

Via Hand Delivery

November 26, 2019

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Public Company Accounting Oversight Board (PCAOB) staff guidance on Rule 3526(b), Communications with Audit Committees Concerning Independence (PCAOB Staff Guidance)¹

Dear Mr. Chairman:

We read with interest the November 21, 2019 letter you received from the Consumer Federation of America, AFL-CIO, Better Markets, Center for American Progress, and Americans for Financial Reform regarding the above referenced matter (Joint Letter).²

The Council of Institutional Investors (CII) is a nonprofit, nonpartisan association of U.S. public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of approximately \$4 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families. Our associate members include non-U.S. asset owners with about \$4 trillion in assets, and a range of asset managers with more than \$35 trillion in assets under management.³

CII Policies

CII's membership-approved policies reflect the view that external auditors are "financial gatekeepers," and as gatekeepers they:

[P]lay a vital role in ensuring the integrity and stability of the capital markets. They provide investors with timely, critical information they need, but often cannot verify, to make informed investment decisions. With vast access to management . .

¹ Public Company Accounting Oversight Board, Staff Guidance, Communications with Audit Committees Concerning Independence (May 31, 2019), [https://pcaobus.org/Standards/Documents/Staff-Guidance-Rule-3526\(b\)-Communications-Audit-Committee-Concerning-Independence.pdf](https://pcaobus.org/Standards/Documents/Staff-Guidance-Rule-3526(b)-Communications-Audit-Committee-Concerning-Independence.pdf) .

² Letter from Consumer Federation of America, AFL-CIO, Better Markets, Center for American Progress, Americans for Financial Reform to Chairman Clayton (Nov. 21, 2018), <https://consumerfed.org/wp-content/uploads/2019/11/Letter-to-SEC-on-PCAOB-aud-ind-guidance-11.21.19.pdf>.

³ For more information about the Council of Institutional Investors ("CII"), including its board and members, please visit CII's website at <http://www.cii.org>.

. information, [auditors] . . . have an inordinate impact on public confidence in the markets. They also exert great influence over the ability of corporations to raise capital

. . . .

The Sarbanes-Oxley Act of 2002 . . . bolstered the transparency, independence, oversight and accountability of accounting firms For example, accounting firms now are barred from providing many consulting services to companies whose books they audit.⁴

We also have policies explicitly on auditor independence that in some important respects are more demanding than existing Securities and Exchange Commission (SEC) requirements.⁵ As one example, our policies provide that “[a] company’s external auditor should not perform *any* non-audit services for the company, except those, such as attest services, that are required by statute or regulation to be performed by a company’s external auditor.”⁶

PCAOB Staff Guidance

Given the emphasis our policies place on auditor independence, you can understand our concern with the issues raised in the Joint Letter. More specifically, we are particularly troubled by the Joint Letter conclusion that the PCAOB Staff Guidance “directly conflicts with the position taken by the SEC with regard to the standard for determining independence, the role of audit committees in determining auditor independence, and the adequacy of ‘safeguards’ to cure independence violations.”⁷

The Joint Letter also notes that the PCAOB Staff Guidance will permit independence violations to go unreported to investors, and even mislead investors “into believing that no such violations occurred.”⁸ In light of these conclusions, we respectfully request that you carefully consider the issues raised by the Joint Letter.

Thank you for your attention to this matter.

Sincerely,



Jeffrey P. Mahoney
General Counsel

⁴ CII Policies, Policies on Other Issues, Financial Gatekeepers (adopted Apr. 13, 2010), https://www.cii.org/policies_other_issues#fin_gatekeepers.

⁵ See CII, Policies on Corporate Governance § 2.13 Auditor Independence (updated Oct. 24, 2018), https://www.cii.org/corp_gov_policies.

⁶ *Id.* § 2.13c Non-audit Services; *cf.* U.S. Securities and Exchange Commission, Office of the Chief Accountant, Audit Committees and Auditor Independence (modified May 7, 2007) (listing the 6 specific non-audit services), <https://www.sec.gov/info/accountants/audit042707.htm>.

⁷ Letter from Consumer Federation of America, AFL-CIO, Better Markets, Center for American Progress, Americans for Financial Reform to Chairman Clayton at 3.

⁸ *Id.*

CC: The Honorable Robert J. Jackson Jr., Commissioner, U.S. Securities and Exchange Commission
The Honorable Allison Herren Lee, Commissioner, U.S. Securities and Exchange Commission
The Honorable Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission
The Honorable Elad L. Roisman, Commissioner, U.S. Securities and Exchange Commission
Rick Fleming, Investor Advocate, U.S. Securities and Exchange Commission
William D. Duhnke III, Chairman, Public Company Accounting Oversight Board
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