

[Securities Regulation Daily Wrap Up, TOP STORY—SEC to replace all five members of PCAOB, \(Jun. 4, 2021\)](#)

Securities Regulation Daily Wrap Up

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The SEC removed William Duhnke from the PCAOB and announced that it will seek candidates for all five Board positions.

Following last week's call from Sens. Elizabeth Warren (D-Mass) and Bernie Sanders (I-Vt) to replace the five-member Public Company Accounting Oversight Board, SEC Chair Gary Gensler has begun this process by [removing William Duhnke from the Board](#) and designating current Board member Duane DesParte as Acting Chairperson. The SEC also announced that it intends to seek candidates to fill all five board positions. While Gensler said this will begin to set the PCAOB "on a path to better protect investors," Commissioners Hester Peirce and Elad Roisman called the decision "[hasty and truncated](#)."

Warren-Sanders letter. Senators Warren and Sanders [asked](#) Gensler by [letter](#) to use the Commission's authority to replace the sitting members of the PCAOB. Warren and Sanders said in the letter that such a move is necessary because, in their view, the Trump Administration's deregulatory agenda had "slowed" the PCAOB's work, resulted in fewer enforcement matters, and had threatened the audit regulator's independence. Then-SEC Chairman Jay Clayton had replaced the entire board during his tenure, and the senators believe the replacement board brought with it a deregulatory agenda that diminished the Board's oversight of auditors and has subjected the Board to concerns about industry capture.

Specifically, Warren and Sanders pointed to the appointment of former Congressional aide Duhnke as PCAOB chair. According to a *Wall Street Journal* article cited by the senators, Duhnke had presided over a period of discord among Board members. The article also noted a whistleblower complaint that alleged that Duhnke had instilled a "sense of fear" within the PCAOB. Warren and Sanders further observed that the Clayton replacement Board included for the first time a member from one of the Big Four audit firms. Gensler had "an opportunity and an obligation to strengthen the PCAOB, protect its independence, and ensure it lives up to its responsibilities - all of which are central to the SEC's mandate to 'promote a market environment that is worthy of the public's trust,'" the Warren-Sanders letter concluded.

SEC action. Under Sarbanes-Oxley, the SEC selects the members and chairperson of the PCAOB. Today, the SEC removed [Duhnke](#) from the board and designated DesParte to serve as Acting Chairperson. The SEC also announced that it has directed the Office of the Chief Accountant to begin the process of soliciting applications to fill all five board positions. The agency promised additional information about this process "in the coming weeks."

Gensler said of the action, "The PCAOB has an opportunity to live up to Congress's vision in the Sarbanes-Oxley Act. I look forward to working with my fellow commissioners, Acting Chair DesParte, and the staff of the PCAOB to set it on a path to better protect investors by ensuring that public company audits are informative, accurate, and independent." [DesParte](#), who joined the Board in 2017 after retiring from Exelon Corporation, said he was "honored to work with the SEC and the staff of the PCAOB as Acting Chair to ensure that we meet the mission established by Congress."

Peirce-Roisman statement. Commissioners Peirce and Roisman issued a separate statement expressing "serious concerns about the hasty and truncated decision-making process underlying this action." While acknowledging that the SEC has the authority to remove board members without cause, the commissioners said that the agency should, in all its actions, act "with fair process, fully-informed deliberation, and equanimity."

The commissioners distinguished Clayton's replacement of the PCAOB from Gensler's. When Clayton announced a search for new members, there was one vacancy on the board, two members' terms had expired, and one member's term would expire in two months. By contrast, Peirce and Roisman said, there is currently one vacancy, but Duhnke's term would not have expired until October 2022, and the remaining three members' terms will expire in 2023, 2024, and 2025. The commissioners called the current action "unprecedented" and "unmoored from any practical standard that could be meaningfully applied in the future."

"A future in which PCAOB members are replaced with every change in administration would run counter to the Sarbanes Oxley Act's establishment of staggered terms for Board members, inject instability at the PCAOB, and undermine the PCAOB's important mission by suggesting that it is subject to the vicissitudes of politics," the commissioners concluded.

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