

SEC Chairman Nominee Jay Clayton Provides Insight on the Future of the SEC (Part 1)

For those eager to learn what direction the SEC will take during the Trump administration, some clues surfaced during the [recent nomination](#) hearing of Jay Clayton, President Trump's pick to head the SEC. Clayton commented on several important issues confronting the SEC.

Enforcement

Clayton said he is

100 percent committed to rooting out any fraud and shady practices in our financial system."

However, Clayton declined to comment on a controversial move by Acting Chairman Piwowar to [revoke](#) the power to open formal investigations from certain senior enforcement officials. Clayton said he was not consulted in advance on this policy change.

Cybersecurity

Clayton said it was not appropriate to comment on the SEC's investigation of [Yahoo](#) regarding its disclosure of a data breach. Clayton said of this "landscape in general" that the SEC should take a "fresh look" at disclosure issues relating to data breaches and he "question[s] whether disclosure is where it should be." Despite saying that materiality is the threshold he did not think there is enough disclosure. Clayton also said that investors should know whether a company's board of directors has expertise regarding cybersecurity issues.

Dodd–Frank

Clayton said that while he has "no specific plans to attack" the statute, he questioned whether the "rules in place are achieving their objectives effectively." On rulemaking in general, Clayton said he had:

a problem with rules that are unnecessarily complex, and the SEC should reduce complexity and provide clarity in rulemaking. With respect to existing rules, Clayton said "let's look back and see if we got it right."

There should be a rigorous examination of the costs and economic impact of rules, Clayton added.

Fiduciary Rule

Despite the [controversy](#) surrounding whether the fiduciary rule applicable to investment advisers should be expanded to cover broker-dealers, Senators did not ask Clayton for his views on this issue.

Arbitration Clauses

Clayton said he was not prejudging or committing to a position on the issue of mandatory pre-dispute arbitration

clauses in investor agreements with broker-dealers or investment advisers, an issue [currently pending](#) in Congress.

Corporate Penalties

Based on Clayton's comments, the SEC may curb large penalties on corporations. In a pre-hearing conversation with one Senator, Clayton said that prosecutors take money from shareholders without holding individuals accountable. In the hearing, Clayton said he:

firmly believe[s] that individual accountability drives behavior more than corporate accountability."

Clayton said if companies make illicit profits they should suffer disgorgement but did not mention penalties. Clayton said people should keep in mind that shareholders bear the costs when companies are prosecuted.

Individual Liability

Clayton was visibly uncomfortable addressing the issue about whether corporate executives should be subject to a strict liability or recklessness standard for corporate misconduct that occurs under their watch.

Strict criminal liability without *mens rea*," Clayton said, seemed like a "big step."

Tomorrow, we will cover Clayton's views on the Foreign Corrupt Practices Act and other issues.

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