

SEC Chairman Nominee Jay Clayton Provides Insight on the Future of the SEC (Part 2)

This post continues our summary of the testimony of Jay Clayton, President Trump's pick to head the SEC, at his recent nomination hearing before the Senate. Clayton commented on several important issues confronting the SEC.

FCPA

Clayton said companies doing business in countries known to have a high rate of corruption should "think long and hard" about their potential exposure not only under the FCPA, but "similar oversight and enforcement from other OECD countries." Clayton said international cooperation has improved, perhaps mindful of a 2011 [paper](#) he co-authored critical of the FCPA. Clayton was also asked about his post-nomination meeting with Carl Ichan, who is a Trump adviser, while a company Ichan is associated with is under [investigation](#) by the SEC for potential FCPA violations. Clayton said they did not discuss the investigation. While he said it "may be inappropriate" to talk to someone under investigation (about other issues), Clayton would not commit to saying it was always inappropriate to do so.

Disclosure Rules

On whether public companies should be required to disclose political contributions, Clayton said the touchstone is materiality. Clayton said he would be "happy to think about" whether such disclosure should be mandatory. Clayton declined to comment on Acting Chairman Piwowar's [directive](#) to reconsider implementation of the pay ratio disclosure rule adopted by the SEC. Regarding disclosure related to climate change, Clayton said companies should be mindful of the SEC's existing [guidance](#).

Capital Formation

Clayton said the SEC "could have done better" with respect to encouraging capital formation. He noted the positive impact of public companies on the market and the economy, and said the SEC should reduce the regulatory burdens so that it is more attractive to become a public company.

Conflicts of Interest

Senator Elizabeth Warren pressed Clayton on potential conflicts that may arise due to his representation of certain clients in the financial services industry, and the impact of recusals on enforcement actions. Clayton said recusals would not result in a deadlocked 2-2 vote on enforcement actions given prior history, as the Commission approves enforcement actions [unanimously](#) over 94% of the time. Should Clayton be confirmed as the Chairman of the SEC, we will begin to see more definitively what direction the SEC will take with respect to enforcement, policy, and regulatory issues.

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