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February 6, 2020

House Financial Services Committee

Oversight and Investigations Subcommittee

Hearing:

**“Fake It Till They Make It: How Bad Actors Use Astroturfing to Manipulate Regulators,  
Disenfranchise Consumers and Subvert the Rulemaking Process”**

Testimony of

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Chair Green, Ranking Member Barr, and members of the subcommittee: On behalf of more than 500,000 members and supporters of Public Citizen, thank you for the opportunity to testify at the House Financial Services Committee’s Oversight and Investigations Subcommittee hearing entitled, “Fake It Till They Make It: How Bad Actors Use Astroturfing to Manipulate Regulators, Disenfranchise Consumers and Subvert the Rulemaking Process.” My name is Bartlett Naylor, financial policy advocate for the Congress Watch division of Public Citizen.

We welcome the committee’s attention to this issue. The problem of astroturf comments is not new and, in fact, is an issue that warrants urgent attention.

Public Citizen promotes consumer protection and policies that attempt to restrict corporate abuse and misconduct. We approach our 50<sup>th</sup> anniversary of pursuing this mission. Public Citizen, as our name

suggests, is an organization dedicated to the concept that democracy depends on an engaged citizenry. Voting is critical in selecting responsible, enlightened lawmakers. But we believe good citizenship requires daily vigilance. Our members and supporters are self-selected Americans who share this sense of daily obligation. Our Public Citizen members are public citizens. We often promote needed new laws and strong regulation. We frequently oppose bills and efforts to relax needed regulations that we believe harm consumers. In many cases we invite our members to contact their lawmakers regarding legislation. We also invite them to submit comments to regulators.

On financial issues, for example, we've invited our members to comment on the Volcker Rule-- the notice of proposed rulemaking, the original proposed rulemaking, the revised rulemaking, and the second revised rulemaking. We invited our members to comment on the CEO/median pay ratio as provided on Section 953 of Dodd-Frank; on incentive compensation rules as provided in Section 956; on the Department of Labor's fiduciary rule; on the Securities and Exchange Commission's broker conduct rule; on the Comptroller of the Currency's Community Reinvestment Act proposals; and many others. These have resulted in tens of thousands of thoughtful comments.

In part, because of our engagement with the regulatory system in this manner, we zealously guard the integrity of this comment process. As overseen by the Administrative Procedures Act, the rulemaking comment process enshrines the goal to which Public Citizen is dedicated, namely communication between congressionally-confirmed rule-makers and the average citizens that these rules are ultimately designed to benefit.

Generally, what we argue for is common sense and widely supported by the American public. We believe our positions on financial issues relevant to this committee are strongly supported by Americans of every political persuasion, who believe that the financial crash of 2008 required a strong legal and regulatory response; who believe that consumers deserve protection from financial predators; who believe in rules to prevent discrimination in our financial markets. The positions Public Citizen promotes before this committee, the wider Congress and before regulatory agencies are positions staunchly supported by the public at large. Polls affirm this.<sup>1</sup>

With this backdrop, we are concerned when we encounter comments in a rulemaking docket that purport to come from ordinary citizens and argue in the opposite direction, against needed regulations. Yes, we expect industry to oppose safeguards, but not the citizens those safeguards are meant to protect. When we see a comment from a small business owner who claims that investor protections will hurt her firm's retirement fund, we're puzzled. When we see a person from the heartland arguing against shareholder rights, we're curious. When we see comments from individuals who laud a bank that redlines communities, we're suspicious.

Occasionally, when we scratch the surface of these grassroots expressions of support for various corporate interests, we find that they're plastic—astroturf.

#### *1. SEC Chair Clayton's Reliance on Fabricated Comments*

The committee's attention to fabricated comments is timely and applies to an active rulemaking effort at the Securities and Exchange Commission (SEC) regarding shareholder resolutions. Earlier this week, on Feb. 3, 2020, the comment deadline ended for a pair of rules. One addresses shareholder resolutions, and the other addresses regulations for proxy advisory firms that help institutional investors decide how to

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<sup>1</sup>*New Poll Shows Significant Support for Financial Reform*, BETTERTMARKETS (Set. 19, 2018) <https://bettermarkets.com/poll-key-findings-graphs>

vote at annual meetings. Resolutions are, as the name implies, proposals that shareholders submit to corporate boards for a vote at the annual shareholder meeting. One of the types that has been most successful ones include those that call on corporations to disclose all their political spending.

