

**Second Public Commentary  
Regarding  
SEC Public Consultation Concerning  
Proposed Amendment to Exchange Act Rule 21F-6  
(in triplicate)**

For the attention of:  
The Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington DC 20549-1090  
United States of America

**BY COURIER & EMAIL**

**Reference:** File Number S7-16-18

**Additional Comments  
pertaining to:**

<https://www.sec.gov/rules/proposed/2018/34-83557.pdf>

More specifically the proposed amendment to reduce awards for whistleblowers in large monetary recoveries and its wider implications.

**44. Cautionary Note, Disclaimer, Forward-Looking Statements and Format**

- 44.1. Please refer to the last page of this letter regarding Cautionary Note, Disclaimer and Forward-Looking Statements before reading the below.
- 44.2. Please note that all comments and observations below is based on my interpretation of the facts and circumstances.
- 44.3. This Second Public Commentary is made in addition to my initial Public Commentary dated 4 September 2018 - <https://www.sec.gov/comments/s7-16-18/s71618-4355164-174072.pdf> - and I here follow the numbering and use the same definitions and abbreviations.

## 45. Executive Summary

- 45.1. When I decided to become a whistleblower under the SEC Whistleblower Program I was under the impression that the SEC and the whistleblower were on 'the same page', i.e. that the SEC wanted high quality information in order to hold serious offenders accountable for severe breaches of the securities law and related fraudulent activities.
- 45.2. I have since learnt that the SEC has through cronyism and politics been infiltrated by a Wall Street establishment (the "**Wall Street Establishment**") who is systematically ignoring fundamental issues of conflicts of interest and is indifferent to fundamental ethical considerations and its lack of impartiality in executing their public duties.
- 45.3. The aim of this Wall Street Establishment is to undermine SEC investigations against themselves 'from within' the SEC itself, in order to protect their 'privilege' to defraud vulnerable Main Street Investors in large M&A-transactions.
- 45.4. Given that I have reasonable grounds to suspect that the SEC is operating in a corrupt manner under the current administration, as further described below, I hereby officially put The Senate Banking, Housing and Urban Affairs Committee (the "**Committee**") on notice by blowing the whistle on the SEC, Chairman Clayton and the wider Wall Street Establishment.
- 45.5. It cannot be acceptable in a democracy that large and influential institutions like Goldman Sachs, Cleary Gottlieb, Sullivan & Cromwell as well as certain well-connected 'high net worth individuals' are allowed to be too powerful to be above the law and cannot be held accountable for their very serious misconduct by the authorities who are supposed to regulate them.
- 45.6. Below I will explain the chain of events which according to me has led to the SEC being infiltrated by the Wall Street Establishment.

### *Madoff - SEC failed to take action despite numerous whistleblower warnings*

- 45.7. Please allow me to first remind the Committee of the whistleblower Harry M. Markopolos who with supporting documents alerted the SEC in 2000, 2001, and 2005 in relation to Bernard Madoff's massive Ponzi scheme, but each time, the SEC ignored him or only gave his evidence a cursory investigation<sup>1</sup>, which ultimately caused huge additional losses to vulnerable Main Street Investors as the scam went on for many, many years before being uncovered 'by itself' on 10 December 2008<sup>2</sup> as Madoff ran out of cash to pay off investors calling their capital (redemptions) as the stock market plummeted.

### *Madoff - SEC Chairman Schapiro widened the SEC subpoena authority*

- 45.8. As a response to SEC's failures to detect Madoff's massive fraud, but more importantly, SEC's failure to take the repeated whistleblower warnings from Markopolos seriously, the SEC Chair at the time, Mary Schapiro, made a radical change in 2009, allowing delegated subpoena authority to a broader number of regional enforcement division managers, to make the division more nimble and streamline the opening of cases.

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<sup>1</sup> [https://en.wikipedia.org/wiki/Harry\\_Markopolos](https://en.wikipedia.org/wiki/Harry_Markopolos)

<sup>2</sup> [https://en.wikipedia.org/wiki/Bernie\\_Madoff](https://en.wikipedia.org/wiki/Bernie_Madoff)

*The Financial Crisis - the Dodd Frank Act - the SEC Whistleblower Program*

- 45.9. As a further response to the wider financial crisis, created and triggered to a large extent by the unethical behaviour of the Wall Street Establishment, Congress introduced the Dodd Frank Act and the SEC Whistleblower Program in order to early detect misconduct from 'insiders', by incentivizing knowledgeable potential whistleblowers with a reward of 10-30% of any Recovery over \$1 million.
- 45.10. As described below in more detail, the Wall Street Establishment is now in the process of undermining the exposure of large cases of fraud, like the one related to Madoff, but more importantly, fraud committed by the Wall Street Establishment itself in complicated M&A-transactions, by amongst other introducing the Reduced Award<sup>3</sup> for whistleblowers exposing such large cases of fraud.

*Goldman Sachs held accountable under the Dodd Frank Act*

- 45.11. As the 'clean-up' after the financial crisis gained momentum under Dodd Frank, Goldman Sachs "*faced a near existential threat*" according to the Financial Times<sup>4</sup>, when some of their immoral working practises came into light.
- 45.12. Subsequently, Goldman (as a company and not any individual working for Goldman participating in the scam) was forced by the SEC under the Obama administration in 2010 to pay \$550 million to settle a claim regarding misleading investors in relation to the sale of a subprime mortgage product, i.e. a clear example of corporate responsibility (as opposed to 'individual' responsibility).
- 45.13. At the time, the SEC's director of enforcement Robert S. Khuzami stated; "*This settlement is a stark lesson to Wall Street firms that no product is too complex, and no investor too sophisticated, to avoid a heavy price if a firm violates the fundamental principles of honest treatment and fair dealing*"<sup>5</sup>.

*Goldman Sachs 'hit back' against the authorities*

- 45.14. It is likely that the above 'undesired' settlement became the 'trigger' for Lloyd Blankfein and the wider Wall Street Establishment to 'hit back' at the authorities in order to make sure that the 'firm' could never be held responsible for (alleged) individual misconduct again and subsequently President Trump became their 'access ticket' to infiltrate the SEC<sup>6</sup>; like a 'hostile takeover' of the authorities that are supposed to regulate them and protect the vulnerable and defenceless from their very own abuse.
- 45.15. There has under Trump's presidency been a considerable presence at the White House of people associated with Goldman Sachs; Gary Cohn (former president and Chief Operating Officer), Steve Bannon (former Goldman Sachs investment banker in the Mergers and Acquisitions Department), Anthony Scaramucci (formerly at investment banking, equities, and private wealth management divisions), Dina Powell (former managing

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<sup>3</sup> As described and defined in my initial Public Commentary on page 11 under paragraph 8.3: <https://www.sec.gov/comments/s7-16-18/s71618-4355164-174072.pdf>

<sup>4</sup> <https://www.ft.com/content/76cd99b8-e0f8-11e8-a6e5-792428919cee>

<sup>5</sup> <https://www.nytimes.com/2010/07/16/business/16goldman.html>

<sup>6</sup> And the DoJ.

director) and Steven Mnuchin (former Chief Information Officer), now the U.S. Secretary of the Treasury<sup>7</sup>.

*Trump Elected - the 'keys' to the SEC handed over to the Wall Street Establishment*

45.16. President Trump was sworn in on 20 January 2017. As explained in more detail below, Trump has subsequently appointed Clayton, at the time a key Goldman Sachs legal advisor at Sullivan & Cromwell, as the Chairman of the SEC, along a significant number of other key individuals from the Wall Street Establishment, to be in charge of other important American institutions and key governmental functions.

45.17. Implications in relation to having the Wall Street Establishment be entrusted to (allegedly) protect the interests of vulnerable Main Street Investors are further described below.

*Removal of the widened subpoena authority by the Wall Street Establishment*

45.18. Even before Clayton had been appointed as SEC Chairman, in the first quarter of 2017, the SEC Commissioner Piwowar (R), acting as interim SEC Chairman at the time, removed the above referred to broadened subpoena authority in a clandestine way so that the "enforcement division's associate directors will no longer have authority to issue subpoenas or formally launch probes"<sup>8</sup>, and thereby moved this critical authority from SEC enforcement officials nationwide over to two "Enforcement Co-Directors"<sup>9</sup> who stands under Clayton's direct supervision.

45.19. As described below in more detail, the Wall Street Establishment has accordingly and in effect removed this extended subpoena authority over to Clayton in order to be able to 'shield' the Wall Street Establishment from unwanted investigations into their own misconduct.

*Commissioner Peirce's Speech - "The Why Behind the No"*

45.20. Shortly after being appointed by President Trump, Commissioner Peirce held a speech on 11 May 2018 titled "The Why Behind the No"<sup>10</sup>, which can best be described as a 'smorgasbord' of arguments to shoot down any and all SEC investigations into misconduct committed by the Wall Street Establishment.

45.21. This 'smorgasbord' is further described in more detail below and relates primarily to a number of carefully crafted key 'hurdles' against pursuing the Wall Street Establishment for its misconduct, namely; enforcement, investigations, arbitrary 'priorities' of investigative targets, subpoena powers, jurisdiction, property rights, SEC's mandate from Congress, time limitations and attorney-client privilege.

*Kokesh v. SEC ruling - arbitrary time limitations*

45.22. On 5 June 2017, the US Supreme Court ruled in *Kokesh v. SEC* that SEC's disgorgement power constitutes a penalty subject to a five-year statute of limitations,

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<sup>7</sup> <https://en.wikipedia.org/wiki/Wiki> and <http://fortune.com/2018/03/07/gary-cohn-resigns-trump-goldman-sachs/>

<sup>8</sup> <https://www.reuters.com/article/us-usa-sec-enforcement-idUSKBN15V2PI>

<sup>9</sup> Stephanie Avakian and Steven Peikin.

<sup>10</sup> <https://www.sec.gov/news/speech/peirce-why-behind-no-051118>

effectively allowing fraudsters to keep all ill-gotten gains made prior to the 5 years before being 'caught-out'.

- 45.23. The benefits of this ruling to the Wall Street Establishment is simply vast and explained in more detail below.

*The CHOICE Act*

- 45.24. On 8 June 2017, the House of Representatives passed the CHOICE Act<sup>11</sup>, to replace Dodd-Frank and remove regulations on the financial sector (i.e. on the Wall Street Establishment). Speaker Paul Ryan expressed his opinion on the bill saying that it would "look out for the people who work hard and do the right thing". At a first glance, the CHOICE Act can give the impression to give the SEC more weapons to punish fraudulent activities.

- 45.25. The opposite is however true as the CHOICE Act will severely diminish the SEC's ability to target widespread corruption or structural compliance issues and will in fact instead protect the likes of Goldman Sachs and the wider Wall Street Establishment at the expense of the vulnerable Main Street Investors the SEC is appointed to protect.

*SEC's 'new priorities' under the Wall Street Establishment - Retail Rhetoric*

- 45.26. Under Clayton's Chairmanship of the SEC, there has been a clear shift in focus by holding "individual" offenders accountable and protect "retail investors", as opposed to pursuing corporations like Goldman Sachs who are typical 'wholesale' market participants.

- 45.27. As described further below, this rhetoric is aimed at protecting the Wall Street Establishment from being held accountable for their own misconduct.

*The Reduced Award for large case whistleblowers*

- 45.28. Within roughly a year of Clayton taking office as SEC Chairman, on 28 June 2018, he enabled a proposal to drastically reduce awards for whistleblowers exposing large cases of fraud, 'developed' (as it appears) by the very same people who are (ought to be) the target of such investigations (i.e. parts of the Wall Street Establishment).

- 45.29. As described below in more detail, the Wall Street Establishment is hereby accordingly making efforts to protect themselves from exposure to unwanted investigations against their own misconduct.

*Rosenstein's huge favouritism to the Wall Street Establishment*

- 45.30. In early 2019 it was reported that the US deputy attorney-general Rod Rosenstein had implemented a 'new approach' at the DoJ by ordering US prosecutors to avoid pursuing companies being investigated for the same wrongdoing by multiple regulators and countries.

- 45.31. Below I will describe in more detail how this 'new approach' will benefit the Wall Street Establishment at the expense of vulnerable Main Street Investors and significantly increase the risk for a new financial crisis developing.

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<sup>11</sup> Creating Hope and Opportunity for Investors, Consumers and Entrepreneurs Act

### *Executive Conclusion*

- 45.32. I have, just like Markopolos in relation to Madoff, on numerous occasions provided the SEC with extensive supporting documents and exposed how the 'investment banking industry', in close collaboration with the 'industry of legal services', i.e. the Wall Street Establishment, is systematically and in orchestration defrauding vulnerable Main Street Investors in sophisticated large M&A-transactions, without the SEC taking action, just in the same way as they treated the repeated warnings from Markopolos in relation to Madoff.
- 45.33. The key difference this time around however, is that the Staff at the SEC seems both keen to take action and understand what I have explained to them, but the Wall Street Establishment, who is the target of such investigations and now 'controls' the internal process at the SEC, is putting a stop to it, by relying on the 'smorgasbord' of hurdles they have created in order to 'shield' themselves.
- 45.34. A recent article in the Financial Times was headed "*It is a mystery why bankers earn so much*" with the subheading "*M&A advisers are paid millions for making boards of directors feel comfortable*"<sup>12</sup>.
- 45.35. In light of the working practices I have exposed to the SEC in relation to the Case<sup>13</sup>, this is no "*mystery*" at all. By systematically breaching fiduciary duties and orchestrating false and misleading scenarios, Big Businesses, their investment bankers, dependent lawyers and auditors have created a 'license' to shift money from defenceless Main Street Investors over to themselves; a highly lucrative exercise and a 'privilege' they are now keen to protect.
- 45.36. Given that the Wall Street Establishment has effectively made the SEC into a corrupt institution by doing all in their power to prevent such SEC investigations from materialising, I believe that the Committee has an obligation to take this matter seriously and act without delay, as only Congress will be able to hold the Wall Street Establishment accountable for their deeds and implement a permanent change to the way in which they operate.
- 45.37. Congress cannot expect an individual like me to all alone take on the Wall Street Establishment who have billions of dollars in monthly cashflows at their disposal, over and above a limitless network, which reaches, quite literally, to the very top of the US government.
- 45.38. In the interest of all Main Street Investors, Republicans as well as Democrats, I hereby urge the Committee to not repeat the mistakes of the past by taking a complaisant approach to the very serious matters at hand and call a hearing in order to transparently put light on the very serious misconduct I have exposed to the SEC which is now being internally concealed by the Wall Street Establishment in order to protect them from being held accountable.

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<sup>12</sup> <https://www.ft.com/content/760fb4c2-7eb3-11e8-bc55-50daf11b720d>

<sup>13</sup> In addition to another case.

