



June 14, 2021

The Honorable Gary Gensler  
Chair  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Via electronic submission: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Subject: Comment in response to request for public input on climate change disclosures

Dear Chair Gensler:

The Project On Government Oversight (POGO) submits the following comment in response to the request by the Securities and Exchange Commission on March 15, 2021, for public input as to whether current climate change disclosures adequately inform investors.<sup>1</sup> We appreciate the opportunity to weigh in on this important matter.

POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

### **Climate Information Is Useful**

In recent years investors have increasingly taken a company's environmental, social, and governance disclosures—known as ESG disclosures—into consideration when deciding whether to invest.<sup>2</sup> These disclosures can be helpful in identifying potential risks as well as areas for growth for a company. While the companies are not generally required to disclose the information in regulatory filings, they do recognize that investors want it and are gradually starting to disclose such information in their annual reports and on their websites.

With respect to environmental disclosures, investors could benefit from knowing more about a company's decisions regarding their energy usage and carbon footprint. Information about a company's plans to either continue using or to move away from fossil fuels that produce

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<sup>1</sup> U.S. Securities and Exchange Commission, "Public Input Welcomed on Climate Change Disclosures," Public Statement, March 15, 2021. <https://www.sec.gov/news/public-statement/lee-climate-change-disclosures>

<sup>2</sup> Kelly Cameron, "ESG Investing Reaches Critical Mass; Ongoing Momentum Depends on What's Driving the Demand, Finds Natixis Investment Managers Survey," *Business Wire*, April 22, 2021. <https://www.businesswire.com/news/home/20210422005347/en/ESG-Investing-Reaches-Critical-Mass-Ongoing-Momentum-Depends-on-What%E2%80%99s-Driving-the-Demand-Finds-Natixis-Investment-Managers-Survey>

greenhouse gas emissions is critical. This is particularly true given that the cost of oil, gas, and coal continues to rise,<sup>3</sup> coupled with the ongoing policy debates about economic incentives to encourage companies to switch to cleaner, renewable energy sources. Real money is at stake in these decisions, something that is important to investors.

A company's environmental sustainability decisions can also significantly impact society's perception of the company. The public is increasingly making spending and purchasing decisions based on a company's environmental record.<sup>4</sup> For example, someone may choose one retailer over another because it has committed to be carbon-neutral where the competitor has not. These decisions of conscience can have a real effect on a company's bottom line, which could impact whether an investor chooses to invest or not.

## **Empower the PCAOB**

As the commission considers how to get corporate environmental, social, and governance information into the hands of investors, POGO encourages the commission to direct the Public Company Accounting Oversight Board (PCAOB) to amend its auditing standards to ensure that a company's financial audit encompasses climate-related disclosures. These disclosures could include a company's current carbon footprint and its financial projections for the next ten years on climate-related spending.

The benefit of adding these disclosures to the purview of the PCAOB is that the auditing board could standardize the reporting to ensure companies are disclosing all the same information, and that such information is presented in the same easy-to-read format. The PCAOB could also issue climate-focused audit testing standards to better calculate long-term costs. Audit testing is a strategy for audits to calculate costs for an entire population by looking at a simple sample.

Should the Securities and Exchange Commission (SEC) task the audit board with collecting this information in company audits, the commission should also pursue long-needed reforms at the PCAOB. Our 2019 investigation found that the accounting board is a "feckless" enforcer that has become too cozy with the industry it regulates.<sup>5</sup> In a letter to you last month, POGO outlined a series of administrative and legislative recommendations that would help make sure the audit board is better equipped to protect investors.<sup>6</sup> POGO encourages you to act on these recommendations as soon as possible.

Between 2003, when the PCAOB began operations, and 2019, the board's annual inspection reports on the U.S. offices of the Big Four audit firms cited 808 instances of defective audits in

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<sup>3</sup> Sean Hill and Owen Comstock, "U.S. gasoline prices have been rising with crude oil prices," U.S. Energy Information Administration, March 30, 2021. <https://www.eia.gov/todayinenergy/detail.php?id=47357>

<sup>4</sup> Tensie Whelan and Randi Kronthal-Sacco, "Research: Actually, Consumers Do Buy Sustainable Products," *Harvard Business Review*, June 19, 2019. <https://hbr.org/2019/06/research-actually-consumers-do-buy-sustainable-products>

<sup>5</sup> David S. Hilzenrath and Nicholas Trevino, "How an Agency You've Never Heard of Is Leaving the Economy at Risk," Project On Government Oversight, September 5, 2019. <https://www.pogo.org/investigation/2019/09/how-an-agency-youve-never-heard-of-is-leaving-the-economy-at-risk/>

<sup>6</sup> Letter from Danielle Brian to SEC Chair Gary Gensler congratulating him on his new appointment, May 26, 2021. <https://www.pogo.org/letter/2021/05/pogo-urges-new-sec-chair-to-reform-the-audit-industry/>

which firms should not have signed off on or verified a client's financial statements, internal controls, or both. However, POGO found that the board has brought a mere 18 enforcement cases involving a total of 21 audits against the Big Four or employees of the firms. On top of that, the PCAOB has only fined the Big Four companies a total of just \$6.5 million. If the board had fined the firms for all 808 of the audits found to be severely botched, the government could have fined the firms more than \$1.6 billion total.<sup>7</sup> If enforcement is meant to deter poor performance and promote good auditing practices, what message is the PCAOB sending to auditors by barely enforcing its own rules?

