

Statement on The Commission's Actions Regarding the PCAOB



Commissioner Hester M. Peirce



Commissioner Elad L. Roisman

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Today, the Commission removed William D. Duhnke III from the Public Company Accounting Oversight Board (PCAOB) and announced that it will seek candidates to fill all five seats on the PCAOB, including those that are currently occupied by members whose terms have not ended. We have serious concerns about the hasty and truncated decision-making process underlying this action.

Although the Commission has the authority to remove PCAOB members from their posts without cause,^[1] in all of our actions, we should act with fair process, fully-informed deliberation, and equanimity, none of which characterized the Commission's actions here. Instead the Commission has proceeded in an unprecedented manner that is unmoored from any practical standard that could be meaningfully applied in the future. We are unaware of any similar action by the Commission in connection with its oversight of the PCAOB.^[2] These actions set a troubling precedent for the Commission's ongoing oversight of the PCAOB and for the appointment process, including with respect to attracting well-qualified people who want to serve. 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,^[3] inject instability at the PCAOB, and undermine the PCAOB's important mission by suggesting that it is subject to the vicissitudes of politics.

[1] See *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477 (2010) (holding that the Commission possesses the power to remove PCAOB members at will).

[2] The Commission's appointment of new PCAOB members in 2017 is distinguishable. As noted by then-Chairman Clayton when announcing a search for new members, "of the five PCAOB Board seats, one is vacant, two are held by members whose terms have expired, and one is held by a member whose term will expire in two months." See Chairman Jay Clayton, SEC, "James R. Doty, Chairman of the Public Company Accounting Oversight Board, Agrees to Remain in Place for Search and Transition Period for New Board Members" (Aug. 11, 2017), <https://www.sec.gov/news/public-statement/clayton-statement-pcaob-2017-08-11>. By contrast, currently one seat is vacant, one was held by Mr. Duhnke, whose term was set to expire in

October 2022, and the rest are held by members whose terms expire in October 2023, 2024, and 2025, respectively.

[3] See 15 U.S.C. § 7211(e)(5).