

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5074
Minority (202) 225-5051

January 10, 2013

Mr. James R. Doty
Chairman
Public Company Accounting Oversight Board
1666 K Street NW
Washington, DC 20006-2803

Dear Mr. Doty:

The Committee on Oversight and Government Reform is continuing its oversight of the use of economic analysis in Public Company Accounting Oversight Board rulemaking and standard-setting. Documents provided to the Committee appear to implicate a pattern of equivocation regarding the use of rigorous economic analysis in PCAOB rulemaking. The Committee is concerned that the Board is taking insufficient action to comply with the broad consensus that economic analysis is a critical element of credible regulatory policy.

The Committee recognizes that you have made concrete commitments to incorporate economic analysis into PCAOB rulemaking and standard-setting. At a March 28, 2012, hearing before the Subcommittee on Capital Markets and Government Sponsored Enterprises of the Committee on Financial Services, you committed the PCAOB to conduct rigorous cost-benefit analysis on any proposal on mandatory audit firm rotation.¹ Additionally, in your August 8, 2012, letter to the Committee, you professed to “share the view that consideration of potential economic consequences of proposed rules, including standards, is an important element of sound regulatory procedure.”² You further stated that “[i]n February 2012, I directed the PCAOB staff to evaluate whether the rigor of PCAOB’s rulemaking process can be improved through additional economic analysis.”³ The Securities and Exchange Commission, acting in its oversight capacity, has taken specific notice of your commitments. An April 30, 2012, letter to you from the SEC Chief Accountant and Chief Financial Officer stated that in light of your

¹ *Accounting and Auditing Oversight: Pending Proposals and Emerging Issues Confronting Regulators, Standard Setters and the Economy: Hearing before the Subcomm. on Capital Markets and Government Sponsored Enterprises of the H. Comm. on Financial Services*, 112th Cong. (2012) (testimony of James R. Doty, Chairman, Public Company Accounting Oversight Board).

² Letter from James R. Doty, Chairman, Public Company Accounting Oversight Board, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t Reform, Aug. 8, 2012 [hereinafter PCAOB Letter].

³ *Id.*

testimony, the SEC had a “particular interest in understanding . . . the Board’s strategies for conducting cost-benefit analyses on its future rulemakings.”⁴

The Committee is aware that you are taking some concrete steps to incorporate rigorous economic analysis into PCAOB rulemaking and standard-setting procedures.⁵ However, documents provided to the Committee appear to implicate an institutional resistance to rigorous economic analysis. Through the spring and summer of 2012, PCAOB staff were preparing the PCAOB’s *Strategic Plan* for the years 2012-2016. This document serves as “a guide to the organization’s programs, operations and development of its budgets.”⁶ Such a comprehensive document would have been the most appropriate and practical place to discuss the PCAOB’s efforts – underway since February, according to your letter – to incorporate additional economic analysis into PCAOB rulemaking.⁷ Nonetheless, notes from a staff meeting reveal that you specifically directed your staff to “steer clear of JOBS Act and cost-benefit in strat[egic] plan . . . unusual period – politics discussion.”⁸

A late draft of the *Strategic Plan* mentioned economic analysis only once, in a discussion of a possible rule on mandatory audit firm rotation.⁹ A sub-point suggested the PCAOB “seek insight through research, roundtables, consultation, economic analysis, and public exposure . . .”¹⁰ Even this isolated and oblique reference to economic analysis triggered great anxiety among PCAOB staff. Upon review of this draft, the Assistant Chief Auditor commented “Does reference to ‘economic analysis’ have implications for all our other standard-setting projects? Also does this commit us to performing an economic analysis of mandatory audit firm rotation even it is determined not to move forward with that project?”¹¹ An unidentified custodian responded: “[Chairman] Jim [Doty] wanted to add to track to what he said before Congress.”¹² These statements leave the Committee concerned that PCAOB may intend to use economic analysis for only *one* proposed rule, and only so as to satisfy the bare minimum of the commitment you gave in Congressional testimony. Such minimal implementation seems to be

⁴ Letter from James L. Kroeker, Chief Accountant, U.S. Securities and Exchange Commission, and Kenneth A. Johnson, Chief Financial Officer, U.S. Securities and Exchange Commission, to James R. Doty, Chairman, Public Company Accounting Oversight Board, Apr. 30, 2012 (PCAOB-HCR-P-1-00000926).

⁵ See, e.g., Letter from James R. Doty, Chairman, Public Company Accounting Oversight Board, to Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission, et al., July 31, 2012 (stating in footnote 1: “The Office of the Chief Auditor . . . does plan to hire two economists in 2012 that were not anticipated in the 2012 Budget. These economists will help the PCAOB develop and implement a framework for further incorporating economic considerations in standard-setting and will serve as a bridge as we develop the economic component of ORA under the leadership of our new ORA director.”) (PCAOB-HCR-P-1-00000931).

⁶ Public Company Accounting Oversight Board, Public Company Accounting Oversight Board Strategic Plan: Improving the Relevance and Quality of the Audit for the Protection and Benefit of Investors, 2012-2016, Draft of July 2, 2012, at 3 [hereinafter PCAOB Strategic Plan] (PCAOB-HCR-P-1-00000507).