## 46. Recapitulation Reduced Award - Clayton's Background - Conflicts of Interest

### *Recapitulation of Reduced Award*

- 46.1. For the convenience of the Committee, as a high-level recapitulation, Clayton has enabled a proposal for large SEC Recoveries (in excess of \$100m), brought to attention by whistleblowers, i.e. fines pertaining to large cases of fraud, that the SEC Commission, where Clayton has the casting vote, shall at their absolute discretion with a simple majority<sup>14</sup> be able to arbitrarily reduce such whistleblower awards from the Current Award Rule<sup>15</sup>, down to the Proposed Award Rule<sup>16</sup>.
- 46.2. A clandestine section of the wording of the Proposed Award Rule caters for the ability of the same simple majority of the Commission to further subjectively lower such whistleblower awards even further; "*we recognize that future experience in the years ahead could suggest that some adjustment is appropriate*"<sup>17</sup>.
- 46.3. In other words, if the Reduced Award were to be adopted, there will be nothing to prevent Clayton<sup>18</sup> from subsequently forcing through a further reduction in award<sup>19</sup> for large Recoveries, to literally a fraction of today's level, ultimately undermining exposure of misconduct identified by such whistleblowers related to such large scale fraud.
- 46.4. If Clayton gets his way, such misconduct will remain hidden from the authorities, to the unwarranted benefit of the Wall Street Establishment (who commits such large scale fraud) at the expense of the defenceless Main Street Investors the SEC is de facto appointed to protect.
- 46.5. It has to be recognised that anyone from (or supportive of) the Wall Street Establishment are aligned to prevent an obligation to pay 100% of a potential fine plus likely steep penalties on top, in addition to mitigate reputational consequences. Therefore, the Wall Street Establishment will always be incentivised to prevent an investigation and in a better position to do so compared with the alleged risk of a whistleblower<sup>20</sup> abusing the authorities or process in order to 'secure' an unjustified award.

### *Recapitulation of Clayton's Background*

- 46.6. According to Clayton, who in my opinion, given his background, is ultimately an 'ambassador' of the Wall Street Establishment, the Reduced Award will "*help strengthen*"<sup>21</sup> the Whistleblower Program and therefore better protect vulnerable Main Street Investors, who are the ultimate victims of large scale fraud.
- 46.7. As explained in detail in my Public Commentary in relation to the Case I have brought to the attention of the Whistleblower Program, it is my belief that an implementation of the Reduced Award will have the direct opposite effect and instead help

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<sup>14</sup> i.e. more than 50% or when the Commission consists of its full 5 members, a minimum of 3 out of 5.

<sup>15</sup> A *minimum* of 10% up to a maximum of 30%.

<sup>16</sup> A *minimum* of \$30m, up to a 'potential' *maximum* of 10% of the Recovery.

<sup>17</sup> Page 21 in; <https://www.federalregister.gov/documents/2018/07/20/2018-14411/whistleblower-program-rules#footnote-113-p34715>

<sup>18</sup> Together with two other Commissioners.

<sup>19</sup> i.e. below the Reduced Award.

<sup>20</sup> Who may only be entitled to 10-30% of a potential such Recovery, or soon perhaps considerably less given Clayton's Reduced Award in relation to large cases of fraud and potential subsequent further arbitrary "*adjustments*" as Clayton see fits. In this context I hereby declare my own potential conflicts of interest in seeking an award as well as being beneficial owner to entitlements to compensation.

<sup>21</sup> <https://www.sec.gov/news/press-release/2018-120>

strengthen the shareholders of Big Businesses (like company B), large investment banks (like D) and 'high net worth' individuals (like Mr. H) as well as their Big Law advisors (like law firm E and Sullivan & Cromwell) who may commit fraud on such large scale.

46.8. Clayton has spent more or less his entire career (more than 20 years) as a "transactional lawyer" at Sullivan & Cromwell<sup>22</sup>, specializing and advising clients in "mergers and acquisitions transactions"<sup>23</sup> ("M&A") and has accordingly accumulated a family wealth worth up to "\$130.4 million"<sup>24</sup>.

46.9. The SEC Chairman is "an elite lawyer who has defended big banks for their financial crisis-era misbehavior"<sup>25</sup>, and among his former lucrative clients are many 'prominent' Wall Street firms, such as Goldman Sachs. As an example, in 2016, Clayton earned "\$7.6 million"<sup>26</sup> from Sullivan & Cromwell partly in providing such related services.

#### *Conflicts of Interest - The Reduced Award*

46.10. It is well known that the likes of Goldman Sachs have specialised in providing advice in relation to such large transactions which the Reduced Award is targeting, or as the Financial Times recently put it; Goldman "became formidably powerful by discreetly serving wholesale clients"<sup>27</sup>.

46.11. In other words, if an organisation like Goldman Sachs (and their advisors like law firm E or Sullivan & Cromwell) were to be involved in a fraud, it is highly likely that there are billions of dollars at stake as opposed to a few million, like in relation to the 1MDB situation for example (see further below).

46.12. In a statement made by Clayton on 30 July 2018 in relation to the proxy process, Clayton referred to areas which "may warrant particular attention" which include whether "there are conflicts of interest, including with respect to related consulting services provided by proxy advisory firms, and, if so, whether those conflicts are adequately disclosed and mitigated"<sup>28</sup>; i.e. Clayton recognises the importance of avoiding conflicts of interest and transparent disclosure in relation to other parties; a key question for the Committee is with what degree of independence does he exercise on such issues himself when it comes to the 'investment banking industry' and the dependent 'industry of legal services' he has built his fortune on?

#### *Who 'developed' the Reduced Award and why?*

46.13. It is currently unknown to me who came up with the idea to 'develop' the deceptively worded Proposed Award Rule and therefore 'produced' the Reduced Award alongside the enablers at the level of the SEC Commission; i.e. Clayton, Piwowar (R) and Peirce<sup>29</sup> (R).

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<sup>22</sup>[https://archive.org/details/CSPAN3\\_20170324\\_060000\\_SEC\\_Nominee\\_Jay\\_Clayton\\_Defends\\_Prior\\_Work\\_as\\_Lawyer\\_for\\_Goldman\\_Sachs/start/5400/end/5460](https://archive.org/details/CSPAN3_20170324_060000_SEC_Nominee_Jay_Clayton_Defends_Prior_Work_as_Lawyer_for_Goldman_Sachs/start/5400/end/5460)

<sup>23</sup> [https://en.wikipedia.org/wiki/Jay\\_Clayton\\_\(attorney\)](https://en.wikipedia.org/wiki/Jay_Clayton_(attorney))

<sup>24</sup> <https://www.reuters.com/article/us-sec-nominee/sec-nominee-clayton-vows-separation-from-his-wall-street-law-firm-idUSKBN16F24W>

<sup>25</sup> [https://baltimorejewishlife.com/news/news-detail.php?SECTION\\_ID=2&ARTICLE\\_ID=82190](https://baltimorejewishlife.com/news/news-detail.php?SECTION_ID=2&ARTICLE_ID=82190)

<sup>26</sup> [https://en.wikipedia.org/wiki/Jay\\_Clayton\\_\(attorney\)](https://en.wikipedia.org/wiki/Jay_Clayton_(attorney))

<sup>27</sup> <https://www.ft.com/content/04de0efa-501a-11e9-9c76-bf4a0ce37d49>

<sup>28</sup> <https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process>

<sup>29</sup> Commissioner Stein (D) and Jackson (D) voted against the proposed Reduced Award.



46.14. It appears to me likely that it is lawyers (current and/or former) from Big Law firms like Clayton's own former firm Sullivan & Cromwell and law firm E who are behind the 'creation' of the Reduced Award. This is despite the fact that they typically work with and specialise in protecting large clients in situations of sophisticated fraud, i.e. an obvious situation of conflicts of interest as it is inherently in their self-interest to *weakening* the Whistleblower Program by *discouraging* large case whistleblowers to come forward and expose misconduct committed by them and their lucrative clients in orchestration.

46.15. It is therefore my belief that the Reduced Award is ultimately a 'product' created for and developed by the Wall Street Establishment, who is out to protect the financial and reputational interests of large investment banks (like investment bank D) and Big Law firms (like E and Sullivan & Cromwell) as well as their important Big Business clients, like Company B and 'high net worth' individuals like Mr. H, as described in my Public Commentary<sup>30</sup>.

46.16. To put it in another way; for any arm's length observer, it is obviously totally unacceptable that representatives of a law firm like E, who stands accused of committing large scale fraud (in close collaboration with investment bank D) in relation to the Case, are allowed to draft the Proposed Award Rule and therefore 'develop' the Reduced Award, given that they themselves are (or perhaps ought to be) subject to such investigations by the SEC.

*Reduced Award is what is "reasonably necessary" to expose large cases of fraud?*

46.17. According to Clayton, the Reduced Award of \$30m<sup>31</sup>, is what is "*reasonably necessary*" to encourage all lines of whistleblowers to come forward with large fraud cases to the Whistleblower Program, like for example the one related to the 1MDB situation, where Clayton's former key client Goldman Sachs is at the very centre of events.

46.18. Below I will explain why I do not share Clayton's biased, at best naïve analysis, as the Reduced Award will obviously undermine the exposure of fraud related to such large corporations to the unwarranted benefit of the likes of Goldman Sachs and their service providers like Sullivan & Cromwell and law firm E.

#### **47. Goldman Sachs and the 1MDB situation - implications of the Reduced Award**

##### *Background*

47.1. As widely reported, Goldman Sachs was retained by the state of Malaysia and took home fees amounting to "*\$600m for underwriting three 2012-13 1MDB bond offerings worth \$6.5bn*"<sup>32</sup>.

47.2. The Financial Times subsequently reported that a Goldman Sachs Partner<sup>33</sup>, Tim Leissner, "*has pleaded guilty*" to "*money-laundering and bribery offences*", and that a managing director at Goldman<sup>34</sup>, Roger Ng, has "*been criminally charged with helping to*

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<sup>30</sup> <https://www.sec.gov/comments/s7-16-18/s71618-4355164-174072.pdf>

<sup>31</sup> An amount less than a quarter of Clayton's own to date accumulated family wealth generated by amongst other providing services to Goldman Sachs.

<sup>32</sup> <https://www.ft.com/content/76cd99b8-e0f8-11e8-a6e5-792428919cee>

<sup>33</sup> Now former Goldman Sachs Partner.

<sup>34</sup> Now former managing director at Goldman Sachs.

*loot 1MDB, a Malaysian state investment fund that authorities allege was victim of one of the biggest frauds of all time”.*

- 47.3. In other words, here is an illustrative real-life-situation of a large fraud case where Clayton’s former key client Goldman Sachs stands accused of being at the very centre of events.

*Whistleblower award under Current Award Rule vs. Clayton’s Proposed Award Rule*

- 47.4. For the sake of the argument, let’s assume that a potential whistleblower a few years ago<sup>35</sup> came across information which could have uncovered the alleged fraud in relation to 1MDB earlier, i.e. before most of the stolen money were squandered, just in the same way the SEC would have prevented huge losses for vulnerable Main Street Investors in relation to the Madoff scam, had they acted earlier on the material tips supplied by the whistleblower Markopolos as described above under paragraph 45.7 above.

- 47.5. In hindsight, we know that the Malaysian government is now seeking damages from Goldman Sachs of \$7.5 billion<sup>36</sup>. Let us further assume that this amount will be the final cost for Goldman to ‘clean up’ the 1MDB situation (the Recovery), i.e. the total fine ultimately imposed by the SEC and the DoJ<sup>37</sup>.

- 47.6. Under the Current Award Rule, a potential whistleblower would be entitled to a *minimum* of 10% up to a *maximum* of 30% of a potential Recovery by successfully blowing the whistle to the SEC about the 1MDB fraud.

- 47.7. In other words, if a whistleblower were to hand over his or hers ‘know-how’ about this fraud to the authorities (the SEC Whistleblower Program) under the Current Award Rule, s/he would be entitled to a minimum award of \$750 million (10%) up to a maximum award of \$2,250 million (30%) for exposing this fraud<sup>38</sup>, leading to the Recovery.

- 47.8. Under an implemented Reduced Award in accordance with the Proposed Award Rule, promoted by Chairman Clayton as “*reasonably necessary*” for this potential whistleblower to come forward in this regard, s/he would ‘perhaps’ end up with \$30 million<sup>39</sup>.

*The Potential Whistleblower’s Perspective*

- 47.9. With an implemented Reduced Award, the above scenario leaves the potential whistleblower with two principal options; either (1) provide the crucial information uncovered related to 1MDB to the SEC Office of the Whistleblower and ‘hope’ getting an award of \$30 million<sup>40</sup>; or alternatively (2) approach the Goldman Sachs Partner Leissner and ask how much he/Goldman would be willing to pay the potential whistleblower for

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<sup>35</sup> Just like Markopolos in relation to Madoff.

<sup>36</sup> <https://www.ft.com/content/11572a34-045e-11e9-9d01-cd4d49afb3e3>

<sup>37</sup> Clearly, if the Wall Street Establishment will get their way by only holding the ‘individual’ Leissner accountable and not the ‘firm’ Goldman Sachs, the probability of a such large and appropriate fine ever materializing seems rather slim.

<sup>38</sup> Depending on the set of factors described on page 12, paragraph 9 in my Public Commentary.

<sup>39</sup> Allegedly up to a ‘potential’ *maximum* of 10% of the Recovery, but please note that the SEC Commissioner Stein herself states that she “*believe that the means by which the proposal provides such flexibility would have the practical effect of serving as a cap.*”, i.e. a maximum of \$30 million, and as described above under paragraph 46.2, a deceptive section in the Reduced Award states; “*we recognize that future experience in the years ahead could suggest that some adjustment is appropriate*”, i.e. it could be even lower at the ultimate discretion of the conflicted SEC Chairman (in light of his longstanding relationship to Goldman Sachs) given his casting vote at the level of the Commission.

<sup>40</sup> Subject to Clayton’s ultimate discretion who has served the interests of Goldman Sachs most of his commercial life.

‘acquiring’ the sensitive information and know-how in question and thereby make sure that the authorities will not be alerted.

#### *Implications of Clayton’s Reduced Award*

47.10. In accordance with the above, if Clayton’s Reduced Award had been implemented at the time, the potential whistleblower would in a ‘best case’ scenario ‘risk’ ending up with only 4.0%<sup>41</sup> of what s/he would get under the Current Award Rule, and in a ‘worst case’ scenario, as ‘little’ as 1.3%<sup>42</sup>, i.e. a reduction (dis-incentivisation) of in between 96.0% and 98.7%<sup>43</sup>.

47.11. In monetary terms, the reduction for a potential whistleblower under Clayton’s Reduced Award would consequently in this scenario be in between \$720 million and \$2,220 million; a significant amount.

47.12. Accordingly, under the Current Award Rule, the potential whistleblower would in a such scenario receive 24<sup>44</sup> to 74<sup>45</sup> times *more* than s/he would under Clayton’s Proposed Award Rule, through the Reduced Award.

