

Guest view: SEC pick's banking ties are an asset

Securities blanket

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Despite consternation from some quarters, Jay Clayton's experience representing Wall Street firms and other public companies is an asset not a liability for the Securities and Exchange Commission.

When President Donald Trump nominated the Sullivan & Cromwell partner in early January to lead the agency, the announcement invited some immediate criticism and dire predictions. The main complaint is that Clayton's background advising the likes of Goldman Sachs makes him an inappropriate candidate to police the securities markets. The [Law360 blog](#) posited that the choice signals an SEC that will be "enforcement light."

Just as the Senate Banking Committee scheduled a confirmation hearing for later this month, a coalition of groups campaigning to block Clayton's nomination said the financial interests he recently disclosed, along with plans to avoid participating in matters that could present conflicts of interest, "raise grave doubts about his commitment to protecting investors."

Any SEC chair demands careful vetting, especially considering recent market movements and the deregulatory tone of the Trump administration. That said, unless the government is prepared to disallow virtually any candidate with any relevant experience and investments, the condemnation of Clayton's nomination is misguided.

Investor protection is an integral piece of the agency's mission and one Clayton already has pledged to uphold. Equally important components of the SEC's stated mission are obligations to maintain fair, orderly and efficient markets, as well as to facilitate capital formation.

By all accounts, Clayton is a talented and well-respected attorney. His deep involvement in matters of corporate finance, mergers and acquisitions and corporate governance will be valuable to the SEC and to the public interest. Clayton's background is by no means disqualifying. To think otherwise presumes, dangerously and unfairly, that his personal and professional integrity is by definition compromised by having represented large financial-services firms.

History in fact demonstrates that previous nominees, whatever their backgrounds might suggest about possible bias or agenda – whether they might be too "soft" on enforcement, too accommodating to Wall Street, or just too inexperienced – have generally defied those highly charged prognoses and provided admirable leadership. Often, this occurred precisely in the areas where critics initially found fault.

Perhaps the best example is John Shad. In 1981, President Ronald Reagan nominated the former vice chairman of the brokerage firm E. F. Hutton to lead the SEC. The first Wall Street executive ever to head the agency, Shad brought a decidedly deregulatory philosophy and openly stated that he "believed industry can regulate itself better than the government can."

His views, which were controversial at the time, put him into direct conflict with John Dingell, the powerful chairman of the House Energy and Commerce Committee, before which Shad was called to testify with regularity. The tension between them was legendary.

By the time Shad's tenure ended, however, he had presided over what was then the most aggressive crackdown on insider trading in the SEC's history. He also shepherded the Reagan administration's support for the Insider Trading Sanctions Act of 1984, the first major piece of muscle added to the agency's enforcement arsenal in decades. And he ushered in important regulatory and technological reforms like the Electronic Data Gathering and Retrieval System, or EDGAR, the reporting tool used today.

And there are more examples of nominees defying low expectations. David Ruder, a law professor, followed Shad. Generously described as someone with limited experience in the "real world" of securities markets, the *New York Times* opined that he was someone the White House expected to be little more than a "good caretaker." Yet, the law professor brought an energy, style and intellectual rigor to the commission that even its toughest critics came to admire.

The Oct. 19, 1987, market crash tested his leadership. Ruder responded with aggressive proposals to address market capacity and coordination and which helped mitigate volatility in trading volume. In this instance, as in many others, Ruder was independent and intellectually disciplined.

Richard Breeden, nominated by President George Bush at the age of 39, was a former partner at a large law firm whose most significant public-service accomplishment was leading a White House task force on financial-services regulation. Described at the time by the Los Angeles Times as “soft spoken” and by another observer as a “blank slate,” Breeden – under whom I served as enforcement chief – directed successful initiatives to clean up abuses in the savings and loan industry and spearheaded the effort to pass the Remedies Act, which was the first piece of legislation empowering the SEC to impose financial penalties on anyone who violated federal securities laws.

From the first woman to chair the SEC, Mary Schapiro, a lifelong regulator with no private-sector experience, to Arthur Levitt (under whom I also led enforcement) and William Donaldson, both former Wall Street insiders without legal backgrounds, the agency has been led in recent memory by talented and dedicated public servants with diverse but invaluable professional experiences. Each faced unforeseen challenges and crises while leading the SEC from unique backgrounds.

Clayton brings experience in all aspects of the agency’s mission, including significant enforcement matters. He has advised clients with serious problems that have played out on an uncomfortably public stage, but that is not something for which he should be asked to apologize. Instead, Clayton’s expertise advising Wall Street should help ensure a successful stewardship of the SEC.

William McLucas was director of the SEC’s Division of Enforcement (1989-98), serving under SEC Chairmen Richard Breeden and Arthur Levitt. During his more than 20 years at the SEC, he also served under Chairmen John Shad and David Ruder, as well as Mary Schapiro when she was a commissioner. McLucas is now partner and chair of WilmerHale’s securities department.

Context News

Jay Clayton, a partner at Sullivan & Cromwell who was nominated by President Donald Trump on Jan. 4 to head the Securities and Exchange Commission, is scheduled to appear before the U.S. Senate Banking Committee on March 23 for a confirmation hearing.

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