



INTERNATIONAL CORPORATE
ACCOUNTABILITY ROUNDTABLE

DAILY KOS



Northwest Coalition for
Responsible Investment

March 17, 2017

The Honorable Michael Crapo

Chairman

Committee on Banking, Housing, and Urban Affairs

U.S. Senate

Washington, D.C. 20510

The Honorable Sherrod Brown

Ranking Member

Committee on Banking, Housing, and Urban Affairs

U.S. Senate

Washington, D.C. 20510

Senate Committee on Banking, Housing, and Urban Affairs

534 Dirksen Senate Office Building

Washington, D.C. 20510

Dear Chairman Crapo, Ranking Member Brown, and Members of the Committee on Banking, Housing, and Urban Affairs,

We, the undersigned organizations, write to express our strong opposition to Mr. Jay Clayton serving as Chairman of the United States Securities and Exchange Commission (SEC). We are profoundly concerned with Mr. Clayton's nomination and urge you to vote "no" on his nomination.

In the aftermath of the 2008 financial crisis, American citizens paid the price for decades of financial market deregulation with foreclosed homes, lost retirement savings, and higher unemployment. Congress responded to the crisis by passing the Dodd-Frank Act and other reforms, which have led to improved stability and greater transparency in the financial sector. President Trump has expressed interest in rolling back Dodd-Frank,

despite its positive effect on markets.¹ Perhaps to that end, President Trump nominated Mr. Clayton to serve as the Chairman of the SEC, the very executive agency whose enforcement actions Mr. Clayton has staunchly opposed throughout his career.

The SEC's mission is to "protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation." The SEC strives to "promote a market environment that is worthy of the public's trust."² In fulfillment of its mission, the SEC enforces prohibitions outlined in the Foreign Corrupt Practices Act (FCPA), as well as mandatory corporate disclosures relating to corruption and bribery, conflict minerals sourcing, and climate change.

Unfortunately for Americans, Mr. Clayton's record indicates that he is more interested in shielding Wall Street institutions from regulatory compliance than in protecting investors or serving the public interest. One year after defending the Italian multinational oil and gas giant Eni S.p.A. from charges filed by the SEC for violations of the FCPA,³ Mr. Clayton chaired a committee that drafted a white paper criticizing this critical legislation and its implementation.⁴ Such position is troubling given that the FCPA has been instrumental in maintaining a level playing field for American businesses operating around the world. The FCPA acts as an insurance policy for U.S. companies operating in corrupt markets and reduces the cost of doing business. Enforcement of the FCPA has also encouraged many non-U.S. companies and governments to adopt, enhance, and increase enforcement of their own anticorruption policies and compliance programs.⁵

Mr. Clayton has also defended multiple large financial institutions against securities claims brought by regulators while employed at Sullivan & Cromwell LLP.⁶ The firm defended Goldman Sachs, JPMorgan Chase, and Barclays against allegations that the banks fraudulently issued or underwrote hundreds of toxic mortgages prior to the subprime collapse.⁷ Mr. Clayton's close ties to Wall Street present serious conflicts of interest and undermine his ability to hold the financial sector accountable.

¹ Mike Konczal, *Ignore the Naysayers: Dodd-Frank Reforms Are Finally Paying Off*, NEW REPUBLIC (July 22, 2014) <https://newrepublic.com/article/118814/dodd-frank-reforms-are-finally-paying>.

² *About the SEC*, U.S. SEC. & EXCH. COMM'N <https://www.sec.gov/about.shtml> (last visited Feb. 23, 2017).

³ Matt Egan, *Jay Clayton, Wall Street Lawyer, is Trump pick to lead SEC*, CNN MONEY (Jan. 4, 2017) <http://money.cnn.com/2017/01/04/investing/jay-clayton-sec-trump/>.

⁴ Committee on International Business Transactions, *The FCPA and its Impact on International Business Transactions – Should Anything Be Done to Minimize the Consequences of the U.S.'s Unique Position on Combatting Offshore Corruption?*, NEW YORK CITY BAR ASS'N (2011), <http://www2.nycbar.org/pdf/report/uploads/FCPAImpactonInternationalBusinessTransactions.pdf>.

⁵ Thomas Firestone, *The FCPA and the Rule of Law Abroad*, AM. FOREIGN SERV. ASS'N (June, 2016), available at www.afsa.org/fcpa-and-rule-law-abroad.

⁶ *Jay Clayton: Biography*, Sullivan & Cromwell LLP, available at <https://www.sullcrom.com/lawyers/Jay-Clayton> (last visited Feb. 23, 2017).

⁷ *Litigation: Selected Representatives*, Sullivan & Cromwell LLP, available at <https://www.sullcrom.com/Litigation-Practices?view=Representations> (last visited Feb. 23, 2017).

In light of Mr. Clayton's troubling track record and dearth of experience ensuring the fairness, stability, and transparency of our financial markets, we urge you to vote "no" on his nomination. At a minimum, we urge you to thoroughly question Mr. Clayton during the confirmation process to obtain his views and commitments on the following questions:

1. Given Mr. Clayton's background as a Wall Street defense attorney, how can the public trust him to protect investors and ensure stable financial markets?
2. Increasingly, the business community, investors, and the general public have recognized the importance and utility of corporate reporting on human rights policies, processes, and impacts. Does Mr. Clayton believe that human rights policies, processes, and impacts of publicly traded companies constitute material information for investors under Regulation S-K?
3. FCPA enforcement has been rigorous and proven effective in punishing corrupt business actors while promoting economic growth by ensuring a fair and competitive business environment. Will Mr. Clayton commit to continue pursuing the aggressive investigation of violations under this Act?
4. The conflict minerals rule promulgated by the SEC pursuant to Section 1502 of the Dodd-Frank Act requires the disclosure of material risks in U.S. companies' supply chains that may result from sourcing minerals from the Democratic Republic of the Congo and surrounding countries. Conflict minerals disclosure is consistent with the mission of the SEC to protect investors, and it is the duty and responsibility of the SEC to enforce all of the federal securities laws passed by Congress. Will Mr. Clayton support the conflict minerals rule and commit to its enforcement?

Thank you for your consideration in this matter. We look to you to protect American markets, investors, and the public from corruption, fraud, and the weakening of financial sector reforms.

Sincerely,

Daily Kos

The International Corporate Accountability Roundtable

National Lawyers Guild

Northwest Coalition for Responsible Investment

Project on Organizing, Development, Education and Research (PODER)