February 15, 2017

To: Members of the Senate Banking Committee

Dear Senators:

You face crucial issues in your consideration of the nominee for Chair of the Securities and Exchange Commission (SEC), Walter “Jay” Clayton. As the primary agency regulating U.S. securities trading markets, the SEC’s actions have far-reaching implications for Main Street Americans who deserve strong investor protection and a growing real economy supported by stable and reliable markets.

Mr. Clayton’s background is as a Wall Street corporate lawyer and dealmaker representing many of the largest financial institutions in our society. Such a corporate background is not unique among past SEC chairs and commissioners, and the wisdom of a seasoned practitioner could be useful in the position. But Mr. Clayton’s decades of service to Wall Street raises serious questions about his ability to lead an agency dedicated to investor protection and the public interest. Accordingly, it is particularly urgent that you thoroughly question Mr. Clayton as to whether his background may bias him toward the interests of Wall Street insiders such as those he has worked with for many years. These interests often conflict with those of ordinary investors, and indeed, all those who depend on fair and well-functioning capital markets (including our state and local governments).

Our economy is still recovering from the devastating effects of the 2008 financial crisis. The inadequate oversight of SEC-regulated institutions and markets was a major contributor to that crisis. While the SEC has made progress to reform and re-vitalize itself, it still has not fully addressed the serious issues revealed in the crisis. New challenges are also emerging as financial markets continue to evolve toward more complex investment products and trading technologies.

The response of the new Administration to this unfinished business has been to call on regulatory agencies to tear down even those improvements that have been made since 2008. As the head of an independent regulatory agency, Mr. Clayton will still have the freedom to act to protect the public when the evidence shows that uncontrolled Wall Street practices endanger economic security, capital formation, and the savings of ordinary investors. But it is crucial that you thoroughly question and examine him to find out whether he will be willing to do so.

Such questioning should be guided by the mission of the SEC, which is to “protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation,” as well as to “promote a market environment that is worthy of the public's trust.”[1] Based on this directive, the American public and its representatives in Congress justifiably expect the SEC and its leadership to hold corporations accountable, to ensure those financial services under the jurisdiction of the SEC operate under fair and robust rules, and afford no special treatment to any entity or person.

---

[1] https://www.sec.gov/about.shtml

The SEC is also charged with ensuring that shareholders have access to timely and complete disclosure of not only financial information but also a company's policies and activities. The underlying premise of the agency is that markets function better as investor confidence improves and that part of that confidence is built on providing investors with information that *they*, and not just industry, deem material. Additionally, shareholders are increasingly calling for more information on environmental, social, and governance (ESG) issues like climate change, human rights, tax, political spending and lobbying activity, CEO pay, and workforce matters. The SEC Chair must be responsive to these demands and utilize increased technological capabilities to make this information readily available to shareholders and to the public.

Disclosure is far from the only pressing challenge facing the SEC. Critical rules responding to the weaknesses in oversight revealed in the financial crisis remain unwritten or unimplemented. Unfinished rules should be prioritized and those rules that have been put in place should not be rolled back unless there is broad consensus on a better way to manage the risks they are intended to address. In addition, there is an important regulatory agenda to improve investor protections in a variety of areas marked by rapid growth and technological change.

While rulemaking is central to the agency's mandate, rules are only effective insofar as they are enforced. It is essential that the Chair of the SEC be willing to take all steps necessary to enforce the law and the rules regardless of how wealthy, powerful or well-connected a firm or person might be. While using all of the Commission's powers to enforce the law civilly, the Chair of the SEC must also be willing to refer lawbreakers to the Justice Department whenever appropriate for criminal prosecution. This is how a fair, serious, and ardent regulator sends the critically important message that no one is above the law.