⁷ PCAOB Letter, *supra* note 2.

⁸ Handwritten meeting notes dated 5/23, custodian identified as Bella Rivishin. (PCAOB-HCR-P-1-00001354).

⁹ PCAOB Strategic Plan, *supra* note 6, at 17 (PCAOB-HCR-P-1-00000521).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

incompatible with your stated belief that consideration of potential economic consequences is an important component of sound regulatory procedure.¹³

Staff resistance to economic analysis may be partly explained by PCAOB-organized professional training. On April 13, 2012, the Board sponsored an academic conference for PCAOB staff. One lecture at this conference was entitled “The Emperor Has No Clothes: Confronting the D.C. Circuit’s Usurpation of SEC Rulemaking Authority.”¹⁴ The thesis of the lecture was that the U.S. Court of Appeals for the D.C. Circuit’s decision in *Business Roundtable v. Securities and Exchange Commission* – an important precedent demanding rigorous economic analysis in SEC rulemaking – was wrongly decided.¹⁵ Alarming, the lecture even suggested that PCAOB rulewriting staff use particular “buzzwords” to mitigate the risk of judicial scrutiny.¹⁶ These sentiments may reflect the belief that rigorous economic analysis is merely an externally-imposed trap to be avoided, rather than a core element of sound regulatory process. Such a belief directly contravenes the statements in your August 8, 2012, letter to the Committee.

The Committee is concerned that despite the promises of your testimony and your written response to the Committee, rigorous economic analysis is not being adequately incorporated into the PCAOB’s rulemaking processes. To enable the Committee to better understand the PCAOB’s ongoing efforts, we request that you provide responses to the following requests for information, producing documents as requested.

1. Please provide all records and communications produced since the Board’s document production of September 5, 2012, referring or relating to “[your] instruction that the PCAOB staff begin evaluating the further use of economic analysis in PCAOB rulemaking.”¹⁷
2. Please provide all records and communications referring or relating to your plan to hire two additional economists, as referenced in your July 31, 2012, letter to SEC Chairman Mary Schapiro.¹⁸
3. Please provide all drafts of the PCAOB Strategic Plan for the years 2012-2016 produced since the Board’s document production of September 5, 2012.
4. Please provide all documents including drafts that describe the PCAOB’s efforts since August 8, 2012, to “further incorporate economic analysis into its rulemaking.”¹⁹

¹³ PCAOB Letter, *supra* note 2

¹⁴ PCAOB-HCR-P-1-00000010

¹⁵ PCAOB-HCR-P-1-00000012

¹⁶ PCAOB-HCR-P-1-00000014

¹⁷ PCAOB Letter, *supra* note 2.

¹⁸ See *supra* note 5.

¹⁹ PCAOB Letter, *supra* note 2.

5. Please immediately complete production of the second “stage” of documents responsive to the Committee’s requests, as identified in a letter to the Committee from PCAOB’s counsel on September 5, 2012.²⁰
6. Please provide a privilege log describing the 64 documents withheld from the Committee, and identifying the basis of the claimed privilege.²¹

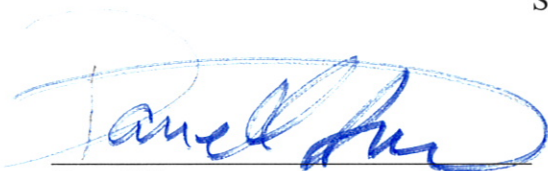
In addition, the Committee requests that you brief the Committee staff in person on these matters.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at “any time” investigate “any matter” as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee’s request.

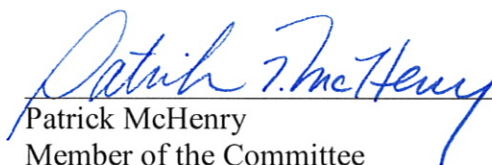
Please provide all such responses as soon as possible, but no later than 5:00 p.m. on January 24, 2013. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers to receive all documents **in electronic format**.

To schedule the requested briefing, please contact Christopher Hixon or Brian Daner of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman



Patrick McHenry
Member of the Committee

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Elisse B. Walter, Chairman
U.S. Securities and Exchange Commission

The Honorable Luis A. Aguilar, Commissioner
U.S. Securities and Exchange Commission

²⁰ Letter from Emmet Flood, Partner, Williams & Connolly LLP, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t Reform, Sept. 5, 2012.

²¹ See *id.*

Mr. James R. Doty
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The Honorable Troy A. Paredes, Commissioner
U.S. Securities and Exchange Commission

The Honorable Daniel M. Gallagher, Commissioner
U.S. Securities and Exchange Commission

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TODD RUSSELL PLATTS, PENNSYLVANIA
MICHAEL R. TURNER, OHIO
PATRICK McHENRY, NORTH CAROLINA
JIM JORDAN, OHIO
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JACKIE SPEIER, CALIFORNIA

LAWRENCE J. BRADY
STAFF DIRECTOR

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.