For years, business interests have sought to limit the ability of shareholders to bring these resolutions before annual meetings. The U.S. Chamber of Commerce has openly called for limiting these tools of corporate accountability. More recently, corporate opposition has included the creation of faux groups. One of these was the so-called Main Street Investors Coalition.<sup>2</sup> This group claimed to represent average investors who tired of shareholder activism. However, as it quickly became clear that this entity was a false front for the National Association of Manufacturers, the group's website closed. Yet the false claims persisted; on Nov. 5, 2019, the Securities and Exchange Commission held an open meeting to consider offering for public comment a series of proposals to roll back shareholder rights for investors in publicly traded companies. Chair Jay Clayton, who controls the staff at the SEC, explained how he came to his views, reflected in the proposal for which he subsequently voted to approve.<sup>3</sup> Specifically, Chair Clayton cited the letters of seven individuals who claimed that shareholder activism undermined their interests and that proxy advisory firms required censorship by corporations. Chair Clayton did not cite any other letters that were submitted. The other letters numbered in the hundreds and generally took the opposite view of those seven letters; that is, the preponderance of letters opposed proposals that would reduce shareholder activism.

It turns out those seven letters were fabricated. An investigation by Bloomberg showed that those letters were “the product of a misleading -- and laughably clumsy -- public relations campaign by corporate interests.”<sup>4</sup> In his comments during the SEC's open meeting, Chair Clayton explained, “Some of the letters that struck me the most came from long-term Main Street investors, including an Army veteran and a Marine veteran, a police officer, a retired teacher, a public servant, a single mom, a couple of retirees who saved for retirement.” Bloomberg then contacted these commenters: “That retired teacher? Pauline Yee said she never wrote the letter, although the signature was hers. Those military vets? It turns out they're the brother and cousin of the chairman of the [lobby group] paid by corporate supporters of the SEC initiative. . . . That retired couple? Their son-in-law runs [the lobby group].”<sup>5</sup>

The lobby group is known as 60 Plus, and is an affiliate of Main Street Investors Coalition, which is funded by the National Association of Manufacturers. 60Plus is funded, in part, by the Koch Brothers.<sup>6</sup>

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<sup>2</sup> Nell Minow, *The Main Street Investors Coalition is an Industry-Funded Effort to Cut Off Shareholder Oversight*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE AND FINANCIAL REGULATION, (June 14, 2018) <https://corpgov.law.harvard.edu/2018/06/14/the-main-street-investors-coalition-is-an-industry-funded-effort-to-cut-off-shareholder-oversight/>

<sup>3</sup> Chairman Jay Clayton. *Statement of Chairman Jay Clayton on Proposals to Enhance the Accuracy, Transparency and Effectiveness of Our Proxy Voting System*, U.S. SECURITIES AND EXCHANGE COMMISSION, (Nov. 5, 2019) <https://www.sec.gov/news/public-statement/statement-clayton-2019-11-05-open-meeting>

<sup>4</sup> Zachary Mider and Ben Elgin, *SEC Chairman Cites Fishy Letters in Support of Policy Change*, BLOOMBERG (Nov. 19, 2019) <https://www.bloomberg.com/news/articles/2019-11-19/sec-chairman-cites-fishy-letters-in-support-of-policy-change>

<sup>5</sup> Zachary Mider and Ben Elgin, *SEC Chairman Cites Fishy Letters in Support of Policy Change*, BLOOMBERG (Nov. 19, 2019) <https://www.bloomberg.com/news/articles/2019-11-19/sec-chairman-cites-fishy-letters-in-support-of-policy-change>

<sup>6</sup> Skocpol, Theda; Hertel-Fernandez, Alexander (2016). *"The Koch Network and Republican Party Extremism"*. PERSPECTIVES ON POLITICS. **14** (3): 681–699. [doi:10.1017/S1537592716001122](https://doi.org/10.1017/S1537592716001122). ISSN 1537-5927.