#### *Goldman Sachs’ Perspective*

47.13. From Goldman Sachs’ perspective, by ‘silencing’ a potential whistleblower in relation to a situation like 1MDB by paying her/him, say, the same amount that Clayton alleges is “*reasonably necessary*” to expose the misconduct in question, i.e. the Reduced Award of \$30 million<sup>46</sup>, Goldman will, given the above assumptions, ‘save’ \$7,470 million compared to the claim that the Malaysian state is currently pursuing against them. This is clearly significant, even for a firm like Goldman Sachs.

47.14. Even if Goldman Sachs were to pay the potential whistleblower say \$100 million for the sensitive information, more than 3 times the Reduced Award, they would still ‘save’ some 98.7%<sup>47</sup>. The penal element is non-existent and from a financial perspective it actually incentivises misconduct.

47.15. As described in my initial Public Commentary, by effectively ‘outbidding’ the SEC for sensitive information in a clandestine way behind the scenes and silence the potential whistleblower before the sensitive information reaches the authorities, the top management of Goldman Sachs would likely further, over and above the ‘savings’ alluded to above, as an additional ‘bonus’, prevent a fall in Goldman Sachs’ market value by many billions of dollars, so the ‘saving’ in this context is simply vast.

47.16. To illustrate the impact on the Goldman Sachs share price from a reputational and financial perspective, during October and November 2018<sup>48</sup>, it lost approx. one third of its

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<sup>41</sup> \$30m/\$750m = 4.0%

<sup>42</sup> \$30m/\$2,250m = 1.3%

<sup>43</sup> Assuming a simple majority of the Commissioners does not suddenly decide “*that some adjustment is appropriate*” and lowers it even further.

<sup>44</sup> \$720m/\$30m

<sup>45</sup> \$2,220m/\$30m

<sup>46</sup> A certain amount is obviously worth much more than an uncertain amount in an unknown distant future to a potential whistleblower and a such ‘back-door-deal’ would of course mean that the potential whistleblower would get ‘cash in hand’ straight away.

<sup>47</sup> 1-(\$100m/\$7,500m)

<sup>48</sup> A time period during which the 1MDB situation became a focus of the media.

market capitalisation<sup>49</sup> (a wipe-out of more than \$20 billion), a significant portion of which can likely be related to the implications of the 1MDB situation.

- 47.17. Clearly, I do not know how much money someone like Leissner and his associates at Goldman Sachs have made from the 1MDB scheme, but it seems rather likely that \$30m is a relatively small amount of money in this context, for having this multi-billion dollar ‘issue’ go away, especially if one take into account the risk for the offenders facing a potential criminal investigation and decades in jail, as well as losing all their ill-gotten gains<sup>50</sup>.
- 47.18. As mentioned above, Goldman charged some \$600 million for their ‘services’ related to 1MDB<sup>51</sup> and in the fourth quarter of 2018 they “*set aside \$516m for litigation and regulatory costs, largely to do with 1MDB*”<sup>52</sup>. In other words, Goldman themselves seems to simply ‘value’ their responsibility in relation to this alleged fraud to correspond to roughly their fee, i.e. that Goldman ought to be allowed to walk away from this mess by simply handing back the money they ‘earned’ from the mandate.
- 47.19. In other words, to pay a potential whistleblower \$30 million to hide a situation like 1MDB, from Goldman’s own subjective ‘liability perspective’, they would instantly ‘protect’ some \$570 million worth of fees, over and above the other risk-related ‘savings’ alluded to above.
- 47.20. If the DoJ would agree to such a biased settlement<sup>53</sup>, it would mean that going forward, Goldman Sachs could be as reckless and immoral as they wanted and still be able, if their misconduct ever were to be exposed, simply ‘point finger’ at one or a few ‘penniless’ individual(s) within their organisation and hand back their fee, i.e. a huge potential upside with limited downside risk; an ideal situation for the Wall Street Establishment. In a such scenario, the CEO of Goldman could simply tell his employees; *‘do whatever you want, just makes sure that the top management and I do not know about it’*.
- 47.21. In relation to 1MDB, the Malaysian people were portrayed by Goldman Sachs as their ultimate client, but it now appears as if it was in fact the Prime Minister himself, Najib Razak and his extended network of corrupt officials, including a number of high-level Goldman Sachs employees (at least one Partner) who all enriched themselves at their expense.
- 47.22. Perhaps even more importantly, if Goldman Sachs manages to buy the silence of the potential whistleblower in this way by outbidding the SEC Whistleblower Program for the ‘know-how’, they would also be in a better position to be alerted earlier and cover up their tracks related to 1MDB and carry on with the same kind of illicit and highly lucrative activities also going forward, in an even more clandestine way, i.e. a further ‘added value’, to the detriment of the victims the SEC is supposed to protect.
- 47.23. The Committee must ask itself, if Goldman Sachs has been involved in widespread “*corruption*” stemming from “*money laundering*”, “*bribery*” and “*embezzlement*”, offences which a certain Goldman Sachs Partner<sup>54</sup> has pleaded guilty to already, why would they not,

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<sup>49</sup> Please refer to my Public Commentary, page 17-18, paragraph 14.6 - 14.13 for further details illustrating a such scenario in theory.

<sup>50</sup> Depending on the very short 5-year time limitations bizarrely stipulated by the US Supreme Court in *Kokesh vs. SEC*, see further below under paragraph 53.

<sup>51</sup> Which was apparently not enough given the subsequent events.

<sup>52</sup> <https://www.ft.com/content/4a95b018-65e3-11e9-a79d-04f350474d62>

<sup>53</sup> Which I personally find not unlikely given the reach and influence of the Wall Street Establishment, see further under paragraph 48.20 - 48.21.

<sup>54</sup> Now former Goldman Sachs Partner.

in light of the above, pay off a knowledgeable whistleblower in order to make sure that their 'little secret' remains hidden from the authorities?

*1MDB is not in any way a unique situation*

47.24. The above scenario is in no way unique and can easily be applied to other multi-billion-dollar cases of alleged fraud such as the one related to the Danske Bank whistleblower<sup>55</sup> or to me in relation to the Case for that matter, so the Proposed Award Rule is indisputably a very serious threat to concealing large cases of fraud, something Clayton and the wider Wall Street Establishment appears (for 'good' reasons) to be in favour of by promoting the Reduced Award.

*Clayton's perceived agenda*

47.25. In light of the above and Clayton's background with Big Law and in servicing the interests of Big Businesses, it is perhaps not surprising that Clayton and his 'friends' at the Commission are now pushing hard for implementing the Reduced Award for large case whistleblowers in order to try to 'shield' the highly lucrative 'industry of legal services' (the likes of Sullivan & Cromwell and law firm E) and the even more lucrative 'investment banking industry' (the likes of Goldman Sachs) on which they all prey<sup>56</sup>, from preventing potential large case whistleblowers to expose their sizable misconduct.

47.26. This again raises the very serious issue of conflicts of interest and lack of impartiality on Clayton's behalf in relation to promoting the Reduced Award.

*Conclusion Reduced Award*

47.27. So, the key question for the Committee simply boils down to; - *How much is it potentially worth to an institution like Goldman Sachs to make a multibillion dollar 'threat' like the one related to 1MDB disappear; more than \$30 million?* If the answer to this question hand on heart is yes, the Reduced Award will weaken the Whistleblower Program and help strengthen the likes of Goldman Sachs, not the other way around.

47.28. Therefore, how it can be argued by Clayton that the Reduced Award applied to the above scenario would "*help strengthen*" the Whistleblower Program and better protect vulnerable Main Street Investors<sup>57</sup>, requires further explanation.

47.29. It is also unclear how the Reduced Award would be an amount "*reasonably necessary*" to have a potential whistleblower come forward to the SEC (as opposed to cutting a 'back-door-deal' with the offender) in a situation like the one related to 1MDB, or a situation like Madoff for that matter.

47.30. In my opinion, Clayton must in this context explain in detail to the Committee his reasoning for promoting the Reduced Award in order to ensure that he is actually out to represent the interests of the general public he is appointed to protect and not that of the likes of Goldman Sachs and his former law firm Sullivan & Cromwell, and ultimately himself and the wider Wall Street Establishment.

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<sup>55</sup> <https://www.ft.com/content/78c7ab66-e9cf-11e8-885c-e64da4c0f981>

<sup>56</sup> As opposed to "*help strengthen*" the Whistleblower Program as misleadingly alleged by Clayton.

<sup>57</sup> In the 1MDB case the Malaysian people.

#### 48. Goldman Sachs 'defence strategy' for the 1MDB situation

*'Goldman is the victim alongside the Malaysian people'*

- 48.1. In a Bloomberg TV interview, the CEO of Goldman Sachs (David Solomon) stated that it is "obviously very distressing to see two former Goldman Sachs employees went so blatantly around our policies and so blatantly broke the law"<sup>58</sup>, i.e. that 'two former Goldman employees' went rogue behind the backs of the top management and that Goldman as an organisation has been equally as misled as the Malaysian people and is consequently totally innocent.
- 48.2. The Financial Times commented by referring to the above as a "carefully-choreographed strategy to paint Goldman as a victim of Mr Leissner's and Mr Ng's alleged criminality"<sup>59</sup>.
- 48.3. According to the DoJ indictment however, Mr Leissner has admitted acting "within the scope of his employment" at Goldman and "with the intent, at least in part, to benefit" the bank<sup>60</sup>, in the same way which led to the \$550 million fine against Goldman back in 2010.
- 48.4. Solomon later stated; "For Leissner's role in that fraud, we apologise to the Malaysian people"<sup>61</sup>, i.e. Goldman as an organisation is portraying itself as a totally innocent victim, alongside the Malaysian people, who have (as opposed to Goldman who has invoiced \$600 million for their 'services') lost many billions of dollars due to Goldman's alleged negligence<sup>62</sup>.
- 48.5. Subsequently, the Financial Times uncovered that Goldman's former CEO and Chairman, Lloyd Blankfein himself had at least once met with Jho Low who allegedly masterminded the vast 1MDB fraud and acted as the middle-man<sup>63</sup>.
- 48.6. The top management of Goldman Sachs is in my experience equally as indifferent to the interests of the Malaysian people as to defenceless minority shareholders in relation to large M&A-transactions, as long as they can charge their gigantic fees and preferably be indemnified by their clients who are allegedly making the lion share of the ill-gotten gains at the expense of vulnerable Main Street Investors.
- 48.7. Such indemnifications works pretty much like a 'circular reference', i.e. if the likes of Goldman ever were to be held financially liable for their misconduct, the ultimate cost will end up with their client, i.e. in the 1MDB case with the Malaysian people, or in the Case, with Company B.
- 48.8. From the Case it is well documented from extracted board minutes that when the one-billion-dollar Value Transfer took place, [REDACTED], Vice Chairman of [REDACTED], and Chief Executive Officer of investment bank D and [REDACTED] Global Mergers & Acquisitions in the Investment Banking Division of investment bank D, as well as the 'M&A specialist' [REDACTED] of law firm E attended in person

<sup>58</sup> <https://www.ft.com/content/7fcb86c2-e267-11e8-8e70-5e22a430c1ad#myft:my-news:page>

<sup>59</sup> <https://www.ft.com/content/9c6bb17a-e380-11e8-a6e5-792428919cee>

<sup>60</sup> <https://www.ft.com/content/a60d8468-e378-11e8-a6e5-792428919cee>

<sup>61</sup> <https://www.ft.com/content/4505dc68-199e-11e9-9e64-d150b3105d21>

<sup>62</sup> In other words, Goldman believe they have all the authority but no responsibility.

<sup>63</sup> <https://www.ft.com/content/9c6bb17a-e380-11e8-a6e5-792428919cee>

as that alleged fraud was 'secured', so to me there is hardly any doubt that the very top layer of management and their engaged lawyers are getting personally involved when the money (fees) involved is significant enough, or the 'relationship' so requires.

- 48.9. The Value Transfer in relation to the Case<sup>64</sup>, is in my view equally as deceptive and fraudulent as the alleged fraud related to the 1MDB situation, or Madoff for that matter; someone lost and someone gained a huge amount, only the methods differ.

*Goldman is typically not acting all alone*

- 48.10. According to an article in the Financial Times, in order to defend Goldman Sachs involvement in the 1MDB situation, Solomon said that "*Goldman and its lawyers conducted detailed due diligence on the bond offerings*" without uncovering the "*brazen scheme*" at works 'behind the scenes'<sup>65</sup> (underline added).
- 48.11. In other words, when the likes of Goldman Sachs are involved in multi-billion-dollar transactions like the one related to 1MDB or the Case, they systematically engage highly experienced and sophisticated corporate attorneys.
- 48.12. As already explained above, Clayton has worked as a such 'expert' for almost two decades at Sullivan & Cromwell before becoming the SEC Chairman, where a key client of his has been Goldman Sachs.
- 48.13. In other words, it cannot be ruled out that Clayton, through Sullivan & Cromwell, has advised Goldman Sachs in relation to 1MDB, which is of course of great concern given the obvious issue of conflicts of interest. Even if Clayton has not been personally involved, he is obviously unsuitable (and should accordingly not be furnished with a waiver either) to be involved in any matter related to Goldman Sachs and the highly lucrative 'industry of legal services', based on which he has built his significant fortune and is likely to go back to work for once his chairmanship of the SEC has come to an end.
- 48.14. It is totally absurd to allege that someone like Clayton would be suitable to intervene in an investigation into the conduct of someone like Goldman Sachs after just 12 months from taking office<sup>66</sup>, given their 20-year plus commercial relationship.
- 48.15. It ought to be that someone like Clayton would have to stay away for at least equally as many years as he has served a client (or even permanently), not least given that in my experience in relation to the Case, such corporate attorneys were very much involved and 'hands on' in committing the alleged fraud in relation to the one-billion-dollar Value Transfer.
- 48.16. In light of the benefit an implementation of the Reduced Award would obviously have for the likes of Goldman Sachs and Big Law firms like E, Sullivan & Cromwell and their Big Business clients like company B and 'high net worth' individuals like Mr. H, in my opinion, Clayton shall not be allowed to participate in any way, directly and or indirectly, in relation to the Proposed Award Rule either, which he with the casting vote has in fact enabled at the level of the Commission.

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<sup>64</sup> As referred to in my Public Commentary on page 3 under paragraph 4.1.

<sup>65</sup> <https://www.ft.com/content/4505dc68-199e-11e9-9e64-d150b3105d21>

<sup>66</sup>

<https://static1.squarespace.com/static/5722daf11d07c02f9c1739cc/t/58c4b2996a4963946ca00b1f/1489285786203/Clayton%2C+Walter+J.++finalEA.pdf>

48.17. Given that the Reduced Award will so obviously weaken and undermine the purpose of the Whistleblower Program, no SEC Commissioner ought to be able to vote in favour of a such biased proposal, as it flagrantly goes against the core mission of the SEC and the letter of the law; namely to protect vulnerable Main Street investors *against* sophisticated large corporations committing fraud in orchestration with their ‘skilled’ corporate attorneys and auditors.