Among other issues, you should press Mr. Clayton on whether:

1) He will implement and enforce the law as currently written including systemic risk provisions such as the Volcker Rule and derivatives regulation, reporting of "CEO to worker pay ratios," whistleblower protections and rewards programs, risk-retention requirements, and reforms to proxy access rules.
2) He will continue and build on the examinations of private funds that revealed significant fraud and expand the Commission's registration and oversight of those funds to protect investors as required by current law.
3) He will defend the rights of investors and asset owners through the shareholder resolution process laid out by Rule 14a-8.
4) He will uphold the definition of materiality as information that *investors* find relevant, rather than the management of the issuers.
5) He will take action in cases where new financial products and activities pose risks to investors and the broader financial system.
6) He will maintain the long SEC tradition of prioritizing strong and effective disclosure for investors.

In questioning Mr. Clayton, you must critically assess his capacity for impartial dedication to and prioritization of the public interest given his long history as a Wall Street lawyer whose sole duty was to act as a zealous advocate for his clients' narrow, private sector interests. In particular, Mr. Clayton has spent a significant portion of his career representing the nation's biggest banks as a lawyer at Sullivan & Cromwell - the law firm *The New York Times* referred to as Goldman Sachs "go-to law firm for more than a century."[2]

His resume includes:

- Advising Goldman Sachs on the $5 billion investment it received from Warren Buffett's Berkshire Hathaway during the financial crisis.[3]
- Advising Bear Stearns during its sale to JPMorgan Chase.[4]
- Advising Barclays Capital in buying up assets left by the Lehman Brothers bankruptcy during the financial crisis.[5]
- Representing Ally Financial[6] in connection with the $25 billion settlement related to robo-signing and other foreclosure abuses with the federal government and state attorneys general.[7]
- Advising the Chinese e-commerce company Alibaba Group on its $25 billion initial public offering, the largest ever IPO.[8]

While this experience has the potential to inform a regulator's perspective, it can also embed a belief that what is best for Wall Street is best for America. The 2008 financial crash proved this belief to be objectively false. Congress needs and the American people deserve a Chair of the SEC who advocates for the needs of Main Street over the interests of Wall Street.

Moreover, Mr. Clayton's long list of former clients opens up the possibility of significant conflicts of interest if he becomes Chair of the SEC. He will almost certainly need to recuse himself from significant decision-making processes at the agency. His wife's ties to Goldman Sachs further complicate the matter. As a result, Mr. Clayton needs to demonstrate beyond any doubt that he will be able to be objective, fair, and willing to hold Wall Street accountable (including his former clients), and not favor policies that allow anyone to profit at the expense of the American people.

We hope and expect you will press Mr. Clayton concerning his willingness to support tough rules and enforcement for Wall Street giants when such action is necessary to protect the broader public. The shortest path to economic growth and job creation is to put Main Street investors' interests first and ensure that rule of law on Wall Street is enforced and strengthened.

Sincerely,

AFL- CIO
American Family Voices
American Federation of State, County and Municipal Employees (AFSCME)
Americans for Financial Reform

---

[2] https://www.nytimes.com/2017/01/04/business/dealbook/donald-trump-sec-jay-clayton.html?_r=0
[3] https://www.sullcrom.com/lawyers/Jay-Clayton
[4] http://www.nytimes.com/2017/01/04/business/dealbook/donald-trump-sec-jay-clayton.html
[5] http://www.nytimes.com/2017/01/04/business/dealbook/donald-trump-sec-jay-clayton.html
[6] https://www.sullcrom.com/lawyers/Jay-Clayton
[7] https://www.justice.gov/opa/pr/federal-government-and-state-attorneys-general-reach-25-billion-agreement-five-largest
[8] http://www.nytimes.com/2017/01/04/business/dealbook/donald-trump-sec-jay-clayton.html

Better Markets
Center for Popular Democracy
Clean Yield Asset Management
Communications Workers of America
Democracy Matters
Harrington Investments, Inc.
Money Out Voters In (MOVI)
New Progressive Alliance
Public Citizen
WV Citizen Action Group
Zevin Asset Management, LLC