On Dec. 10, 2019, Chair Clayton testified before the Senate Banking Committee in a general oversight hearing. Several senators, including Sen. Chris Van Hollen (D-Md.) took special exception to Clayton's reliance on these fabricated letters. "What troubled me even more was you did try to present this as sort of a concern of Main Street investors when you rolled this out. You attempted to create the impression that this was something a lot of Main Street investors care about. You got duped."<sup>7</sup>

Recently, a Republican operative began soliciting comment letters on this rulemaking claiming that it's aimed at stopping left wing champions of illegal immigrants and abortion.<sup>8</sup> This video features Holly Turner, who identifies herself as an ordinary citizen. Nowhere does she acknowledge that she's a former Trump administration official<sup>9</sup> who served at the U.S. Small Business Administration. Turner now works at Stampede Consulting, which claims to run "Award-winning grassroots campaign."<sup>10 11</sup> The firm describes Ms. Turner as "always willing to speak truth and stand firm against the Left."<sup>12</sup>

Now, the SEC docket on this rulemaking already features letters claiming to be from Main Street investors who oppose corporate accountability. For example, one letter comes from one of the submitters that Bloomberg identified as a fabrication.<sup>13</sup>

## 2. OCC Comptroller Otting and the OneWest CRA Challenge

On January 29, 2020, the full House Financial Services Committee held a hearing on changes to the Community Reinvestment Act (CRA) proposed by Comptroller of the Currency Joseph Otting. CRA is a piece of 1977 legislation that requires banks to reinvest in their communities.

In his previous job, the CRA nearly cost Otting a \$24 million payday.

Congress approved the Community Reinvestment Act in 1977 to combat redlining and other forms of discriminatory lending. Senator William Proxmire, then chair of the Senate Banking Committee, and for

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<sup>7</sup> Rita Raagas De Ramos, *Senators Call Out SEC's Clayton: You Were Duped in Proxy Initiative*, FINANCIAL ADVISOR IQ, (Dec. 11, 2019)

<https://www.financialadvisoriq.com/c/2596973/299793/senators-call-clayton-were-duped-proxy-initiative>

<sup>8</sup> *Republican Operative Holly Turner Posts Appallingly Deceptive Video in Support of Anti-Shareholder Proposal from the SEC*, VALUE EDGE ADVISORS, (Jan. 10, 2020) <https://valueedgeadvisors.com/2020/01/10/republican-operative-holly-turner-posts-appallingly-deceptive-video-in-support-of-anti-shareholder-proposal-from-the-sec/>

<sup>9</sup> *Republican Operative Holly Turner Posts Appallingly Deceptive Video in Support of Anti-Shareholder Proposal from the SEC*, VALUE EDGE ADVISORS, (Jan. 10, 2020) <https://valueedgeadvisors.com/2020/01/10/republican-operative-holly-turner-posts-appallingly-deceptive-video-in-support-of-anti-shareholder-proposal-from-the-sec/>

<sup>10</sup> *Holly Turner*, AMERICAN ASSOCIATION OF POLITICAL CONSULTANTS, (2019) <https://theaapc.org/awards/40-under-40/inaugural-class-of-2015/holly-turner-2/>

<sup>11</sup> The website explains: once we have a signed contract, our team will meet with yours to discuss the project goals and establish "what success looks like" for you.

☐ We will then launch Phase 1, during which we will deploy a team to ascertain the lay of the land and actually test messaging, targeting, conversation + conversation rates so that we can measure what it'll take to operationalize the mission.

☐ Our team will return with a plan to achieve your goals and once discussed and approved, we will guarantee performance **or your money back**.

<sup>12</sup> *Our Team*, STAMPEDE CONSULTING, (2019) <http://stampedeconsulting.com/our-team/>

<sup>13</sup> Marie Reed, *letter*, SECURITIES AND EXCHANGE COMMISSION (undated) <https://www.sec.gov/comments/s7-22-19/s72219-6526201-200431.pdf>

whom I worked as chief of investigations, authored the measure amidst widespread evidence that many banks failed to serve low-income and minority residents in the communities where they operated.

The CRA calls on banks to serve their entire communities. If banks fail in this mandate, Washington regulators will “take such record into account in its evaluation of an application for a deposit facility by such institution.” In other words, a bad CRA record could prevent a bank from buying or merging with another bank. Bankers wish to purchase smaller banks to grow. Smaller banks seek to sell to cash out for a profit. As such, the CRA has become foundational in the nation’s effort to promote fair lending.

Otting encountered the CRA as the CEO of OneWest. Otting assumed this job in October 2010, nearly two years after Dune Capital hedge fund manager Steven Mnuchin (now U.S. Treasury secretary) purchased the failed IndyMac Bank from the government. Mnuchin renamed it OneWest.

