

[Securities Regulation Daily Wrap Up, SEC NEWS AND SPEECHES— Clayton to House: ‘I commit to independence’, \(Jun. 25, 2020\)](#)

Securities Regulation Daily Wrap Up

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By [John M. Jascob, J.D., LL.M.](#)

The SEC chairman received a grilling from a House subcommittee related to his proposed nomination to be the top federal prosecutor in Manhattan.

SEC Chairman Jay Clayton faced a barrage of questions from members of the House of Representatives concerning President Trump's stated intention to nominate Clayton to be the new U.S. attorney for the Southern District of New York. In over two and a half hours of testimony before the House Financial Services Committee, Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, Clayton repeatedly stressed that he was there speaking in his role as the SEC's chairman, and not addressing a Senate nomination hearing. When pressed, however, Clayton said he remains "fully committed" to being chair of the SEC. Clayton also emphasized that he would continue to act with independence, both during the remainder of his time at the SEC and in any future role in public service.

Despite the recurring questions concerning Clayton's nomination, the hearing did generally adhere to its stated subject matter, "[Capital Markets and Emergency Lending in the COVID-19 Era](#)." Clayton responded to questions concerning expanding access to private markets, protections for retail investors, and the SEC's enforcement efforts, among other topics.

In setting the tone for what followed, subcommittee Chairman Brad Sherman (D. Cal) referenced the potential of Clayton leaving the SEC at the outset of the hearing, saying "I hope you're here six months from now." Sherman also urged Clayton to follow the advice of senators who had publicly asked Clayton to withdraw his name from consideration for the prosecutor's post. Sherman pointedly said that keeping his name in nomination was "weakening [Clayton's] gravitas" with the SEC. Clayton responded by saying that the nomination process does not require his current attention, and that he looks forward to continuing to lead the work of the Commission as long as he remains there.

SEC's work during the pandemic. Covering briefly the matters discussed in his [prepared remarks](#), Clayton said that the Commission has remained fully operational since mid-March while functioning in a telework environment due to the COVID-19 pandemic. Clayton commended the SEC staff as well as Congress, the Federal Reserve, and other regulators for their roles in ensuring the continued orderly operation of the financial markets and preserving the flows of credit and capital in the economy. Clayton said that the "pipes and plumbing" of the securities markets have functioned largely as designed, and as market participants would expect.

Among the SEC's investor protection efforts during the pandemic, Clayton highlighted the Commission's efforts to assist issuers in providing complete and accurate disclosures of the material risks facing their businesses. SEC enforcement staff has also been actively monitoring the markets for frauds affecting investors relating to COVID-19, including potentially fraudulent or misleading claims related to access to testing materials, development of vaccines and access to personal protective equipment (PPE). The SEC has issued over 30 trading suspensions where there have been concerns regarding the adequacy and accuracy of information in connection with virus-related representations from issuers.

Capital raising by small businesses. Chairman Sherman began the questioning by asking Clayton about where the Commission stands with exempting exempt business development companies (BDCs) from the acquired fund fees and expenses (AFFE) disclosure requirements, which mandate that funds outline the fees and operating costs charged by the BDCs in which they invest. Some believe that the application of these

requirements to BDCs has restricted liquidity for small and medium sized businesses due to the delisting of many BDCs from fund indexes. Clayton noted that the Commission cannot dictate the components of an index but said that he believes that AFFE disclosure will be addressed in an SEC rulemaking proposal before year end.

Enforcement. Among his questions, Ranking Member Bill Huizenga (R-Mich) asked the chairman about the possibility of obtaining restitution for the victims of the Stanford Ponzi scheme, who have now been waiting over 11 years for some sort of recovery. Clayton said that he could not reach any conclusion regarding those efforts other than that of failure. He noted that despite the SEC's dedication of substantial resources to the matter, the victims are likely never going to be "made anything close to whole." Nevertheless, the Commission persists in trying to help the victims as much as possible.

Independence. Full Committee Chairwoman Maxine Waters (D-Cal) turned the enforcement discussion back to Clayton's nomination for U.S. attorney, expressing concern that the nomination will interfere with his oversight of the SEC and hamper the Commission's important role as "cop on the beat." Clayton stressed again that the nomination does not require his current attention and that he remains "fully committed" to being chair of the SEC. Continuing to press, Waters asked if Clayton would recuse himself regarding any matters involving President Trump or his associates, Clayton replied that he would "continue to pursue all matters with independence." Waters retorted by saying, "Let the record show that as a 'yes.'"

Rep. Carolyn Maloney (D-NY) kept the heat on Clayton, saying she was "extremely troubled" by what she referred to as the "scandal" concerning the firing of U.S. Attorney Geoffrey Berman in the Southern District of New York. Asked by Maloney whether he had knowledge that Berman would be fired, Clayton declined to answer. She then asked Clayton about his position on investigating President Trump or his associates, Clayton responded that he would commit to approach the job with independence and in accordance with all ethical rules. After Maloney remarked, "We need independence," Clayton said, "I commit to independence."

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