*Goldman Sachs’ representation in relation to 1MDB*

48.18. Goldman Sachs is now doing its best defending itself against the DoJ in relation to the 1MDB situation and have hired a lawyer named Mark Filip, who is a former colleague of Brian Benczkowski<sup>67</sup>, the head of the criminal division of the DoJ.

48.19. Filip and Benczkowski used to work together at the law firm Kirkland & Ellis and have according to the Financial Times *“a longstanding and close relationship”*<sup>68</sup>, and given the fact that the *“typical process for settlements of significant criminal cases involves the approval of the head of the criminal division”* is again illustrative of how the Wall Street Establishment operates in a clandestine way by applying unethical cronyism in order to ‘shield’ the lucrative ‘investment banking industry’ (the likes of Goldman Sachs) and the dependent ‘industry of legal services’ (the likes of law firm E and Sullivan & Cromwell).

48.20. To further add to this highly unsuitable constellation, President Trump has, as far as I understand, recently equipped another former top lawyer at Kirkland & Ellis, now the Attorney General, William Barr, with an *“ethics waiver”* in relation to Goldman Sachs role in the 1MDB fraud, despite the *“pledge he made when he took office to remove himself for two years from any matter involving his former law firm”*, signalling that any settlement ‘negotiated’ by Goldman *“will be decided at the highest levels of the US government”*<sup>69</sup> and accordingly by a group of ‘buddies’ with a common history as lawyers at Kirkland & Ellis, where they have been serving the interests of lucrative clients like Goldman Sachs for decades.

48.21. According to the Financial Times a *“spokeswoman for the justice department did not return requests for comment on Mr Barr’s waiver. The White House had no immediate comment. A Goldman spokesperson declined to comment”*<sup>70</sup> (see paragraph 45.1 above).

48.22. A day earlier, on a conference call to discuss its first-quarter financial results, Solomon told analysts however in relation to 1MDB that *“[n]obody wants to get to a resolution on this faster than we do”*<sup>71</sup>.

48.23. That Goldman also want to resolve the 1MDB situation as cheaply as possible for them, is a given. Having one of their most trusted former lawyers at the helm of the SEC one would have thought suits Goldman perfectly well, but less so for the likes of the Malaysian people or the former minority shareholders of company A, who are the victims of such fraud.

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<sup>67</sup> Nominated by President Trump in June 2017, but his confirmation was held up for more than a year as Democratic senators objected to his lack of prosecutorial experience and his work for Russia’s Alfa-Bank at Kirkland & Ellis.

<sup>68</sup> <https://www.ft.com/content/577d0120-e1fc-11e8-a6e5-792428919cee>

<sup>69</sup> <https://www.ft.com/content/4a95b018-65e3-11e9-a79d-04f350474d62>

<sup>70</sup> <https://www.ft.com/content/4a95b018-65e3-11e9-a79d-04f350474d62>

<sup>71</sup> <https://www.ft.com/content/2f56b28e-5fbc-11e9-a27a-fdd51850994c>



48.24. The above makes one wonder what kind of influence has Clayton exerted and how many waivers have Clayton received to date, like for example in relation to the Case, despite his evident conflicts of interest, in order to be able to interfere in SEC investigations related to the lucrative 'investment banking industry' (the likes of Goldman Sachs) and the dependent 'industry of legal services' (the likes of law firm E and Sullivan & Cromwell)<sup>72</sup>, based on which he has built his fortune on?

48.25. The Reduced Award in this context appears to be 'just' the 'icing on the cake' for the Wall Street Establishment.

#### 49. Sudden restriction of Subpoena Powers - 'shielding' the Wall Street Establishment

49.1. Taking a step back, by way of further background, as briefly described above, in response to the SEC's failures to detect Madoff's massive fraud<sup>73</sup>, the former SEC Chair Mary Schapiro made a change in 2009, allowing delegated subpoena authority to a broader number of enforcement division managers to make the division more nimble and streamline the opening of cases.

49.2. Even before Clayton had been formally appointed as SEC Chairman<sup>74</sup>, the SEC Commissioner Piowar (R)<sup>75</sup>, acting as interim SEC Chairman at the time, removed the above broadened authority so that the *"enforcement division's associate directors will no longer have authority to issue subpoenas or formally launch probes"*<sup>76</sup>, and thereby moved this critical authority from SEC enforcement officials nationwide over to two *"Enforcement Co-Directors"*<sup>77</sup> who stands under Clayton's direct supervision<sup>78</sup>.

49.3. At the same time, the *"authority for formal orders"* was allocated to the Commission, i.e. ultimately to Clayton given the political divide, as illustrated by the enabling of Reduced Award<sup>79</sup>.

49.4. In other words, through this intervening change, Clayton<sup>80</sup> would be able to prevent investigations against parties like Goldman Sachs, law firm E, Sullivan & Cromwell and individuals like Mr. H, just in the same way the very same constellation on 28 June 2018 enabled the arbitrary proposal to implement the Reduced Award for whistleblowers and thereby have tried to prevent the exposure of large scale fraud, like the one pertaining to 1MDB and Goldman Sachs for example.

49.5. According to Piowar, the practice implemented by Schapiro had been insufficient *"for the Commission to exercise the appropriate level of oversight of the formal order process"*<sup>81</sup>; read the Wall Street Establishment has not been able to exercise the

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<sup>72</sup> As well as their 'trusted' auditors.

<sup>73</sup> Despite numerous attempts by a whistleblower to get the attention of the SEC: [https://en.wikipedia.org/wiki/Harry\\_Markopolos](https://en.wikipedia.org/wiki/Harry_Markopolos)

<sup>74</sup> A at a time when only three out of the five SEC's Commissioner's seats were filled: <https://money.cnn.com/2017/03/29/investing/sec-investigation-elizabeth-warren/index.html>

<sup>75</sup> Who is also a strong supporter of the Reduced Award alongside Clayton and Peirce.

<sup>76</sup> <https://www.reuters.com/article/us-usa-sec-enforcement-idUSKBN15V2PI>

<sup>77</sup> Stephanie Avakian and Steven Peikin.

<sup>78</sup> i.e. Goldman's indirect supervision.

<sup>79</sup> 1. Press Release: <https://www.sec.gov/news/press-release/2018-1202> 2. Statement Piowar: <https://www.sec.gov/news/public-statement/statement-piowar-whistleblower-062818> 3. Statement Peirce: <https://www.sec.gov/news/public-statement/statement-peirce-whistleblower-062818> 4. Statement Clayton: <https://www.sec.gov/news/public-statement/statement-open-meeting-amendments-commissions-whistleblower-program-rules>

<sup>80</sup> Together with two Commissioners, assuming a full appointment of five Commissioners.

<sup>81</sup> <https://www.reuters.com/article/us-usa-sec-enforcement-idUSKBN15V2PI>

(in)appropriate level of oversight of the formal order process in order to prevent unwanted investigations against themselves.

- 49.6. Clearly, any truly arm's length observer would conclude that this limitation of authority for investigations will not help strengthening the protection of vulnerable Main Street Investors, but instead help strengthening the protection of the likes of Goldman Sachs and the wider Wall Street Establishment.
- 49.7. Please allow me to remind the Committee that both Piwowar<sup>82</sup> and Peirce<sup>83</sup> were both "happy to support" the implementation of the Reduced Award, despite all its flaws as closer explained within the scope of my commentaries.
- 49.8. The Committee must recognise that the above 'concentration of power' to less than a handful of individuals within an organisation like the SEC with more than four thousand three hundred professional employees<sup>84</sup>, when it comes to decide whether or not the SEC shall initiate (i.e. not launch a lawsuit) an investigation, is highly unsuitable and undermines its core mission, especially in light of the fact that the very same constellation has misleadingly promoted the Reduced Award as being something that will "help strengthen" the Whistleblower Program, when it will only help strengthen the Wall Street Establishment and the likes of Goldman Sachs, who through this new 'policy' may be systematically protected from unwanted investigations at the expense of the vulnerable Main Street Investors the SEC is appointed to protect.

## 50. Rosenstein's huge favouritism to the Wall Street Establishment

- 50.1. The Financial Times reported that the US deputy attorney-general Rod Rosenstein has lately been implementing a "subtle reshaping of how the Department of Justice prosecutes companies for bribery and fraud" in order to "reflect the priorities of their administration and the political pressures of the time"<sup>85</sup>.
- 50.2. According to the same article, in May 2018, "Mr Rosenstein ordered US prosecutors to avoid "piling on" with multiple penalties against companies being investigated for the same wrongdoing by multiple regulators and countries, a move that would reduce the financial penalties businesses could expect to pay".
- 50.3. To put this new 'strategy' in perspective and for the Committee to realise how unreasonable this approach is, the Case for example has been investigated by the authorities in [REDACTED] without any of them being able to identify even a fraction of the very serious misconduct<sup>86</sup> I have exposed to the SEC.
- 50.4. Consequently, either Rosenstein does not understand the underlying purpose of the Whistleblower Program or has ulterior motives and is running errands for the Wall Street Establishment.
- 50.5. Rosenstein's 'new approach' within the DoJ, to let serious offenders who may have (partly?) committed offences outside the US and therefore are potentially subject to other investigations in such jurisdictions 'off the hook' as the above article suggests, is again cause

<sup>82</sup> <https://www.sec.gov/news/public-statement/statement-piowar-whistleblower-062818>

<sup>83</sup> <https://www.sec.gov/news/public-statement/statement-peirce-whistleblower-062818>

<sup>84</sup> i.e. approx. one in a thousand.

<sup>85</sup> <https://www.ft.com/content/ff8e63f4-198d-11e9-b93e-f4351a53f1c3>

<sup>86</sup> Alleged fraud and flagrant breaches against the securities law.

for alarm that the Wall Street Establishment is out to protect itself from being held accountable and subjected to the fines they merit, at the expense of the vulnerable Main Street Investors they have defrauded.

- 50.6. The importance of reversing Rosenstein's 'new approach' is pretty evident for any truly arm's length observer, as holding offenders accountable does not only apply to past misconduct and restitution for such victims, but also, given that no examples may be set due to passivity by the authorities (as seems to here be promoted by Rosenstein), the very same misconduct also risks being allowed to repeat itself going forward, in an even more refined and clandestine manner, to the further benefit of the Wall Street Establishment.
- 50.7. This 'new approach' seems to erratically imply that a case like the alleged fraud related to 1MDB shall not be investigated by the US authorities going forward, despite Goldman Sachs being at the very centre of events (a more American firm is hard to envisage). To have the DoJ look the other way when such unlawful activities are (partly<sup>87</sup>) committed outside of the US, reminds a bit of a 'cowboy approach' to regulation, belonging back in the 'wild west', and has obviously nothing to do with the requirement for transparency and integrity in the 21<sup>st</sup> century.
- 50.8. The Case I have referred to the Whistleblower Program is ultimately all about the urgency to reshape how the entire finance industry functions, which has allegedly been allowed to operate in a corrupt manner for decades, something Rosenstein seems to be on a mission to make sure will not happen, to the undue benefit of the likes of Goldman Sachs.
- 50.9. The Committee must now self-critically ask itself the key question; - *Why is Rosenstein promoting this new and highly irrational approach?*
- 50.10. Rosenstein and the Wall Street Establishment more generally will for sure argue it is simply 'good allocation of limited resources' but the clandestine purpose, or the effect of its implementation, is undoubtedly that it will protect the likes of Goldman Sachs from fines and equally as important, make sure that the alleged lucrative abuse they appear to have specialised in can carry on at the expense of the same vulnerable and defenceless Main Street Investors the SEC and DoJ are appointed to protect.
- 50.11. The key reason for me bringing the information relating to the Case to the attention of the SEC, was precisely that "*multiple regulators*" ( [REDACTED] ) were incapable of understanding and investigating the breaches properly and hold the alleged offenders accountable; but perhaps more importantly, make sure that the SEC, as the key global regulator of financial markets, was made aware of this systematic abuse within large M&A-transactions and could set an example which would prevent the same kind of offences from being re-committed<sup>88</sup> by members of the Wall Street Establishment going forward.
- 50.12. In a such scenario, being promoted by Rosenstein and Clayton, the SEC Whistleblower Program would actually work as a system to alert the Wall Street Establishment when someone has 'caught them out' so that they internally can prevent an investigation 'from within' and subsequently find other ways to structure their fraud in an even more sophisticated way going forward, making it even harder for the authorities to

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<sup>87</sup> One would have thought partly outside of the US given the meetings which took place in New York etc.

<sup>88</sup> Or even worse - refined even further so that it will be even harder to detect the same kind of fraudulent actions in the future.

expose their misconduct. For sure, I did not turn to the SEC and blew the whistle in order to tip-off the offenders so that they could 'go back to the drawing board' and improve their illicit schemes; quite the contrary, but that is in fact how the system seems to work at the moment under Clayton.

50.13. It has to be recognised by the Committee that any individual who is part of or loyal to the Wall Street Establishment will do whatever they can to defend and cover up their lucrative abuse, not least in order for it to continue, and together they will orchestrate as many hurdles as it takes in order to make sure that the offenders will ultimately walk away unblemished with their loot; Rosenstein's 'new approach' is in my opinion a typical such 'hurdle'.

50.14. No doubt, the likes of Goldman Sachs, law firm E, Sullivan & Cromwell and the wider Wall Street Establishment are very much in favour of Rosenstein's 'new approach' at the DoJ, as in one go, all the non-US abuse committed by the Wall Street Establishment can in 'one-go' once and for all be closed, and having Clayton at the helm of the SEC at the same time promoting the same idea (see paragraph 52.31 - 52.34 below), whilst implementing the Reduced Award in order to conceal the most serious large scale fraud from being exposed; is simply a 'no-brainer' for the Wall Street Establishment.

50.15. From a commercial perspective, it must also be recognised, that if the authorities were to adopt Rosenstein's and Clayton's 'new approaches', it could have significant detrimental effects on American business activities overseas, as potential clients of the likes of Goldman Sachs would have to think (at least) twice before engaging them as they would know that they would not be protected by the American regulators if defrauded, which ought to be a concern to the US Chamber of Commerce, who otherwise consistently comes out in defence of the Wall Street Establishment.

50.16. To put it another way, if the US regulators do not hold Goldman properly liable for its misconduct in relation to 1MDB, what is the probability of Goldman ever doing business in Malaysia ever again, or for that matter anywhere else outside of the US?

## 51. Rhetoric & Casuistry

*Clayton - Senate Hearing 24 March 2017*

51.1. At the above hearing, Clayton stated amongst other that; "*I Am 100% committed to rooting out any fraud and shady practices in our financial system*". This is clearly very easy to say, the Reduced Award suggests however the direct opposite, as described above in relation to the 1MDB situation for example, but then this of course relates to Clayton's former key client, Goldman Sachs.

