

March 20, 2017

Honorable Mike Crapo, Chair
Honorable Sherrod Brown, Ranking Member
Senate Committee on Banking, Housing and urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510
Via email

Dear Honorable Senators,

The President has nominated Walter Joseph Clayton to serve as Chair of the Securities and Exchange Commission (SEC). The Senate Banking Committee conducts its confirmation hearing March 23, 2017. The purpose of this letter is to raise questions about possible conflicts of interest that may affect Mr. Clayton's ability to serve effectively on the SEC, and to urge that additional information be obtained to enable an informed judgment on that matter.

As an attorney with Sullivan & Cromwell for many years, Mr. Clayton's client list includes a long list of entities subject to SEC regulation and oversight. They include Volkswagen, Valeant Pharmaceuticals and Pershing Square, publicly traded corporations that have raised SEC issues involving public disclosures, emission testing fraud, and drug pricing, among others. He has a longstanding, close relationship with Goldman Sachs, a major player in numerous SEC policy issues, regulatory matters, and enforcement actions. He represented Goldman Sachs and other underwriters on the 2014 \$250 billion initial public offering for Alibaba. He has represented multiple major banks subject to SEC penalties for misconduct. He has likely represented many other entities subject to SEC regulation, oversight, and enforcement actions. A complete client list and a detailed plan indicating under what circumstances Mr. Clayton would recuse himself from future SEC proceedings is essential to evaluating the extent to which his conflicts of interest will render him unable to participate in SEC proceedings.

A second set of issues raising conflict of interest concerns involves Mr. Clayton's family ownership interests in a private company called WMB Holdings, Inc. ("WMB"). Mr. Clayton's Form 278 indicates that 12 of his family trusts receive substantial dividends or income from WMB, in each case in amounts described as "over \$1 million." His Form 278 also indicates that his spouse has "directly held financial interests in WMB," but does not further describe the nature of her interests or the interests held by the 12 family trusts. Mr. Clayton's ethics agreement with the Designated Agency Ethics Official of the SEC states that his family ownership interests in WMB constitute a conflict of interest under 5 C.F.R. § 4401.102(c)(1), which prohibits "knowingly purchasing or holding a security or other financial interest in an entity directly regulated by the Commission." It also indicates that, upon taking office at the SEC, Mr. Clayton plans to retain the unspecified ownership interests in WMB for each of the 12 family trusts.

There is very limited public information about the ownership and business activities of WMB. Mr. Clayton's Form 278 describes, in Footnote 6, a number of services provided by WMB, including trust, incorporation, registered agent, domain name management, DBA management, and special purpose entity services. It also states that WMB's trust services, "are provided through Delaware Trust Co." The Delaware state bank commissioner indicates that WMB is, in fact, the parent of Delaware Trust Co., which, in 2014, changed its name from CSC Trust Co.¹ Mr. Clayton's Form 278 does not, however, acknowledge that relationship between WMB and the Delaware Trust Co.

It appears that WMB may also be the parent of Corporation Service Co. ("CSC"). CSC is a large Delaware-based firm with "more than 2,500 employees worldwide."² It maintains offices in Delaware, Australia, France, Hong Kong, Singapore, Sweden, and the United Kingdom, and is well known for providing a wide range of corporate formation and administration services in the United States and abroad.³ On its website, CSC states that it "services more than 180,000 businesses," including "90 percent of the Fortune 500;" "provides solutions to more than 3,000 financial market customers;" and "supports nearly 10,000 law firms." CSC has the same address as WMB Holdings and offers many of the same services described in Footnote 6 of Mr. Clayton's Form 278 outlining WMB services. In addition, persons associated with the leadership of CSC may be related to Mr. Clayton's spouse.⁴ Again, however, Mr. Clayton's Form 278 does not disclose or acknowledge any relationship between WMB and CSC.

Both the Delaware Trust Co. and CSC appear to be subject to SEC regulation and enforcement. Because Mr. Clayton intends to retain his family's ownership interest in WMB which, in turn, appears to own both companies, additional information is needed to understand the nature and extent of his family's ownership interests, the nature of the companies' business activities, and the extent to which Mr. Clayton's ongoing conflict of interest will render him unable to participate in SEC proceedings.

To obtain the additional information needed to address these conflict of interest concerns, we recommend obtaining answers to the following questions.

