

## [Securities Regulation Daily Wrap Up, TOP STORY—Trump picks Sullivan attorney Jay Clayton for SEC chair, \(Jan. 4, 2017\)](#)

Securities Regulation Daily Wrap Up

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By [Anne Sherry, J.D.](#)

Donald Trump will nominate Sullivan & Cromwell partner Jay Clayton to lead the SEC. While the announcement promised that Clayton will protect investors and encourage job creation, some Democratic leaders and watchdog groups were skeptical about the appointment of a "Wall Street insider" to oversee financial markets. Beyond his client representations, however, little is known about Clayton's regulatory views.

**The nominee.** According to his Sullivan [profile](#), Clayton's practice includes M&A, IPOs, and regulatory and enforcement proceedings, and he counts Goldman Sachs among his clients. The attorney "also advises several high-net-worth families regarding their public and private investments." Clayton represented the underwriter in Alibaba's \$21.7 billion offering, the largest-ever IPO in U.S. markets.

The [announcement](#) promises that "Clayton will play an important role in unleashing the job-creating power of our economy by encouraging investment in American companies while providing strong oversight of Wall Street and related industries. Robust accountability will be a hallmark of his tenure atop the SEC, and the financial security of the American people will be his top priority." Clayton said in the statement that if he is confirmed, he will work with "key stakeholders in the financial system to make sure we provide investors and our companies with the confidence to invest together in America." He also said his Commission would carefully monitor the financial sector while setting policy "that encourages American companies to do what they do best: create jobs."

**SEC composition.** In addition to filling the chair's seat, Trump will need to nominate two more candidates to fill out the five-member Commission. The SEC currently comprises outgoing chair Mary Jo White (Independent), Kara Stein (Democrat), and Michael Piwowar (Republican). Under Exchange Act Section 4(a), no more than three commissioners may be from the same political party, and "members of different political parties shall be appointed alternately as nearly as may be practicable."

**Practitioner's perspective.** [John Baker](#), counsel at Stradley Ronon and owner of the FundLaw listserv, [observes](#) there that "little is known of Clayton's regulatory views" beyond a coauthored [opinion piece](#) discussing Form 10-K and a bar association [committee report](#) using game theory to argue that FCPA enforcement should dial back pressure on companies to focus more on individual misconduct. Baker points out that although Trump's announcement mentions undoing regulations and restoring oversight of the financial industry, it "does not specify which regulations need to be undone, nor does it indicate how financial industry oversight is in need of restoration."

"Taking Clayton's statements at face value," Baker concludes, "his nomination appears to portend an SEC Chairman who believes in a disclosure-oriented mission for the SEC and will back up that mission with enforcement action, while looking for opportunities to reduce regulatory burdens and working with key stakeholders. It may also portend a lighter touch in enforcing the Foreign Corrupt Practices Act."

**Industry and Congressional response.** Trump's announcement prompted relatively little reaction among industry groups and congressional leaders, possibly reflecting the fact that little is known about Clayton beyond the clients he represents. Maxine Waters (D-Calif), ranking member of the House Financial Services Committee, [suggested](#) that Clayton's Wall Street ties echo Trump's own conflicts of interest: "Donald Trump himself owes Wall Street banks hundreds of millions of dollars. Trump's preference for Wall Street insiders calls into question his priorities: is he truly aiming to represent the American people or is he rewarding his pals on Wall Street? The nomination of Jay Clayton is clear evidence that Trump favors the latter."

Representative Waters' counterpart in the Senate, Sherrod Brown (D-Ohio), [said](#): "It's hard to see how an attorney who's spent his career helping Wall Street beat the rap will keep President-elect Trump's promise to stop big banks and hedge funds from 'getting away with murder.' I look forward to hearing how Mr. Clayton will protect retirees and savers from being exploited, demand real accountability from the financial institutions the SEC oversees, and work to prevent another financial crisis." These comments are consistent with Sen. Brown's [remarks](#) upon voting against Chair White's nomination to the SEC, when he "question[ed] Washington's long-held bias toward Wall Street and its inability to find watchdogs outside of the very industry that they are meant to police."

Better Markets' Dennis Kelleher [warned](#) that Clayton "must not bring the failed mindset that 'what's good for Wall Street is good for America' ... He must believe that what's good for Main Street is good for America, which happens to also be good for Wall Street, as proved from 1940 until 2008."

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