said.

Brown recommended that the PCAOB disclose meetings the Board holds with outside parties such as audit firms, as well as disclosing the agendas of these meetings, which can act as a catalyst for investor interaction. The PCAOB should also post to its website correspondence it receives from investors, trade associations, audit firms, public companies, and others, along with the Board's response to this correspondence. In addition, the PCAOB should post the voting records of its Board members and use the Sunshine Act as a model for holding public meetings when the Board discusses matters of public importance, Brown said, noting that in the PCAOB's early days, the Board would hold public meetings on a monthly basis even though its bylaws only require quarterly meetings.

Brown would also like the PCAOB to identify issuers with deficiencies in its inspection reports. This information would be useful for investors as well as the company's audit committee members, who presumably would want

to know if an audit of financial statements was potentially deficient. He also suggested improving the usefulness of information provided to customers regarding audits of broker-dealers, and revisit the PCAOB's policy of withholding Board opinions in matters appealed to the SEC.

**Accountability and public input.** The PCAOB should also improve how it seeks input from investors, Brown said. He praised the role of the PCAOB's advisory groups in providing input and views on PCAOB matters. While the groups are governed by Board-adopted charters, these charters give the PCAOB plenary control over the frequency and agenda of the advisory committee meetings, including dispensing with the meetings altogether, which the Board has done, Brown stated.

Brown recommended that the PCAOB return advisory groups to their former prominence by using the statutory requirements for the SEC's advisory committees as a model. The Dodd-Frank Act required the SEC to establish an investor advisory committee and gave it a broad purpose, a specified size, the terms of office of the members, and a minimum frequency of members. The IAC also has specific authority to issue recommendations, and the SEC is obligated to respond to the recommendations, according to Brown. He added that Dodd-Frank also created the SEC's Office of the Investor Advocate and urged the Board establish one for the PCAOB.

While the PCAOB has provided the public with the opportunity to comment on proposed standards, Brown pointed out that this is discretionary and can be set aside at any time by the Board. The Board should formally adopt rules or bylaws that make notice and comment on proposed standards mandatory, using the APA as a model, he recommended. Brown also said that the PCAOB should be required to submit memoranda to the rulemaking file when Board members or PCAOB staff meet with outside parties to discuss a proposed standard.

Noting that government agencies are required to post petitions for rulemaking that they receive, Brown encouraged the Board to adopt rules to establish a mechanism for submitting public petitions. Petitions encourage investor and public participation he said, citing recent petitions posted by the SEC concerning 12b-1 fees, electronic signatures, and reporting on the physical location of assets. Currently, when an investor or member of the public writes to the PCAOB about revisions to its standards, rules, or approach, the PCAOB is not required to make the communication or any response to it public. By implementing a public petitioning mechanism, the PCAOB could increase public participation in its standard-setting process, Brown advised.

Finally, Brown recommended that the PCAOB establish an Office of Minority and Women Inclusion (OMWI) like the SEC, which it was mandated to do under Dodd-Frank. A PCAOB OMWI would help improve its outreach to underrepresented communities and promote awareness of the PCAOB's own diversity practices, he said.

With the benefit of 17 years of experience and insight, the PCAOB "should implement these evolutionary steps because we know from experience that they are necessary," Brown concluded.

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