Instead of fulfilling the promise of the CRA, Otting managed OneWest in the opposite direction, according to the California Reinvestment Coalition.<sup>14</sup> Instead of “reinvesting,” Otting oversaw tens of thousands of foreclosures, including 35,000 in California alone. Victims were concentrated in minority communities. Staff at the California Attorney General’s office prepared a litigation memo summarizing their accusations of “widespread misconduct.”<sup>15</sup> According to a media summary, OneWest “rushed delinquent homeowners out of their homes by violating notice and waiting period statutes, illegally backdated key documents, and effectively gamed foreclosure auctions.”<sup>16</sup><sup>17</sup><sup>18</sup><sup>19</sup>

What was certainly devastating for OneWest's borrowers was attractive to investors looking for a franchise in southern California, where OneWest concentrated its business. Mnuchin shopped OneWest soon after Dune Capital acquired it and found interest from Salt Lake City-based CIT Group. CIT proposed paying more than double the \$1.5 billion that Mnuchin raised to buy IndyMac from the government. And completion of this deal promised a substantial payday for Otting.<sup>20</sup> Otting had not led a

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<sup>14</sup> Bartlett Naylor, *The Revolving Door and the Assault on the Community Reinvestment Act*, AMERICAN PROSPECT, (Nov. 21, 2018) <https://prospect.org/economy/revolving-door-assault-community-reinvestment/>

<sup>15</sup> Document provided via David Dayan, <https://www.documentcloud.org/documents/3250383-OneWest-Package-Memo.html>

<sup>16</sup> David Dayan, *Treasury Nominee Steve Mnuchin’s Bank Accused of “Widespread Misconduct” in Leaked Memo*, THE INTERCEPT (Jan. 3, 2017) <https://theintercept.com/2017/01/03/treasury-nominee-steve-mnuchins-bank-accused-of-widespread-misconduct-in-leaked-memo/>

<sup>17</sup> In the reverse mortgage business, the OneWest-controlled firm Financial Freedom engaged in practices that led to more than 16,000 foreclosures, a far greater number than would be expected based on the company's market share. Elderly individuals who had recently suffered the death of a spouse were victimized. In one case, Financial Freedom attempted to evict a 90-year-old woman from her home over a [27-cent error](#) on an insurance payment. In another case, a New York State [Supreme Court judge](#) called OneWest’s foreclosure practices “harsh, repugnant, shocking, and repulsive.”

<sup>18</sup> Over Otting's signature, OneWest Bank signed a consent order with the [Office of Thrift Supervision](#) for “certain deficiencies and unsafe or unsound practices in the Association’s residential mortgage servicing and in the Association’s initiation and handling of foreclosure proceedings.”

<sup>19</sup> OneWest affiliate Financial Freedom paid \$89 million following allegations that it violated the False Claims Act. This involved a five-year pattern from 2011 to 2016 where Financial Freedom claimed government fees that the [U.S. Justice Department](#) said “they were not entitled to receive.”

<sup>20</sup> How much Mnuchin paid Otting to run OneWest isn't public because Dune Capital purchased IndyMac with private funds. (A publicly traded company publishes the compensation of senior executives; a private company does not.) The year before it failed, IndyMac CEO Michael Perry received [\\$1.4 million](#) in total compensation. It is possible that Otting received a similar compensation package.

company before Mnuchin retained him at OneWest. The University of Northern Iowa graduate held a succession of mid-level management positions at Bank of America, Union Bank and then US Bank, helping it expand into California. (The White House announcement of his appointment as Comptroller of the Currency listed him as a graduate of the “School of Credit and Financial Management at Dartmouth College.” This program is not Dartmouth sponsored, but rents space to a program that offers [four-week courses](#).) In other words, Otting was not a high profile CEO that Mnuchin needed to lure with a major compensation contract. Under the terms of the merger agreement, if regulators approved the deal, Otting would be paid \$24 million, guaranteed, whether or not he continued to work at the post-merger company.<sup>21</sup>

A sealed merger would make Otting rich. But CRA stood in the way.