51.2. Clayton further stated that; "*I have zero tolerance for bad actors*", and "*I will say it to the enforcement staff. I will say it to my fellow commissioners. I do believe that individual accountability is extremely important*" (underline added). The rhetoric pertaining to "*individual accountability*" is particularly interesting in light of the 1MDB situation, as that is precisely what Goldman's CEO Solomon is focusing on, namely, to allege that the misconduct was undertaken by one or perhaps a few individuals within Goldman, as opposed to the 'firm' itself, who is innocent.

- 51.3. In other words, the Committee must recognise that with "*individual accountability*" (which sounds good) comes the removal of "*collective accountability*", i.e. that of the corporation behind the misconduct.
- 51.4. Clearly, if the SEC/DoJ will, as Clayton suggests, aim to only hold individuals, like for example Leissner, who allegedly misappropriated billions of dollars in relation to 1MDB whilst working for Goldman, accountable, the probability of recovering the huge amounts stolen is obviously close to zero, whilst if Goldman were to be held liable, the money can actually be recovered to the Malaysian people.
- 51.5. The fact that without the platform of Goldman, the 1MDB fraud would not have been able to be executed, seems to be conveniently ignored.
- 51.6. The Committee must recognise that it is the shareholders of a corporation (through majority vote) who appoints its management and it must therefore always be the responsibility of the organisation in question to make sure that its management and employees do not break the law, as otherwise it will be easy for the likes of Goldman, once such misconduct is revealed, to simply single out and blame one or a few 'penniless' individuals within that organisation, in order to protect the financial and reputational interests of the 'firm'.
- 51.7. Lawyers like Clayton and his former colleagues at Sullivan & Cromwell and law firm E are masters in using the language in a way that sounds reassuring but means very little in practice. A Bernard Madoff is for sure a "*bad actor*" in the views of Clayton, but I doubt that he will view his former key client Goldman as a such in light of what they have done in relation to 1MDB for example, despite their alleged crimes leading to the same end-results for the victims. That is precisely why Clayton only want "*some help*"<sup>89</sup> from Congress to remove time limitations in relation to simply understood fraud, like the Kokesh Ponzi scheme, but not for sophisticated M&A-fraud that the Wall Street Establishment has specialised in.
- 51.8. Clayton further stated that; "*All Americans should have the opportunity to participate in and benefit from our capital markets on a fair basis including being provided accurate information...*" (underline added). How accurate is "*accurate*" according to Clayton?
- 51.9. The Committee must ask itself, whether the current proposals achieve this aim, when Clayton simultaneously, in a press statement in relation to the settlement with Tesla/Musk, can state that "*when companies and corporate insiders make statements, they must act responsibly, including endeavoring to ensure the statements are not false or misleading and do not omit information a reasonable investor would consider important in making an investment decision*" (underline added), instead of using words like 'must' or 'are obliged to' ensure the same.
- 51.10. Is endeavouring to ensure that statements are not false or misleading and not to omit important information enough in order to protect vulnerable Main Street Investors?
- 51.11. Had the SEC's director of enforcement taken on Clayton's biased approach back in 2010, it would most likely have saved Goldman Sachs \$550 million in fines.

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<sup>89</sup> Please see paragraph 53.18 - 53.20 below.

- 51.12. Given the extent of the misconduct in relation to the 1MDB situation<sup>90</sup> which was initiated after the \$550 million fine suggests that it had the direct opposite effect on Goldman, which in turn indicates that even harsher punishments would have been appropriate in order for the likes of Goldman to take compliance seriously
- 51.13. On the same note in relation to the Case, how fair is “fair”? Investment bank D issued a so-called 'fairness opinion' to confirm that the one-billion-dollar Value Transfer was “fair”, when it was anything but fair and totally orchestrated, which is illustrative of highly sophisticated casuistry, to reach the end-goal of the Wall Street Establishment, namely profiteering at the expense of the vulnerable.
- 51.14. Clayton further stated that; “*I pledge to you and to the American people that I will show no favouritism to anyone*”. Favouritism is an interesting concept, the Wall Street Establishment typically operates in a clandestine way, so instead of ‘assisting’ someone like Goldman directly, they will take related actions in order to protect them, such as for example explained above in relation to Rosenstein's 'new approach' at the DoJ, or the introduction of the Reduced Award under the misleading ‘banner’ that the money could instead be used more “efficiently” by the US Treasury for “*similarly important public purposes*”<sup>91</sup>.
- 51.15. In fact, by promoting the Reduced Award, Clayton has already bluntly showed his favouritism to the Wall Street Establishment (large corporations whose interests are being served by the likes of law firm E and Sullivan & Cromwell).
- 51.16. Given the above, it is pretty evident for any ‘arm’s length observer’ that Clayton has strong and deep-rooted loyalties towards Goldman Sachs and the lucrative ‘industry of legal services’, based on which he has built his significant fortune, which in turn is a grave cause for concern from a conflicts of interest and lack of impartiality perspective in relation to protecting vulnerable Main Street Investors in his capacity of Chairman of the SEC.

*Clayton’s letter to the SEC ‘head of ethics’*

- 51.17. The above issue is in fact confirmed in writing by Clayton himself in his letter dated 3 March 2017<sup>92</sup> addressed to the Designated Agency Ethics Official of the SEC at the time, Pavis Minton, where Clayton states that for “*a period of one year after my withdrawal, I will not participate personally and substantially in any particular matter involving specific parties in which I know the firm is a party or represents a party*” (underline added) or in relation to where “*a former client of mine is a party or represents a party for a period of one year after I last provided service to that client*” unless Clayton is “*first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d)*”.
- 51.18. Clayton further explained to Pavis Minton that until his spouse had divested all her interests in Goldman Sachs, he “*will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Goldman, Sachs & Co., unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2)*” (underline added).

<sup>90</sup> Conspiring to misappropriate funds through money laundering, paying bribes and kick-backs.

<sup>91</sup> <https://www.sec.gov/news/press-release/2018-120>

<sup>92</sup>

<https://static1.squarespace.com/static/5722daf11d07c02f9c1739cc/t/58c4b2996a4963946ca00b1f/1489285786203/Clayton%2C+Walter+J.++finalEA.pdf>

- 51.19. From the above, it is clear that Clayton recognizes (or recognized) that he has a serious issue of conflict of interest and lacks impartiality in relation to Goldman Sachs, although he seems to believe that he can participate via a representative, as long as not “*substantially*”, which again is a rather subjective definition. It also bizarrely appears as if this conflict is somehow expected to simply ‘disappear’ after one year in office, i.e. that Clayton is deemed ‘conflicted’ in relation to Goldman Sachs up until and including day 365 but not day 366 and onwards, suggesting that as long as Clayton waited until the 366<sup>th</sup> day after taking office he could then intervene in investigations against someone like Goldman Sachs and step in in order to ‘shield’ them from being held accountable for their misconduct.
- 51.20. In this context, the Committee shall note that Clayton was sworn in on 4 May 2017 and waited until 28 June 2018, i.e. just over a year, before announcing the proposed Reduced Award which obviously will benefit Clayton’s former key client Goldman Sachs.
- 51.21. Conflicts of interest is clearly not based on a number of days but on having good judgement and integrity, something Clayton seems to be short of in the interest of the Wall Street Establishment.
- 51.22. President Trump’s Executive Order 13770 of 28 January 2017 (i.e. issued before Clayton’s ‘ethics letter’) regarding “*Ethics Commitments by Executive Branch Appointees*” states that the likes of Clayton “*will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts*”<sup>93</sup> (underline added).
- 51.23. It thus appears as if Clayton has somehow given himself a ‘50% discount’ for his ‘quarantine’ period, in breach of the executive order, unless of course he has, equally bizarrely as Attorney General Barr, been provided with a ‘convenient’ waiver to interfere despite his obvious unsuitability to do so.
- 51.24. In the said letter, Clayton further confirmed that Pavis Minton had explained to him<sup>94</sup> that “*particular matters of general applicability are much broader than particular matters involving specific parties because they include every matter that is focused on the interests of a discrete and identifiable class of persons, such as an industry*” (underline added), like the ‘industry of legal services’ at Sullivan & Cromwell.
- 51.25. It is one thing to *acknowledge* conflicts of interest or one’s lack of impartiality (as Clayton has partly done in his letter to Pavis Minton), but a totally different matter to actually *avoid* the same and act with integrity, by diligently distance oneself and serving the interests of the Main Street Investors against the interests of the likes of Goldman Sachs (please refer to paragraph 46.12).

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<sup>93</sup> <https://www.whitehouse.gov/presidential-actions/executive-order-ethics-commitments-executive-branch-appointees/>

<sup>94</sup> And Clayton would have thus understood, one would have thought.

## 52. Speech Hester M. Peirce - "*The Why Behind the No*"

- 52.1. After having removed the wider subpoena power as described above, Commissioner Peirce held a speech on 11 May 2018 titled "*The Why Behind the No*"<sup>95</sup>, in order to explain why she had a higher ratio to vote no "*than the rate at which any other Commissioner votes against recommendations from the Enforcement Division*"<sup>96</sup>.
- 52.2. After having "*celebrated the one-year anniversary of Chairman Clayton's arrival at the SEC*", Peirce further emphasized that Clayton "*understands the importance of vigorous enforcement in protecting investors*".
- 52.3. Peirce also explained that the vast majority of SEC enforcement actions are "*legally straightforward*" and that the Commission "*unanimously approves the vast majority of staff enforcement recommendations*" as it is "*not controversial*".
- 52.4. The speech was accordingly centred around a "*small part*" of "*controversial*" enforcement actions in relation to which Mrs Peirce had voted "*against recommendations from the Enforcement Division*"; i.e. 'the why behind her no's'.
- 52.5. If Clayton, as alleged by Peirce, "*understands the importance of vigorous enforcement in protecting investors*", the Committee must ask why would Clayton promote the Reduced Award under the misleading banner that it will "*help strengthen*" the Whistleblower Program when it obviously will help strengthen the likes of Goldman Sachs?
- 52.6. It has to be recognized by the Committee that the matters in relation to which Peirce has voted against an investigation by the Enforcement Division, are controversial for a reason, and it cannot be ruled out that such cases typically relate to sophisticated M&A-fraud committed by the Wall Street Establishment, like the Case who Clayton and his 'friends' on the Commission may be out to 'shield', at the expense of the interests of the Main Street Investors the SEC is obliged to represent.
- 52.7. By carefully reading Peirce's speech, it becomes clear that it is, as briefly described above, like a 'smorgasbord' of arbitrary arguments that will support and protect the Wall Street Establishment from being properly investigated and held accountable for their misconduct, as further laid out below.

### *Enforcement as Last Resort*

- 52.8. According to Peirce, the "*SEC is not an enforcement agency, but enforcement is an important tool for the SEC*" and such enforcement is "*a last resort*" and that only when "*people intentionally do not comply, or persist in noncompliance, with our rules, enforcement may be the right tool to use*" (underline added), accusing the SEC of previously acting like "*a branch of the U.S. Attorney's Office for the Southern District of New York*".
- 52.9. The Committee must ask how the SEC (through its Commission, now with the ultimate power in the hands of Clayton) will be able to retribute victims of securities fraud, if not through enforcement?

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<sup>95</sup> <https://www.sec.gov/news/speech/peirce-why-behind-no-051118>

<sup>96</sup> It is unclear if this excludes Clayton and to what degree he has recused himself due to conflicts of interest.



52.10. If an offender does not voluntarily take full and unconditional responsibility for its misconduct (like Goldman in relation to 1MDB for example) and makes good for the damages caused by swiftly agreeing an arm's length settlement with the SEC and the victims<sup>97</sup>, how will it be possible to protect the Main Street Investors by recovering their losses without using enforcement?

52.11. The Committee must also carefully listen to Peirce's use of the word "*intentionally*" in relation to no-compliance, as this opens up a very dangerous and arbitrary channel for biased interpretations. I am confident that someone like Mr. H for example will 'happily' allege to the SEC that he did not intentionally vote through the one-billion-dollar Value Transfer in relation to the Case, especially if that will get him 'off the hook' to pay tens of millions of dollars in fines and damages, as Peirce position above suggests.

#### *Effects of an investigation*

52.12. According to Peirce, the "*effects of an investigation or proceeding on a private party can be devastating*" and that the "*power to investigate carries with it the power to defame and destroy*".

52.13. It goes without saying that any suspect shall be treated with respect and that any person is innocent until proven guilty in a recognised court of law, but to have someone speaking on behalf of a regulatory body victimising offenders in this way sends a very bizarre signal to Main Street Investors; almost like how Goldman is being portrayed as a 'victim' alongside the Malaysian people in relation to 1MDB (see paragraphs 48.1 - 48.4 above).

52.14. Take the former A minority shareholders as an example, who lost a billion dollars of value at the time due to the alleged fraudulent activities by investment bank D, law firm E, Mr. H and others; does Peirce not think that the actions of the latter has at had a devastating effect on the former A minority shareholders?

52.15. Peirce almost make it sound as if the Staff at the SEC is typically out to "*defame and destroy*" innocent people who are under investigation for alleged misconduct which is totally groundless, just for the 'fun of it'.

#### *Rhetorical Language & Deceptive Retail Focus*

52.16. Peirce further emphasized that the SEC "*must focus on the cases that will actually make a difference*" by spending its "*limited enforcement resources wisely*" and that focus should be "*to bring only meaningful enforcement actions*" in relation to "*violations of a sufficiently serious nature to warrant the expense to us and to those whom we pursue*".

52.17. In the same rhetorical way as Peirce and Clayton have misleadingly promoted that the Reduced Award is what is "*reasonably necessary*" in order to make large case whistleblowers come forward or that the proposed 'guidance' for the 'independent analysis' standard should be "*reasonably apparent*" to Clayton and Peirce in hindsight in order to qualify whistleblowers for an award, as this allegedly will "*help strengthen*" the Whistleblower Program, Peirce here again uses expressions like "*actually make a difference*", "*meaningful enforcement actions*" and matters of "*sufficiently serious nature*",

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<sup>97</sup> How often has the likes of Goldman Sachs done that in the past?

i.e. highly arbitrary and subjective concepts, to ultimately enable exoneration of the likes of Goldman Sachs from being held accountable for very serious misconduct.