Exacerbating the problems is that the PCAOB's enforcement charges, hearings, and related proceedings are hidden from public view while they run their legal course, which often takes years. So, although the board's inspection reports are public, investors are left in the dark when the board chooses to take the further step of considering an enforcement action until a final decision has been made or a settlement has been reached. This is problematic; if an auditor or firm is facing charges by the PCAOB, the public and investors should know if their potential auditors are accused of poor performance. If the commission tasks the PCAOB with requiring climate related disclosures to better inform investors as we recommend, investors should be able to know if a company is facing administrative charges around these types of disclosures. Investors should also be able to know of any pending audit charges or other disciplinary charges. This information is critical to investors and could be a determining factor in whether one chooses to invest or not.

It's worth noting that SEC civil or administrative charges and Department of Justice charges and indictments are disclosed, and the ensuing enforcement proceedings unfold in public. And the PCAOB itself has argued that the secrecy of its enforcement proceedings is contrary to the public interest.<sup>8</sup> However, current law prevents this, and changing it requires congressional action.<sup>9</sup>

Another critically important issue facing the PCAOB is the revolving door between the board and the firms it regulates, which often creates conflicts of interest or at the very least the appearance of conflicts. A 2020 report by POGO found that, as of November 2019, more than 40% of PCAOB employees had worked for the Big Four audit firms. At the same time, more than 160 people working for the Big Four had previously worked for the accounting board.<sup>10</sup> This raises concerns that those jumping from industry to regulator will use their power to advance the agenda of a past or future employer in the private sector, or that those who do the

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<sup>7</sup> David S. Hilzenrath and Nicholas Trevino, "How an Agency You've Never Heard of Is Leaving the Economy at Risk," Project On Government Oversight, September 5, 2019. <https://www.pogo.org/investigation/2019/09/how-an-agency-youve-never-heard-of-is-leaving-the-economy-at-risk/>

<sup>8</sup> Public Company Accounting Oversight Board, "PCAOB Staff Directed to Develop Proposal to Ask Congress to Make Public Disciplinary Hearings and Related Proceedings," News Release, August 5, 2010. <https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-staff-directed-to-develop-proposal-to-ask-congress-to-make-public-disciplinary-hearings-and-related-proceedings> 302

<sup>9</sup> 15 U.S. Code § 7215(c)(2) and 15 U.S. Code § 7215 (d)(1)(C) (2020) <https://www.law.cornell.edu/uscode/text/15/7215>

<sup>10</sup> David S. Hilzenrath, "How Accountants Took Washington's Revolving Door to a Criminal Extreme," Project On Government Oversight, January 14, 2020. <https://www.pogo.org/investigation/2020/01/how-accountants-took-washingtons-revolving-door-to-a-criminal-extreme/>

reverse will use the knowledge and relationships they developed working as regulators to help their current employer game the system and gain an unfair advantage.

This latter concern isn't just a hypothetical issue. In one of the worst cases of the revolving door in recent memory, KPMG partners hired PCAOB employees, pumped them for inside information on the oversight board's plans, and then exploited the information to cheat on upcoming inspections. Meanwhile, PCAOB employees angled for jobs at KPMG and divulged regulatory secrets to the audit firm. This egregious behavior resulted in KPMG being order to pay a penalty of \$50 million in 2019.<sup>11</sup>

The commission should require the PCAOB to institute a "cooling off period" for employees coming and going between service at the PCAOB and any of the Big Four accounting firms. This would greatly improve ethics and independence at the audit agency, which in turn would help investors have faith that climate-related disclosures are accurate and true.

## Conclusion

Investors have increasingly been seeking more information about companies' environmental, social, and governance plans. This information can provide critical data about a company's current strategy and potential future risks. Should the commission move forward with requiring companies to disclose more information about climate-related risk, it could task the Public Company Accounting Oversight Board with requiring the information be tested and included as part of companies' annual audits. However, should the audit board be delegated this responsibly, the commission must also address long-term issues at the board.

Thank you for your consideration of this comment. Should you have any questions, please contact me at [REDACTED].

Sincerely,



Tim Stretton  
Policy Analyst

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<sup>11</sup> Securities and Exchange Commission v. KPMG LLP., No. 3-19203, 12-20 (2019).  
<https://www.sec.gov/litigation/admin/2019/34-86118.pdf>