The California Reinvestment Coalition contested the merger on CRA grounds. In response, OneWest fought the request. This included comments supporting the merger from business managers that may have had an association with OneWest, suggesting that they are contacts of former President Otting or his OneWest staff. They refer to the fact that the merger would benefit “our community” in “southern California.” In many cases, these letters come from business managers outside of southern California, as was the case with two accountants associated with KPMG, a major accounting firm. One of these came from Phillip Bray, whose email is [pbray@kpmg.com](mailto:pbray@kpmg.com) and he lists Charlotte, N.C. as his address.<sup>22</sup> Mr. Bray does not reference his association with KPMG. Another KPMG comment comes from Tim Phelps, also from Charlotte, NC. Like Mr. Bray, his association with KPMG comes through his email address, namely [tghelps@kpmg.com](mailto:tghelps@kpmg.com). Both speak of “our community” in “southern California.” Public Citizen emailed both KPMG addressees to ask how they came to submit these letters and received no response. We also emailed KPMG’s ethics office and received no response. We then emailed the Public Company Accounting Oversight Board to ask if they considered it a conflict of interest for an independent audit firm to provide support for a client in an important business decision. PCAOB responded to our inquiry and asked for additional information. We have not heard from them since. Another comment letter comes from a CIT official named Jaison Chacko, whose address is Livingston, Montana. Mr. Chaiko also talks about “our community” in “Southern California.”<sup>23</sup> Neither Charlotte, N.C. nor Livingston, Mt. can be considered part of the southern California community. We can only speculate either that these managers are not attentive to the details of their own emails, or that their name and email was exploited by a third party.

The OneWest email campaign also included other irregularities. One petition was composed of 593 individuals purportedly supporting the merger with Yahoo email accounts. (Yahoo has a 3 percent market share for email.) A large number of these emails were time stamped as 2 a.m., February 13, 2015. Yahoo

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<sup>21</sup> According to [CIT's public filing](#), “Pursuant to the agreement to acquire OneWest, CIT entered into an offer letter with Mr. Otting, which provides for a total target annual compensation opportunity (including base salary and annual and long-term incentives) for each of 2015, 2016 and 2017 in the amount of \$4.5 million. In the event of Mr. Otting’s termination of employment without cause or for good reason prior to the third anniversary of the closing of the acquisition, subject to the execution of a release of claims, Mr. Otting would be entitled to a lump sum severance payment approximately equal to the remaining total target annual compensation.” A CIT’s disclosure itemized his entire promised payday at [\\$24 million](#).

<sup>22</sup>Comment file, OCC merger, FEDERAL RESERVE, [https://www.federalreserve.gov/bankinforeg/Comments\\_Letters\\_\\_1-6-15\\_to\\_1-13-15\\_part\\_1.pdf](https://www.federalreserve.gov/bankinforeg/Comments_Letters__1-6-15_to_1-13-15_part_1.pdf)

<sup>23</sup>Comment file, OCC merger, FEDERAL RESERVE, [https://www.federalreserve.gov/bankinforeg/Comments\\_Letters\\_\\_1-6-15\\_to\\_1-13-15\\_part\\_2.pdf](https://www.federalreserve.gov/bankinforeg/Comments_Letters__1-6-15_to_1-13-15_part_2.pdf)

had suffered a security breach before this period. Other emails came from persons who, after they received receipt confirmation from the Washington regulator, denied they had originated them and theorized their email had been hacked.

In the end, regulators approved the merger. CIT retained Otting in August 2015. By December, CIT terminated him. No matter; a consummated merger promised him \$24 million, whether or not he showed up at work for three years.

We are unaware of any disciplinary action taken to address the fabrication of the email comments.

### 3. *The Chamber's Pawns*

Organized by the U.S. Chamber of Commerce, a handful of small business owners became the public face of a Wall Street effort to fight a years long Washington reform effort by the Obama Department of Labor (DoL). Public Citizen tracked this effort.<sup>24</sup> The DoL sought to guarantee that financial advisors provide people saving for retirement with investment advice that is in their best interests. The result of this reform was a DoL rule directing investment advisors to put their clients' interests ahead of their own personal interest whereas they previously were focused on obtaining the most lucrative commissions from selling various investment products. The current rules permit conflict of interests that cost investors an estimated \$17 billion annually—money that goes mostly to Wall Street. Since Wall Street can't argue compellingly that it deserves this money, the voices of small business owners became important to the lobbying campaign aimed at stopping this new rule, known as the fiduciary rule.