- 52.18. Peirce further refers to the *“careful leadership of Chairman Jay Clayton, and our Enforcement Co-Directors Stephanie Avakian and Steven Peikin”* and that the *“Commission is focusing its resources on key areas of concern, such as the protection of retail investors”* (underline added).
- 52.19. As an example of this ‘retail’ concern, Peirce stated that *“a Ponzi scheme or affinity fraud that has attracted small investments from many investors is an important case — likely more important than a large-dollar violation that occurs in the context of a transaction between two sophisticated financial institutions”*.
- 52.20. It is common knowledge that Goldman and its closely tied legal advisors like Sullivan & Cromwell (i.e. Clayton’s former firm) have built their entire success on servicing the interests of large institutions (see paragraph 46.10 above). In order to further divert focus away from the Wall Street Establishment, Clayton’s ally Peirce therefore above is rhetorically promoting the protection of ‘vulnerable retail investors’, as opposed to ‘wholesale investors’, like a financial institution.
- 52.21. By stacking ‘vulnerable retail investors’ against ‘sophisticated wholesale investors’ whilst systematically referring to the ‘scarce resources’ available to the SEC, the Wall Street Establishment has found a way to try to validate why they should pursue ‘plain vanilla fraud’, like Ponzi Schemes, but not ‘sophisticated M&A-fraud’ like the one being alleged in relation to the Case<sup>98</sup>.
- 52.22. The above carefully choreographed ‘strategy’ will naturally protect the likes of Goldman Sachs and Sullivan & Cromwell from being held accountable for their alleged sophisticated misconduct, whilst concurrently hold relatively speaking ‘small fry’ fraudsters like James S. Polese<sup>99</sup> fully liable for the same kind of offences (fraud), something that suits the Wall Street Establishment, so that they can carry on enriching themselves and their high profile clients on scale at the expense of defenceless minority shareholders in large M&A-transactions.
- 52.23. The above rhetoric lacks all credibility, given that behind more or less every single ‘wholesale investor’ (like a bank), there is of course ultimately retail investors who are the beneficial owners, whose economic interests are of course damaged also when such wholesale investors are subjected to fraud or breaches against the securities law.
- 52.24. What Clayton and Peirce are actually promoting, is that Wall Street shall be allowed to defraud Wall Street. It is obviously fundamental that fraud in any shape or form is stamped out irrespective of who the target and who the perpetrator is.
- 52.25. On the flip-side of the argument; if Wall Street were to be ‘allowed’ to defraud Wall Street, small time fraudsters like Mr Polese will ask themselves, why cannot Main Street be allowed to defraud Main Street? Clayton’s and Peirce’s ‘logic’ seems to be that Wall Street entities ‘can afford’ to be defrauded, which obviously creates a totally bizarre environment, especially given that Main Street Investors will be equally victimized if Wall Street is allowed

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<sup>98</sup> The Wall Street Establishment is obviously less likely to be involved in Ponzi schemes given that they have specialized in more sophisticated fraud, often related to M&A-transactions.

<sup>99</sup> <https://www.sec.gov/litigation/litreleases/2019/lr24408.htm>

to defraud Wall Street as that is where they ultimately have their savings (indirectly) invested.

52.26. In other words, in a Ponzi Scheme for example, a typical retail investor is likely to be a *direct victim*, whilst in relation to a fraud pertaining to say a “*sophisticated*” financial institution like a bank, the very same retail investor is likely to be an *indirect victim* given that the financial institution in question is ultimately and typically owned by the very same vulnerable saver through pension funds, index funds, hedge funds and the likes.

52.27. The approach by the Wall Street Establishment is nothing but discriminatory, as one category of market participant (the likes of Goldman Sachs) abusing the securities law will walk free whilst the other category (the ‘small crook’ like Mr. Polese) will be held accountable and face the full force of the law for the same line of offences. Plainly speaking, it is undemocratic, and it has to be recognised by the Committee that it is now being promoted heavily by Peirce and Clayton for a reason.

#### *Removal of subpoena powers*

52.28. In a further praise to the SEC’s new ‘working methodologies’ under Clayton and with reference to Piwowar’s high-handedness (see paragraph 49.2 above), Peirce stated that the “*lower Enforcement senior staff*” have now lost their authority to issue subpoenas and therefore must now first seek “*the approval of the Enforcement Co-Directors*” given that even “*starting the investigation process can have severe consequences for private parties*” and that the “*authority for formal orders*” should rest with the Commission, i.e. ultimately with Clayton given the political divide at the Commission, as illustrated by the vote related to the proposed Reduced Award.

52.29. In light of the above, Peirce states that when she believe that the SEC “*ought not to have spent our Enforcement Division’s time and effort on a matter*”, then she is “*likely to vote against it*”, concluding that the Commission, with Clayton at the helm, “*is better positioned than the staff to dispassionately consider resource allocation*” (underline added).

52.30. To use the word “*dispassionately*” and to refer to it as if it was an ‘edge’ of the Commission in this context, whilst simultaneously *passionately* promoting an agenda that will make fraud cases against the likes of Goldman Sachs and Sullivan & Cromwell disappear through the Reduced Award, is almost tragi-comical from a regulatory perspective.

#### *Ignoring offences committed outside the US*

52.31. Peirce also stated that “*another way*” for the Enforcement Division “*to conserve resources*” is that under Clayton’s stewardship it can “*take into consideration whether other regulatory or criminal authorities are looking at the same conduct*”, like for example, if “*another foreign or domestic authority*” is already investigating the matter, then the SEC “*might step aside and apply its resources elsewhere*” whilst the “*foreign authority*” pursues the misconduct.

52.32. This ‘new approach’ by Clayton, fully in line with Rosenstein’s equivalent ‘strategy’ to protect the Wall Street Establishment at the level of the DoJ (see paragraph 50 above), to make the SEC ignore overseas inquiries that are being investigated or have been investigated by other (less competent) authorities, in order to allegedly “*conserve resources*” of the SEC reminds of Clayton’s rhetoric behind the ‘clever’ reason for the

adoption of the Reduced Award, where a 'saving' by paying less to large case whistleblowers could allegedly be used more "efficiently" by the US Treasury for "similarly important public purposes" and the assertion that the Reduced Award according to Clayton is "intended to make sure that the Commission is a responsible steward of the public trust"<sup>100</sup> (see paragraph 6.7 on page 10 and paragraph 22.3 on page 23 in my Public Commentary) (underline added).

52.33. Take the Case as an illustrative example of how unreasonable<sup>101</sup> (or plain stupid or at best naïve) this 'new' approach is. Assuming Clayton's new 'philosophy' in this regard were to be adopted (or perhaps it already is), the likes of Goldman Sachs and their high profile lawyers like law firm E and Sullivan & Cromwell as well as individuals like Mr. H will obviously walk free with the loot as foreign authorities are in my experience plainly speaking incapable of investigating sophisticated M&A-fraud (the language in question can in itself be a huge hurdle), something Peirce herself willingly admits when stating that even for the SEC (with all its 4,300+ skilled staff) it can "take years to conduct investigations, which often involve many documents and complex facts" and accordingly, even for the US authorities it can be very difficult to understand what has actually happened.

52.34. Peirce emphasized that "the SEC has limited resources and unlimited potential demand for those resources" and that "individuals and entities under SEC investigation endure years of uncertainty", as if offenders were the victims, just like Goldman is portraying itself in relation to the 1MDB situation. The Committee ought to ask Peirce; - *What about the protection of the victims of such sophisticated abuse?*

#### *Due Process & Property Rights*

52.35. Peirce further refers to the "paramount importance" of due process given "the power and reach of the Commission" and stated that she wants to ensure that the "Commission is known for taking a vigorous, but careful enforcement approach", referring to the constitution and "that no person shall be deprived of property, without due process of law". It is unclear here if Peirce is a supporter of fraudsters retaining ill-gotten gains that are more than 5 years old as stipulated by the Kokesch v. SEC ruling (see further below).

52.36. Peirce also stated that the "rules should be clear, so that individuals know in advance the actions that constitute violations" and that the SEC should be "even-handed and sensible", referring to the "agency's integrity" and that it "helps to bolster the agency's standing in the markets, the courts, and the minds of the American people".

52.37. Peirce will accordingly initially look at "rulemaking by enforcement", stating that due process "starts with telling individuals in advance what actions constitute violations of the law" and that the "Enforcement Division only should bring actions based on established legal obligations".

52.38. To take a "careful" approach to enforcement (which in itself is a last resort according to Peirce) is clearly illustrative of which side the Wall Street Establishment stands on, as those committing fraud and violations against the securities law would have been, one would have thought, all but careful in order to enrich themselves at the expense of others.

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<sup>100</sup> <https://www.sec.gov/news/press-release/2018-120>

<sup>101</sup> Unless you are of course out to protect the Wall Street Establishment.

- 52.39. Peirce seems to be more concerned of protecting the offender's stolen property than recover it for the victims who lost the property in the first place.
- 52.40. The Committee must ask itself, how does the above approach corresponds to the four words engraved above the US Supreme Court - Equal Justice Under Law - especially when highly irrational and arbitrary time limitations under *Kokesh v. SEC* will typically leave offenders retaining the vast majority of the loot even when they are caught out red-handedly (as rarely as that happens) after a few (5) years?
- 52.41. Peirce also seems to be keen for the SEC to have a "*standing in the markets*", as some kind of 'nice guy' and the meaning of the word "*integrity*" is as subjective as the Wall Street Establishment's usage of words like 'independent', 'fair' or 'arm's length' when they enrich themselves at the expense of the defenceless in large M&A-transactions.
- 52.42. Peirce's 'principle' of telling violators in advance what actions constitute violations of the law (as otherwise they should be exonerated?), then everything that has not been explicitly stated as unlawful would be 'fair game' to the Wall Street Establishment. To say that a fraudulent action is legal because it is not expressly illegal would evidently be a very dangerous precedent and yet again unduly benefit the Wall Street Establishment.
- 52.43. Is Peirce suggesting that someone like Mr. H could say that he simply relied on the advice the board got from law firm E, investment bank D and the other advisors when they shifted the one billion dollars of value over from the defenceless A minority shareholders over to Mr. H and the other former company B shareholders and thereby be exonerated under Clayton's chairmanship of the SEC?

*The Wall Street Establishment's 'interpretation' of the SEC mandate from Congress*

- 52.44. When it comes to voting, Peirce (and Clayton) will also look at "*the degree to which our enforcement process is being used to push the bounds of our authority*", referring to that "*Congress sets the parameters within which we may operate, and we ought not to stray outside those boundaries*" and that there is a risk given that "*it is easier for a private party just to settle than to litigate a matter*" and that thereafter it has become, unduly, a "*new legal precedent*".
- 52.45. If the above were to be true, why are Clayton and Peirce trying to change the Whistleblower Program by going against the clear instruction from Congress through the adopted Dodd Franck Act, by introducing the Reduced Award in order to protect the likes of Goldman Sachs and the wider Wall Street Establishment?

*Peirce's 'views' on time limitations*

- 52.46. Peirce will also look carefully at time limitations when deciding how to vote on a potential enforcement action. Peirce explains that the Commission is "*sometimes asked to vote on matters that involve conduct a decade or more in the past*" and concludes that it "*is harder for people to defend themselves against older charges*" and that if granted "*there are many factors contributing to the age of investigations, including many factors beyond the SEC's control*".
- 52.47. Peirce is also concerned, as stated above, that it "*can take years to conduct investigations, which often involve many documents and complex facts*", emphasizing that

*“the SEC has limited resources and unlimited potential demand for those resources” and that “individuals and entities under SEC investigation endure years of uncertainty”.*

- 52.48. In a time limitation aspect, if it *“takes years”* for the SEC, with some 4,300 staff out of which approx. 1,100 are dedicated investigative staff at its disposal, to investigate sophisticated misconduct (like the alleged M&A-fraud pertaining to the Case for example), then Peirce instead ought to ask herself how vulnerable are not the victims of such sophisticated misconduct and how unreasonable is it not to expect them to fend for themselves in short order?
- 52.49. One almost get the impression that Peirce is of the opinion that ‘too sophisticated misconduct’ (such typically conducted by the Wall Street Establishment) is an unwanted ‘burden’ on the SEC and is too cumbersome to be prioritized by the SEC given its ‘scarce resources’, again playing into the hands of the likes of Goldman Sachs, law firm E, Sullivan & Cromwell as well as ‘high net worth’ individuals such as Mr. H, as if such parties having committed the abuse in the first place (like Goldman in relation to 1MDB) are becoming the ‘victims’ due to SEC investigations according to Peirce.
- 52.50. If Peirce acted with integrity, she ought to also have flagged in her speech that thanks to email and data storage, the recollection of witnesses is far less required by time given that in today’s world it is relatively easy to piece together what actually happened many years later, but not a single word to that effect, as it does not work to the benefit of the Wall Street Establishment she seems to be on a mission to protect.
- 52.51. In my opinion, the statute of limitations has not evolved with time, as most of the case law originates from a time period when we did not even have email or data storage. Now, as in relation to the Case, SEC investigators can relatively easily go back in time and with great accuracy piece together what actually happened when the alleged fraud was committed, i.e. witness recollection has become much less of importance when holding offenders accountable and bringing cases to trial.
- 52.52. Email traffic and data storage is in my opinion equally as important to what DNA traces have become over the last decade or so at physical crime scene investigations.
- 52.53. Had Peirce acted with the best interest of Main Street Investors at heart, she ought to (at least) have stated, in order to provide a balanced view, that it is also harder for victims to *protect themselves* against older offences (which time limitations is an example of), but evidently, she is totally one-sidedly on a mission defending the interests of the Wall Street Establishment who has committed the offences in the first place.

#### *Attorney-Client Privilege*

- 52.54. Before deciding how to vote in relation to an enforcement action, Peirce will also look at the attorney-client privilege. Peirce explained in her speech that the *“protection of attorney-client privilege makes our investigations harder”* and that it is therefore *“tempting to reward private parties for waiving the privilege”*, but according to Peirce *“the SEC should not request, encourage, or incentivize people to waive privilege”* because *“allowing a permissive approach to waiver<sup>102</sup> is essentially the same thing as waiver becoming mandatory in practice”* and that people instead should be encouraged to *“seek the advice*

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<sup>102</sup> It is worth pointing out that when it comes to ‘waivers’ when clear conflicts of interest are present, the likes of Clayton and Peirce are less concerned as it benefits the likes of Goldman Sachs.

*of an attorney” as that “helps to foster understanding of and compliance with the law” and that it is “important that we ensure that the parties against whom we are bringing enforcement actions have had a full and fair opportunity to present their side of the story”.*

- 52.55. One almost gets the impression that Peirce believes that it is good that SEC investigations are difficult to conduct, as apparently the interests of a potential offender stands higher in ranking than that of the victim of the abuse.
- 52.56. Obviously, once someone stands accused of a crime and seek advice from an attorney, such advice shall of course be fully protected under the attorney-client privilege, but not advice taken in relation to say a bond issue, a merger or a squeeze-out, where the party in question (the board and its various advisors) is in fact dealing with third parties interests (such as the Malaysian people or the A minority shareholders in relation to the Case) and have serious and fundamental fiduciary duties to adhere to.
- 52.57. Had I strictly shared Peirce’s views in this regard, the misconduct I have exposed in relation to the Case would likely not have been known today to the undue benefit of the Wall Street Establishment, a situation which Peirce seems to prefer, despite she ought to be representing the interests of vulnerable Mains Street Investors. It can be noted that the [REDACTED] does not share Peirce’s view as they have subsequently given permission to use the seized evidence in relation to the Case.
- 52.58. The comment that it is important that offenders gets a “*full and fair opportunity to present their side of the story*” almost seems naïve in this context, why would they not? Is Peirce alleging that the Staff at the SEC is typically abusing their power when conducting investigations, if so, she must explain to the Committee what evidence she has to support such a view.