Questions

¹ Annual Report, STATE OF DELAWARE OFFICE OF STATE BANK COMMISSIONER (2014)

http://banking.delaware.gov/pdfs/annual/Annual_Report_2014.pdf

² *About Us*, CSCGLOBAL, (website viewed March 15, 2017) <https://www.cscglobal.com/service/csc/about>

³ *Id.*; *Office Locations*, CSCGLOBAL (Website visited March 15, 2015) <https://www.cscglobal.com/service/csc/csc-office-locations>

⁴ Daniel Butler, who may be a relation of the nominee's spouse Gretchen Butler Clayton, served as head of CSC from 1975 to 1998. *Press release*, CSCGLOBAL (Sept. 13, 2013) <https://www.cscglobal.com/service/csc/press-daniel-butler-inducted-into-delaware-business-leaders-hall-of-fame>. Records show several other Butlers as officers of WMB. See: New domestic filings, Louisiana Secretary of State (website viewed March 15, 2017) http://coraweb.sos.la.gov/NewCorpNewsletters/NewCorp_20140826.txt. In addition, a description of Rod Ward indicates that he is a director of WMB Holdings, "the holding company of CSC." *Sustaining the Family Business Legacy*, BESSEMER TRUST, (Spring 2012)

http://www.bessemertrust.com/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet//Advisor/Content/Bessemmer%20Insights/04_19_12_BT_RT_FamBusiness.pdf .

1. For the past five years, what clients did Mr. Clayton have as an attorney at Sullivan & Cromwell, and under what circumstances will he recuse himself from SEC proceedings, including regulatory, oversight, or enforcement actions, that may affect those clients?
2. What is the nature and extent of the Clayton family ownership interests in WMB Holdings Inc. (WMB), the Delaware Trust Co. (DTC), and Corporation Service Co. (CSC)? Who else holds major ownership interests in those entities?
3. Mr. Clayton pledges to divest some but not all of his family's WMB holdings. Specifically, he pledges, following confirmation, that his spouse will divest "directly held financial interests in WMB," but "my spouse and minor children will retain their beneficial interests" in the family trusts where the individual "is solely a beneficiary."
 - a. What WMB assets, financial interests, or ownership interests are held by each of his 12 family trusts, and what is the basis for the substantial WMB dividends and income produced to those trusts?
 - b. For each of the past three years, what is the total amount of WMB dividends and income produced to Mr. Clayton, his wife, and the 12 family trusts?
 - c. Does Ms. Clayton plan to sell her WMB financial interests to a relative?
 - d. Is there any arrangement under which Ms. Clayton or her family will repurchase her WMB financial interests after Mr. Clayton leaves the SEC?
4. Is WMB the parent of DTC and CSC? Please identify all other subsidiaries and affiliates of WMB and describe the nature of each relationship.
5. What role, if any, has Mr. Clayton or his spouse taken in the management, administration, legal practices, or oversight of WMB, DTC, or CSC?
6. WMB is regulated by the SEC, as acknowledged in the Clayton ethics agreement. Is it correct that the SEC also regulates DTC and CSC? If so, for each entity, what is the nature of the SEC regulatory relationship?
7. Has the SEC brought any enforcement actions against WMB, DTC, CSC, or their affiliates?
8. WMB, DTC, and CSC collectively deal with hundreds of thousands of clients. How would Mr. Clayton know if an SEC enforcement action involved a WMB, DTC, or CSC client?
9. The Panama Papers database associated with the Panama law firm of Mossack Fonseca lists the WMB/CSC address (2711 Centerville Rd, Suite 400, Wilmington, Delaware) in connection with numerous entities. Dozens of these entities are incorporated offshore, such as in the British Virgin Islands.⁵ For example, Prax Capital, using WMB/CSC's registered address, is connected to Power Solar System, which features a web of investors including Goldman Sachs and a number of Chinese investors.⁶
 - a. What is the nature of the relationship of WMB, DTC, or CSC with Mossack Fonseca?
 - b. Has WMB, DTC, or CSC (including any affiliate) ever done business with Mossack Fonseca or provided services to a Mossack Fonseca client? Please explain.

⁵ See, for example, Warick Trading Company (Website visited March 15, 2017) <https://offshoreleaks.icij.org/nodes/12107190>.

⁶ See Panama Papers (website visited March 15, 2017) <https://offshoreleaks.icij.org/nodes/10112052>.

- c. Has WMB, DTC, or CSC (including any affiliate) ever formed a trust, corporation, or other entity in an offshore jurisdiction or tax haven? Does WMB, DTC, or CSC (including any affiliate) regularly do so? Please explain.
 - d. Has WMB, DTC, or CSC (including any affiliate) ever formed a trust, corporation, or other entity for a Russian client? Does WMB, DTC, or CSC (including any affiliate) regularly do so? Please explain.
10. Due to the business activities of WMB, DTC, and CSC, will Mr. Clayton recuse himself from SEC regulatory, administrative, and enforcement actions related to company or trust formation services, registered agents, domain name management, beneficial ownership issues, shell entities, offshore disclosure matters, and the anti-money laundering obligations of corporate and trust formation agents?
11. What are Mr. Clayton's views on the company and trust formation industry in the United States and around the world?

Thank you for your consideration of these conflict of interest concerns. If you have any questions, please contact Bartlett Naylor at bnaylor@citizen.org.

Sincerely

Public Citizen
Revolving Door Project