The U.S. Chamber organized this lobbying campaign, which included congressional testimony, lobby visits to Capitol Hill, and a webpage featuring a dozen small business owners it claimed were "speaking out" about the problems with the proposed fiduciary rule. These small business owners individually told stories claiming that the current system works well and is even essential to their success. But Public Citizen's Chamber Watch project found the Chamber's portrayal of these small business leaders' opposition to the fiduciary rule to be at a minimum misleading and in some cases downright false. In fact, far from a groundswell of grassroots advocacy by small business, this was more akin to an astroturf campaign organized by the Chamber.<sup>25</sup>

Chamber Watch attempted to contact each of these small business owners who were "speaking out." We found:

- One Chicago non-profit leader did not have a view on the rule and didn't even know that he was listed on the webpage as being opposed to the rule. He subsequently called the Chamber and his name was removed.
- One California small business owner who said the current system helped her grow employment at her business over the last 12 years acknowledged that she had only one employee.
- One small business owner said the proposed rule is overly generous and should be stricter to prevent "mendacious" activities.

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<sup>24</sup> Bartlett Naylor, *Sacrificing the Pawns*, PUBLIC CITIZEN (June 2016) <https://chamberofcommercewatch.org/wp-content/uploads/2016/06/Sacrificing-the-Pawns-final.pdf>

<sup>25</sup> Bartlett Naylor, Dan Dudis, *Taking a Hard Look at a Campaign Critical of the Fiduciary Rule*, NEW YORK TIMES June 9, 2016) <https://www.nytimes.com/2016/06/10/business/dealbook/taking-a-hard-look-at-a-campaign-critical-of-a-fiduciary-rule.html?smid=tw-dealbook&smtyp=cur&r=2>

- One person identified as a “human resources” officer is associated with a firm that no longer exists except as a website.
- One Indianapolis small business owner whose business is to make sure contractors meet construction codes said she generally opposes regulations because they raise the cost of business. This, even though her very business is predicated upon verifying that construction companies comply with government regulations.
- More than a fourth of the “small business owners” are lobbyists for the brokerage industry, including officials of the U.S. Chamber itself, which listed them in order to pad the number of critics.
- One person is a government official whose office organized a roundtable to receive comment on the proposed rule from small businesses. But the business owners whose input was solicited at this roundtable were not representative of the approximately 28 million small businesses in the United States. Twelve of the 14 small business owners at this roundtable were investment advisors. One worked for the U.S. Chamber of Commerce.
- Most of the remaining small business owners featured by the Chamber didn’t seem interested in “speaking out” and declined to respond to Chamber Watch email or telephone calls.

#### 4. *Other Deceptions*

Allied Progress uncovered suspicious comment letters opposing reform of payday loans by the Consumer Financial Protection Bureau (CFPB). For example, the group found “at least 214 comments claim, verbatim, that the borrower took out payday loans because they “needed to replace [their] hot water tank” and their “appliances needed to be repaired and eventually replaced,” citing Cash Connection as their lender of choice.”<sup>26</sup> An investigation by David Dayen published in Vice explored the sophisticated way that the payday industry generated comments to the CFPB.<sup>27</sup>

Corporate financial abusers do not limit their deceptions to faux comments from average citizens. Public Citizen has investigated other areas of deception. Another common ploy with which this committee is undoubtedly familiar are industry-funded studies submitted under the banner of a respected university.

In 2019, we published a lengthy examination of a Koch funded center operating under the banner of George Washington University, called the Regulatory Studies Center.<sup>28</sup> This Center focuses on submitting testimony and comments to government bodies on regulatory policies. It purports to be “objective” and “unbiased” and says that the submissions of its writers represent the writers’ views, alone. Yet, about 96 percent of its public comments on discrete proposals recommend less regulation than the proposal or status quo. The Charles Koch foundation has provided the Center more than \$1 million in funding. Three-fourths of its comments to public agencies were authored by a person with ties to other Koch organizations. These

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<sup>26</sup> Press release, *Payday Industry’s Fake CFPB Comments*, ALLIED PROGRESS (May 16, 2019) <https://alliedprogress.org/news/payday-industrys-fake-cfpb-comments-criticized-at-congressional-hearing-adds-pressure-on-kathy-kraninger-to-restore-integrity-to-tainted-payday-rulemaking-process/>

<sup>27</sup> David Dayen, *How Predatory Lenders Plot to Fight Government Regulation*, VICE (Aug. 18, 2016) [https://www.vice.com/en\\_us/article/8genzb/payday-lenders-consumer-protection-strategy-atlantis-bahamas](https://www.vice.com/en_us/article/8genzb/payday-lenders-consumer-protection-strategy-atlantis-bahamas)

<sup>28</sup> Taylor Lincoln, *A Key Cog in Charles Koch’s Master Plan*, PUBLIC CITIZEN (June 3, 2019), <https://www.citizen.org/wp-content/uploads/A-Key-Cog-in-Charles-Kochs-Master-Plan-4.pdf>.

facts strongly suggest that the Center is something other than the independent research hub that it claims to be.