*Individual or corporate reasonability for misconduct*

- 52.59. Another of Peirce’s areas of focus when voting on enforcement actions relates to choices “*about which remedies to impose or which individuals to pursue*”, explaining that “*civil penalties against corporations are another area of concern*”.
- 52.60. This is again interesting in light of what is going on in relation to 1MDB and Clayton’s former key client Goldman Sachs, where the focus of the Wall Street Establishment is now the “*individual*” (Leissner - who will obviously not be able to retribute the Malaysian people) in order to protect the ‘firm’, who is more than capable of compensating the same.
- 52.61. In order to ‘justify’ the approach of ‘individual accountability’ as opposed to ‘collective accountability’ (i.e. that the corporation behind the misconduct is to be held accountable like in 45.12 above), Peirce described a theoretical situation where a listed company has committed accounting fraud where the “*responsible individuals have twice forced the shareholders to pay for their wrongdoing*” and that therefore the SEC “*needs to be extremely careful in how and when it imposes corporate penalties to avoid making an already bad situation worse for shareholders*” (underline added).
- 52.62. The Committee must ask; has Peirce ever asked herself the question who appoints the management of a company? If she has, she ought to know that it is the *majority* of the shareholders. Consequently, if the majority of the shareholders appoints people who

commit accounting fraud (as in her example above), why should the corporation in question not bear responsibility for such misconduct alongside the individual(s) involved?

52.63. It is well recognized by market participants that management can ‘make or break’ a company, just look at the late Steve Jobs impact on Apple, or Bayer who has appointed Werner Baumann to be the architect of the Monsanto deal which has to date wiped out some €25 billions of Bayer’s market capitalisation<sup>103</sup>.

52.64. If Peirce’s logic were to be applied in a more general context, organisations like Goldman could comfortably commit fraud on an industrial scale by making sure that if ever caught-out, there will always be an asset-poor individual that will become a ‘goalkeeper’ and take responsibility for the misconduct in the end, so that Goldman as an organisation can walk away unblemished, by simply, in a worst case scenario, handing back their fee.

52.65. It should also be pointed out that in relation to the SEC settlements with Tesla and Musk respectively in relation to certain ‘tweets’, Peirce voted *against* a fine (of \$20 million) for Tesla and *for* an equivalent fine for Musk, i.e. ‘individual financial accountability’ but not a corporate equivalent.

52.66. If it was not Musk at the other end of this fine, most such people would have gone bankrupted, which shows how biased this approach is, as it is only out to protect corporations who have breached the law, i.e. the Wall Street Establishment. Obviously, in the vast majority of situations, only companies can pay such fines, not individuals.

52.67. From the perspective of the victims in the Case (or any other case for that matter), they do not care, they just want their stolen money back, and if the SEC under Clayton will focus (if at all) on a few individuals at investment bank D and law firm E, who in turn conspired with auditors F and Mr. H in order to implement the scheme, as opposed to holding the respective firms accountable for the misconduct, the probability of recovering the one billion dollars the A minority shareholders lost at the time, seems rather slim under Clayton’s leadership of the SEC, which obviously suits the Wall Street Establishment perfectly well.

### 53. Time Limitations

#### *Clayton’s ‘views’ on time limitations - Kokesh v. SEC*

53.1. In his testimony on 21 June 2018<sup>104</sup>, Clayton stated under the heading “*Returning Funds to Main Street Investors*” that in his view “*protecting retail investors also means, whenever possible, putting money back in their pockets when they are harmed by violations of the federal securities laws*” and that Clayton is “*troubled by the substantial amount of losses*” that the SEC “*may not be able to recover for retail investors*” (underline added) due to time limitations<sup>105</sup>.

53.2. Clayton further referred to the “*recent unanimous Supreme Court decision in Kokesh v. SEC*” in which the Supreme Court had “*time-limited the ability of the Commission to seek disgorgement of ill- gotten gains beyond a five-year statute of limitations applicable to penalties*”.

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<sup>103</sup> <https://www.ft.com/content/ba67adba-4b26-11e9-bbc9-6917dce3dc62>

<sup>104</sup> Before the Committee on Financial Services at the U.S. House of Representatives regarding “*Oversight of the U.S. Securities and Exchange Commission*”.

<sup>105</sup> <https://www.c-span.org/video/?447253-1/sec-chair-jay-clayton-testifies-house-oversight-hearing>



- 53.3. Clayton also expressed that *“if the fraud is well-concealed and stretches beyond the five-year limitations period applicable to penalties, it is likely that we will not have the ability to recover funds invested by our retail investors more than five years ago”* and that this in turn would allow *“clever fraudsters to keep their ill-gotten gains at the expense of our Main Street investors”* (underline added). This is remarkable as fraud by its very nature is seldom easily of immediately detectable. Certainly, in several jurisdictions, including the United Kingdom when fraud is uncovered it is the date of knowledge of the fraud and supporting facts that is relevant and fraud is often one of the obvious exceptions to any limitation defence.
- 53.4. Please note that *Kokesh v. SEC* relates to a so-called Ponzi Scheme dating back many years and the ruling does not differ whether the fraud was primarily committed against ‘retail’ or ‘wholesale’ investors, although *Kokesh* primarily targeted retail investors. Ponzi Schemes are, just like Madoff, easily detected and easy to understand once the ‘balloon bursts’, whilst truly sophisticated fraud committed by the Wall Street Establishment related to large M&A-transactions is always very ‘well-concealed’ and much more complex.
- 53.5. Against this background, Clayton welcomed the *“opportunity to work with Congress to address this issue to ensure defrauded retail investors can get their investment dollars back”* (underline added), see further under paragraph 53.18 - 53.20.

*Testimony provided by the two Enforcement Co-Directors*

- 53.6. The Co-Directors, Division of Enforcement, Stephanie Avakian and Steven Peikin, delivered a Testimony on 16 May 2018<sup>106</sup> to the United States House of Representatives Committee on Financial Services Subcommittee on Capital Markets, Securities, and Investment.
- 53.7. Avakian and Peikin explained, just like Clayton and Peirce, that their focus is also on protecting *“retail investors”* and the *“kinds of misconduct that traditionally have affected retail investors, such as accounting fraud, charging inappropriate or excessive fees, “pump-and-dump” frauds, and Ponzi schemes”*, i.e. not sophisticated M&A-fraud committed by the Wall Street Establishment and the likes of Goldman Sachs.
- 53.8. But Avakian and Peikin also stated that they *“will continue to actively pursue cases against large corporations, financial institutions, and other market participants who violate our federal securities laws”* and that they *“do not face a binary choice between protecting Main Street and policing Wall Street”*. In this context it is important for the Committee to recognize that someone like the Brazilian state-owned energy company Petrobras will be held fully accountable<sup>107</sup> by the US authorities<sup>108</sup>, whilst ‘members’ of the Wall Street Establishment who are ‘protected from within’ the SEC will not face the same scrutiny.
- 53.9. Bizarrely, for someone like Company B, by retaining someone like investment bank D, it ‘buys’ itself some kind of mafia-like ‘protection’ as if ever there were to be any regulatory investigation by the authorities, the Wall Street Establishment will come to its rescue and do what it can to prevent the alleged fraud from being properly scrutinised.

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<sup>106</sup> <https://www.sec.gov/news/testimony/testimony-oversight-secs-division-enforcement>

<sup>107</sup> <https://www.justice.gov/opa/pr/petr-leo-brasileiro-sa-petrobras-agrees-pay-more-850-million-fcpa-violations>

<sup>108</sup> Through Assistant Attorney General Benczkowski from the law firm Kirkland & Ellis - i.e. same law firm now representing Goldman Sachs against DOJ in relation to 1MDB.

- 53.10. Irrespectively, it does not help how much the Division of Enforcement may 'want' or 'intend' to pursue large case offenders from the Wall Street Establishment, if, once the question reaches the Commission, Peirce will vote it down (alongside Clayton) in light of all her biased assessments above (like a whole chain of 'pitfalls' with the end-goal of rejection). Further, if it ever reaches as far as the Commission, once the Reduced Award has been fully implemented by Clayton, such large cases will obviously rarely end up with the SEC in the first place any way, as described within my commentaries.
- 53.11. Avakian and Peikin also stated that "*Chairman Clayton charged us to root out fraud, market manipulation, and other violations of the federal securities laws with conviction and energy*", yet this obviously stands in stark contrast with the implications of the Reduced Award being promoted by Clayton in relation to large case fraud situations like 1MDB and the likes of Goldman Sachs being held accountable for their alleged misconduct.

*The Enforcement Co-Directors' views on time limitations*

- 53.12. Avakian and Peikin further emphasised their focus of "*compensating harmed investors for losses stemming from violations of the federal securities laws*" and that "*putting money back in the pockets of victims*" was of "*significant importance*".
- 53.13. Avakian and Peikin also explained that "*a recent development threatens our ability to continue doing so for long-running frauds*" in light of the US Supreme Court's decision in *Kokesh v. SEC*, where the "*Court held that Commission claims for disgorgement are subject to a five-year statute of limitations*".
- 53.14. Avakian and Peikin further explained that many "*securities frauds are complex and can take significant time to uncover and investigate*" and that some "*egregious fraud schemes*" like the one perpetrated by *Kokesh* "*are well concealed and are not discovered until investors have been victimized over many years*" and that wrongdoers "*should not benefit because they succeeded in concealing their misconduct*".
- 53.15. Nothing is more egregious and well-concealed than sophisticated M&A-fraud, yet that does not seem to be any major concern to the two Enforcement Co-directors, who are reporting directly to Clayton.
- 53.16. Avakian and Peikin further stated that they are concerned with the US Supreme Court's decision as "*Mr. Kokesh, who was found liable for defrauding his firm's advisory clients out of approximately \$35 million in client funds over many years, kept more than 80 percent of the money he stole, and his victims will get no recovery of those funds*". In the Case, the alleged offenders have to date kept 100% of the one billion dollar they stole, which is obviously even worse.
- 53.17. Avakian and Peikin is, like Clayton, seeking the assistance of Congress to overrule the highly irrational time limitations imposed by the US Supreme Court in *Kokesh v. SEC*, but given Clayton's relationship to the likes of Goldman Sachs and the wider Wall Street Establishment, one can get the impression that such restitution of harmed investors should only apply to 'retail investors' who has suffered 'plain vanilla' fraud (like Ponzi schemes) but not to victims of sophisticated M&A-fraud committed by the likes of Goldman Sachs, law firm E and Sullivan & Cromwell.

*Senate hearing of Clayton on 11 December 2018 - re. Kokesh v. SEC*

- 53.18. When questioned by Senator Kennedy at an oversight hearing before the Senate Banking Committee about the effects of the Kokesh v. SEC decision on 11 December 2018, Clayton stated that “- *We need some help, we need some help, because what it did was it said basically that Ponzi schemes and other types of frauds like that that go on beyond 5 years, we are not able to reach back and get the money back for people who are victims of those schemes, because disgorgements was viewed in that case as a penalty subject to the 5 year statute of limitations*”<sup>109</sup>.
- 53.19. Upon a follow-up question by Senator Kennedy if only Congress can give the SEC the authority to provide the SEC with the ability to set aside those effects by Kokesh v. SEC (i.e. recover ill-gotten gains beyond 5 years), Clayton responded that “*I’m not going to be a lawyer here, but yes*”.
- 53.20. The Committee must listen very carefully to what Clayton is saying here, he is not asking Congress to outright remove the Kokesh v. SEC decision so that all kind of victims of fraud can be compensated beyond 5 years; Clayton only wants “*some help*”, in order to be able to only retribute victims of “*Ponzi schemes and other types of frauds like that*”, i.e. not in relation to for example victims of sophisticated M&A-fraud committed by the likes of his former key client Goldman Sachs, in situations like the one related to the Case, again fending for the interests of the Wall Street Establishment at the expense of defenceless Main Street Investors.

*The five-year time limitation applied to the alleged fraud related to 1MDB*

- 53.21. As previously explained, Goldman Sachs is currently being investigated by the DoJ in relation to alleged embezzlement, money laundering and bribery offences pertaining to 1MDB.
- 53.22. Clearly, I have no detailed knowledge as to how this investigation was initiated, but I have understood that not until 2015 did the DoJ start to look into the alleged fraud in question which became of public focus during the latter half of 2018, i.e. some 10 years after 1MDB was first established. This illustrates, yet again, how unreasonable a five-year time limitation is when one is dealing with highly sophisticated fraud like in 1MDB or the Case.

*Time Limitations - Attorney’s and Investment Bank’s Ongoing Conspiracy*

- 53.23. To further illustrate to Congress how time limitations work to the unreasonable benefit of offenders in sophisticated M&A-transactions, one can refer to a recent ‘announcement’ at the homepage of Hengeler Mueller<sup>110</sup> with regards to the takeover of Mannesmann by Vodafone dating back to 2001/2002<sup>111</sup>.
- 53.24. After lower court rulings which would have resulted in an additional payment obligation by Vodafone in a high double-digit million amount, on 22 March 2018 the Düsseldorf Higher Regional Court ultimately rejected the claims of minority shareholders against Vodafone GmbH to receive increased compensation.

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<sup>109</sup> 42 minutes and 30 seconds into the hearing: <https://www.youtube.com/watch?v=T6YQixZuZtA>

<sup>110</sup> One of Germany’s most important M&A law firms.

<sup>111</sup> <https://www.hengeler.com/en/service/deals-and-news/2018/all/all/hengeler-mueller-vertritt-vodafone-erfolgreich-in-spruchverfahren/>

53.25. In other words, Hengeler Mueller, with unlimited insight into the takeover-process since the outset in 2001/2002, still actively provided 'services' and gave 'advise' to Vodafone in relation to this transaction some 16 years after the event in questions took effect; before claiming final 'victory' for their client *against* the former minority shareholders of Mannesmann in March of 2018, by eradicating the above high double-digit million amount awarded to former minority shareholders by lower instances.

53.26. The Committee must ask itself if it is really reasonable to impose a 5-year time limitation for a fraudulent event when the potential conspiracy to injure the economic interests of vulnerable minority shareholders is still very much potentially actively ongoing behind the scenes by the very same potential offenders some 16 years later?

*If the SEC will not hold sophisticated M&A-offenders liable - who will?*

53.27. The alleged offenders in relation to the Case have already been able to escape justice for many, many years and it is now about time that the authorities start to hold also such serious offenders accountable for their deeds.

53.28. Given that no one is above the law, which (ought to) includes representatives at organizations like [REDACTED], Congress must now give the SEC clear instructions to properly investigate also large M&A-fraud like the one related to the Case, given that the Wall Street Establishment has lately infiltrated the SEC in order to undermine such investigations to their own benefit, and it is only by setting examples such abuse will finally eradicate.