In the SEC's rulemaking about pay reform under Section 956, the Agency made reference to a Prof. Rene Stulz. But the docket fails to note his industry ties. A Reuters investigation of conflicted economists found that "Stulz is on the board of directors of Swiss financial firms Banque Paribas and Wegelin Asset Management. He is also a director at Community First Financial Group and Peninsula Banking Group." Reuters noted that he omitted these affiliations when he testified before Congress. He told Reuters he did not consider his financial ties to be relevant to his testimony.<sup>29</sup>

### 5. *Policy Choices*

As noted at the outset of this testimony, Public Citizen vigorously defends the opportunity of citizens to comment on policy, including rulemakings covered by notice-and-comment. We believe this process should be made more accessible, with better, simpler plain-English explanations in the rule makings themselves.

Financial policy has enormous impact on everyday Americans as evidenced by the horrific financial crash of 2008. The roots of that devastation turned on the regulation of complex derivatives, margin requirements, Basel capital requirements, swap clearing, cross border oversight, and a blizzard of other rules whose language intentionally frustrates what a person of good faith can try to decipher. It is Public Citizen's abiding challenge to translate these dissembling terms into those that Main Street Americans can grasp, and whose needed reforms they can consider and perhaps promote to rule makers in formal comments. We are especially pleased that Rep. Madeleine Dean (D-Pa.) on this committee promotes this same goal.

Public Citizen opposes efforts to frustrate or otherwise limit the ability of average Americans to engage in this system. We do not share the view that the rising number of comments made possible by the internet is an inherently bad thing. We applaud the rising number of comments.

We believe that agencies should take individual comment letters more seriously. For example, we believe that corrupt pay practices served at the core of the 2008 financial crash; bankers profited personally from their reckless, often fraudulent behavior. In a rulemaking to implement pay reform, known as Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, we invited our members to submit comment on this rule. More than a thousand did, with individual descriptions of what the crash did to them. None of these were form letters. These letters described individual hardships—dropped piano lessons for the kids, cancelled vacations, foreclosures, lost jobs. The regulators made only glancing reference to these letters, noting they were "form" letters. Instead, the regulators gave fulsome attention to the letters from bankers. We think the Agencies should have paid little attention to what bankers said about this rule.

We believe agencies should welcome letters, even those that take exception to the current trajectory of policy. Currently, Otting's OCC staff are reaching out to co-signers of a letter drafted by the National Community Reinvestment Coalition to challenge their support of NCRC's critique.

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<sup>29</sup> Emily Flitter, Kristina Cooke, and Pedro de Costa, *For Some Professors, Disclosure Is Academic*, REUTERS (Dec. 20, 2010) <http://www.reuters.com/article/us-academics-conflicts-idUSTRE6BJ3LF20101220>

At the same time, we welcome efforts to combat the abuse of this system by those who want to advance the interests of corporations or those who would do harm to consumers and citizens by suffocating the comment plumbing, by forging comments, or otherwise creating fictions that betray the American interest.

For the most egregious cases of comment fabrication, current law already provides penalties for fraud, it is a federal crime to “knowingly and willfully” make “any materially false, fictitious, or fraudulent statement or representation” to the federal government, punishable by a fine or up to five years in prison, or both.<sup>30</sup> That said, a review by the by the US Senate Permanent Subcommittee on Investigations<sup>31</sup> found that only one agency among the dozen surveyed had contacted the FBI about fraudulent activity. And there is no record of any resulting FBI action.<sup>3233</sup>

We call on this committee and Congress to question why law enforcers have failed to penalize those who “knowingly and willfully ... make fraudulent representations” to the government. Without penalties, bankers seeking to hurdle CRA requirements to seal a lucrative bank merger will continue to fabricate comments. Corporate captains seeking to escape shareholder accountability will continue to generate fake comments that SEC commissioners will cite to dismantle shareholder rights. Investors will fall prey to Wall Street predators who cause small business managers to spout self-defeating fictions.

We ask this committee to commission a study on the utility of public listing of those who file fake comments, especially those who organize such efforts. This would inform rule-makers as well as media and civic organizations to readily identify such efforts. The public listing should also serve as a deterrent. We support the policy advanced by Sen. Elizabeth Warren that requires those who communicate with the government to disclose any financial backing.<sup>34</sup>

In some circumstances, we think that public attention to these fabrications, such as through this hearing, or media coverage, or reports by organizations such as Public Citizen, can expose the fraud and address the damage. As noted, the Main Street Investors coalition took down their website. We assume this resulted from public attention. At George Washington University, students are circulating a petition calling on university officials to sever ties with the Koch-funded Regulatory Studies Center or come clean about its purposes and funding arrangements.<sup>35</sup> We support these sensible, proactive responses.

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<sup>30</sup> 18 U.S.C. § 1001(a) (2018).

<sup>31</sup> Staff Report, *Abuses of the Federal Notice-and-Comment Rulemaking Process*, U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS (undated) <https://www.hsgac.senate.gov/imo/media/doc/2019-10-24%20PSI%20Staff%20Report%20-%20Abuses%20of%20the%20Federal%20Notice-and-Comment%20Rulemaking%20Process.pdf>

<sup>32</sup> Letter from the Hon. J. Christopher Giancarlo, Chairman, Commodities Futures Trading Comm’n, to the Hon. Rob Portman, Chairman, U.S. Senate Permanent Subcomm. on Investigations, and the Hon. Tom Carper, Ranking Member, U.S. Senate Permanent Subcomm. on Investigations (Mar. 16, 2018).

<sup>33</sup> Staff Report, *Abuses of the Federal Notice-and-Comment Rulemaking Process*, U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS (undated) <https://www.hsgac.senate.gov/imo/media/doc/2019-10-24%20PSI%20Staff%20Report%20-%20Abuses%20of%20the%20Federal%20Notice-and-Comment%20Rulemaking%20Process.pdf>

<sup>34</sup> Sen. Elizabeth Warren, *Anti-Corruption and Public Integrity Act*, CONGRESS.GOV (August 21, 2018) <https://www.congress.gov/bill/115th-congress/senate-bill/3357>

<sup>35</sup> Lauren Lumpkin, *GWU president apologizes for ‘insensitive’ racial remark*, THE WASHINGTON POST (Feb. 3, 2020), [https://www.washingtonpost.com/local/education/gwu-president-apologizes-for-insensitive-racial-remark/2020/02/03/adf33ed4-46b4-11ea-8124-0ca81effcddb\\_story.html?carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-](https://www.washingtonpost.com/local/education/gwu-president-apologizes-for-insensitive-racial-remark/2020/02/03/adf33ed4-46b4-11ea-8124-0ca81effcddb_story.html?carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-)

In the case of the fabricated comments relied on by Chair Clayton at the SEC, we've already asked the SEC IG to investigate. We asked the IG to probe:

- Why did Chairman Clayton exclusively cite those letters fabricated by the industry lobby? Did this industry lobby help prepare Chairman Clayton's statement? What communications took place between the Chairman and this lobby, including those by his staff?
- Are there any genuine letters that bolster Clayton's position?
- Why has Chairman Clayton failed to acknowledge the preponderance of letters that oppose restrictions on shareholder resolutions? Was he made aware of these letters?

We have reason to believe that the IG is investigating this issue. We invite the committee to inquire about the status of this investigation. Given his reliance on these fabricated letters, we also believe that Chair Clayton should withdraw this rule proposal. We ask the committee to join our request.

As a matter of procedure, where a commissioner cites a letter as important grounds for adopting a policy position, the agency staff should make a minimum good faith effort to validate its authenticity. In some cases, such validation might be demonstrated from within the four corners of the letter, such as if it is from a trade association or civil rights organization. In other cases, it might require an email or telephone call to the comment filer to confirm that the person exists and acknowledges sending the letter. Presumably, such a person would find this outreach encouraging, knowing that his or her views were helping to shape policy. Where the staff finds questions with the provenance of letters, or where civic organizations or the media have highlighted irregularities, we urge the Inspectors General to investigate.

Regulatory agencies provide an invaluable service to the public by implementing safeguards. It is essential they are listening to the genuine voices of everyday citizens.

Thank you for the opportunity to present Public Citizen's views on this important subject.

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