*Kokesh v. SEC - a Blessing for the 'Wall Street establishment'*

53.29. As previously described, I fear that the Wall Street Establishment which has infiltrated the SEC is now internally 'using' the Supreme Court ruling related to Kokesh v. SEC<sup>112</sup> to their personal benefit by 'justifying' that resources shall not be allocated to investigate sophisticated M&A-fraud that is more than 5 years old against themselves and their clients, something the above is in fact a blunt confirmation of.

53.30. As described above, those cases are in fact not 'old' at all; quite the contrary as the conspiracy to injure the economic interests of such Main Street Investors is still very much ongoing behind the scenes in a clandestine way many, many years later, despite the fact that the alleged fraudulent event in question indeed materialised a long time ago.

53.31. Under Kokesh v. SEC, a fraudster may simply take the view that as long as s/he manages to protect the scheme from detection for more than 5 years, s/he will be able to gradually retain the stolen money, which is clearly unacceptable in a state of law.

*Removal of Kokesh v. SEC in its entirety - Lilly Ledbetter Fair Pay Act of 2009*

53.32. After having undertaken my own research, I have identified a Supreme Court decision (Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 - 2007) which concluded that an employer "*cannot be sued under Title VII of the Civil Rights Act of 1964 over race or*

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<sup>112</sup> In combination with not pursuing any claims related to overseas fraudulent activities etc.

*gender pay discrimination if the claims are based on decisions made by the employer 180 days ago or more*<sup>113</sup>.

53.33. As I trust the Committee is aware, a bill was subsequently introduced in the 111<sup>th</sup> Congress which resulted in the Lilly Ledbetter Fair Pay Act of 2009<sup>114</sup>, enabling “*victims of pay discrimination*” to be able to seek restitution without being subjected to highly irrational and unreasonable time limitations imposed by the above referred to Supreme Court decision.

53.34. In the same way, ‘*victims of sophisticated M&A-fraud*’ should also logically be protected from such equivalent arbitrary time limitations imposed by the decision of the US Supreme Court in relation to *Kokesh v. SEC*<sup>115</sup>, not least in light of what has been explained above and the fact that fraud by its very nature is seldom easily of immediately detectable. This is why in several jurisdictions, when fraud is uncovered, it is the date of knowledge of the fraud and supporting facts that is relevant and fraud is often one of the obvious exceptions to any limitation defence.

53.35. Against this background, Congress now ought to intervene and focus on removing the detrimental time limitations of 5 years imposed by the Supreme Court in *Kokesh v. SEC* by introducing an Act<sup>116</sup> that would supersede this highly illogical and discriminatory decision in order to make sure that the statute of limitations (irrespective if disgorgement remedy constitutes a “*penalty*” or not<sup>117</sup>) will not enable fraudsters to retain their ill-gotten gains<sup>118</sup>, irrespective if the ill-gotten gains stems from a ‘plain vanilla’ Ponzi scheme or sophisticated M&A-fraud.

#### *Summary Time Limitations*

53.36. It is a very positive step forward that Clayton (who is in my opinion very much part of the Wall Street Establishment) has come out in relation to time limitations with such passion in defence of vulnerable Main Street Investors who have been defrauded, although I personally, in light of the implications of the Reduced Award, doubt that Clayton is in favour of extending time limitations in order to hold the likes of his former key clients like Goldman Sachs financially liable for their historical misconduct related to sophisticated M&A-fraud.

53.37. The implications of the *Kokesh v. SEC* ruling seems to be (assuming that Clayton will only get “*some help*” from Congress, tailored to protect the Wall Street Establishment - see paragraph 53.18 - 53.20 above) that the law will *discriminate* against the victims of sophisticated M&A-fraud as opposed to those subjected to easily understandable fraud like Ponzi.

53.38. Given that sophisticated M&A-fraud obviously is much more difficult to detect and investigate and therefore will take considerably longer time to expose, it cannot be the

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<sup>113</sup> [https://en.wikipedia.org/wiki/Ledbetter\\_v.\\_Goodyear\\_Tire\\_%26\\_Rubber\\_Co.](https://en.wikipedia.org/wiki/Ledbetter_v._Goodyear_Tire_%26_Rubber_Co.)

<sup>114</sup> [https://en.wikipedia.org/wiki/Lilly\\_Ledbetter\\_Fair\\_Pay\\_Act\\_of\\_2009](https://en.wikipedia.org/wiki/Lilly_Ledbetter_Fair_Pay_Act_of_2009)

<sup>115</sup> Clearly, I have no idea if it was this ‘angle’ Clayton was considering when he in his address before the Committee on Financial Services at the U.S. House of Representatives regarding “*Oversight of the U.S. Securities and Exchange Commission*” on 21 June 2018 stated that he wanted to work with Congress to address the issues with the *Kokesh v. SEC* decision in order to “*ensure defrauded retail investors can get their investment dollars back*”.

<sup>116</sup> Equivalent to the Lilly Ledbetter Fair Pay Act of 2009.

<sup>117</sup> And is therefore subject to the five-year statute of limitations in 28 U.S.C. § 2462.

<sup>118</sup> Interestingly, this seems to have the support and backing of Chairman Clayton, at least in relation to ‘plain vanilla’ fraud like Ponzi Schemes, in accordance with the above, perhaps less so for situations like 1MDB which involves his former key client Goldman Sachs.

purpose of the lawmaker that 'skilful' criminals orchestrating sophisticated M&A-fraud shall be able to escape justice because of their ability to conceal their crimes in a more clandestine way or intentionally delay proceedings<sup>119</sup>, as opposed to more 'plain vanilla' fraudsters like Mr. Kokesh and Mr. Polese. In fact, logically it ought to be the other way around, the more sophisticated the fraud, the less time limitation ought to apply.

53.39. I believe that this is now a unique opportunity for Congress to seize the moment and provide the SEC/DoJ with the tools they need in order to clean up past abuse, including that committed by the Wall Street Establishment, without unreasonable restrictions on time limitations, which will make the future safer for the Main Street Investors that Congress ultimately represents through the electorate.

#### 54. The Wall Street Establishment's view on Dodd-Frank and the Whistleblower Program

54.1. The Wall Street Establishment is now promoting irrational policies within the SEC which ultimately will 'shield' Big Businesses, important investment banks and key law firms who are allegedly defrauding Main Street Investors<sup>120</sup> on an industrial scale, by covering up their past misconduct in order to spare themselves huge fines and reputational damages.

54.2. The Wall Street Establishment, which consist of a wide range of 'well-connected' so called 'professionals' or 'high net worth individuals' who in the past have made vast fortunes by exploring the weak and vulnerable in the investment world, are now extremely keen to 'protect' their 'fiefdom', and the Whistleblower Program is accordingly an inherent threat to their very existence, as it undermines their ability to continue to abuse the system, at the expense of the Main Street Investors the SEC is appointed to protect.

54.3. The Wall Street Establishment is well aware that if a case of significant magnitude, like the Case, were to be properly investigated and the extent of their misconduct exposed, a whole chain of other cases in which the same line of misconduct has been committed may come to light and literally cause havoc to their illicit business model.

54.4. In other words, the resolve of the Wall Street Establishment to prevent a such situation knows no limits and therefore they now do their utmost to hide their own misconduct by, amongst other, punishing knowledgeable whistleblower who may expose them to potential such fines, by coming up with more and more 'clever' arguments as 'policies' as to why such investigations shall be halted even before they are instigated.

54.5. From my 'David and Goliath' perspective as a large case whistleblower, I am up against an extremely powerful group of people and organizations who have literally billions of dollars' worth of assets at their disposal in order to protect their 'privilege' to continue defrauding the defenceless. In other words, Congress cannot expect a whistleblower to all alone take on and hold giants like Goldman<sup>121</sup>, Cleary Gottlieb, Sullivan & Cromwell<sup>122</sup> and individuals like Mr. H accountable for their alleged highly sophisticated misconduct. Only the authorities have such resources available at their disposal, but only assuming that they

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<sup>119</sup> To illustrate this, in the court case related to the ██████████ for example, the submissions by ██████████, as 'crafted' by ██████████ and ██████████, could easily consist of many thousand pages of complex arguments, completely overwhelming the judge and therefore delaying the proceedings well beyond ██████████ time limitation restrictions, i.e. sophisticated fraudsters can simply take on a strategy to delay a court process beyond 5 years and thereby circumnavigate the law to their benefit. Consequently, the fraudulent activities and conspiracy typically continues a long time after the event in question has taken effect, as when legal challenges follow, the offenders are continuing to 'defend' their illicit actions, causing further harm to the victims.

<sup>120</sup> The likes of minority shareholders being caught up in sophisticated M&A-transactions.

<sup>121</sup> 37,000 employees and a net income of \$10,459,000,000 in 2018.

<sup>122</sup> With some 2,000 employees combined and revenues of in excess of a billion dollars each.

are allowed to use them by the Wall Street Establishment who is the subject to such investigations.

54.6. Obviously, those who have suffered losses from abuse like the one I have exposed in relation to the Case, are in no position to properly defend themselves given the huge complexities, number of jurisdictions involved and the fact that the offenders have almost unlimited resources to 'shoot it down'<sup>123</sup>. If this is, as I allege, a systematic abuse within sophisticated M&A-transactions more generally, the resources the Wall Street Establishment is willing to deploy to cover up what I have exposed in relation to the Case knows no limits.

54.7. Anyone from (or supportive of) the Wall Street Establishment reading my commentaries would for sure claim that I am just desperately trying to secure my 10-30% of a potential Recovery<sup>124</sup>, which partly is true, but then it must be remembered that the offenders (and their associates) are out to prevent an obligation to pay 100% of the same, so the Wall Street Establishment will always be many times<sup>125</sup> more incentivised to prevent an investigation than I as a whistleblower can ever be to expose the abuse in question to the authorities.

54.8. If one further take into account the potential risk for fall in the share price of an offender's stock as a consequence of a whistleblower actually blowing the whistle<sup>126</sup>, plus the removed ability to carry on defrauding investors in the very same lucrative way going forward, the Wall Street Establishment is probably 10's, if not 100's or a 1,000 times more incentivised<sup>127</sup> to put a permanent stop to a potential such investigation against them, than I can ever be to secure an award by exposing their misconduct.

54.9. In other words, the resources at work to protect the financial and reputational interests of the Wall Street Establishment is simply vast and I firmly believe, that they will come up with as many hurdles as it takes in order to make sure that such alleged offenders will ultimately walk away unblemished with their loot.

## 55. Committee Hearing

55.1. In light of the above, I hereby take the liberty to share a copy of this letter with Senator Crapo (R) and Senator Brown (D), Chairman and vice Chairman respectively for the Committee, who as far as I understand ultimately hold oversight and therefore jurisdiction over matters related to the SEC and propose that a hearing is summoned without delay in order to get to the bottom of what is actually going on within the SEC under Clayton's chairmanship.

55.2. What I have described above and in my initial Public Commentary ought to be of great concern to all, irrespective if they are Republicans or Democrats, as the matter at hand clearly rises above party politics.

55.3. I personally believe that lack of independence and lack of impartiality among key players in the financial markets is the number one threat to defenceless Main Street

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<sup>123</sup> Someone like Goldman Sachs alone can make a billion dollars in net income in a single month.

<sup>124</sup> Or soon perhaps considerably less given Clayton's Reduced Award.

<sup>125</sup> i.e. 10 (100/10) to 3.3 (100/30) times more incentivized.

<sup>126</sup> Like for example how Goldman plummeted in value in light of the 1MDB situation.

<sup>127</sup> In the example above under 47.13 the Wall Street Establishment would be 250 times (7,500/30) more incentivized than me without even considering the risk of fall in share price and the removed ability to carry on defrauding.

Investors, who are dependent to rely on their integrity despite the huge information asymmetry vis-à-vis investment bankers and their dependent corporate attorneys and auditors.

55.4. Assuming a such hearing were to be called, I would propose the following agenda;

55.4.1. The Wall Street Establishment

55.4.2. The Reduced Award

55.4.3. Time Limitations

55.4.4. Attorney-Client Privilege

55.4.5. Due Process & Property Rights

55.4.6. Subpoena Powers

55.4.7. Lack of 'Chinese Walls'

55.4.8. The Scale of the Misconduct

55.5. Again, assuming such a hearing will take place, I would suggest that the following individuals are called in the following order;

55.5.1. Richard Jansson - Large Case Whistleblower

55.5.2. Rod Jay Rosenstein - former United States Deputy Attorney General

55.5.3. Hester M. Peirce - SEC Commissioner

55.5.4. Stephanie Avakian and Steven Peikin - SEC Enforcement Co-Directors

55.5.5. Walter Joseph "Jay" Clayton III - Chairman of the SEC Commission

55.5.6. Jane Norberg and Emily Pasquinelli - Chief and Deputy Chief of the SEC Whistleblower Program

55.6. I find it rather likely that the Committee will thereafter decide to call other people to be heard under oath, but that is of course a separate matter for the Committee to decide upon in due course.

## 56. Summary - Conflicts of Interest, Cronyism & Corruption

56.1. Infiltration of authorities for personal enrichment and advantage at the expense of others is nothing new, in Italy for example, the Financial Times reported recently that the mafia has "*developed white-collar expertise in infiltrating the local councils and committees that award tenders and subsidies*"<sup>128</sup>.

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<sup>128</sup> <https://www.ft.com/content/73de228c-e098-11e8-8e70-5e22a430c1ad>



- 56.2. In my view, subject to Congress taking action and not being complacent, the Wall Street Establishment is about to face its very own '#metoo-moment', as reality is starting to catch up with allegedly corrupt market participants like Goldman Sachs and their dependent corporate attorneys and auditors, who have for decades taken advantage of defenceless Main Street Investors in order to enrich themselves and their Big Business clients.
- 56.3. Given the huge information asymmetry involved in M&A-transactions, if the SEC does not become part of this movement, Main Street Investors will continue to be abused for decades to come, as only Congress has the power to implement a permanent change. Not even the President can 'fire' the SEC Chairman, although I am not suggesting in any way that he wants to.
- 56.4. It is important that Congress does not underestimate the influential power of those who want to continue to profit from this 'corrupt system' (the Wall Street Establishment) and therefore will do all in their power to defend their 'privilege', and it is therefore in my opinion crucial that a hearing is called.
- 56.5. Congress must show the Wall Street Establishments that they mean business by cleaning up such clandestine abuse and not allow it to be swept under the carpet by allowing serious offenders to 'get away with' their past misconduct because of highly irrational time limitations or other biased hurdles and make sure that examples are set that will prevent the same kind of offences from being re-committed by the Wall Street Establishment going forward.
- 56.6. If Congress does not address this abuse and put a stop to it, organisations like Goldman Sachs will grow even stronger at the expense of the American people, who have elected the members to Congress in order to represent their interests.
- 56.7. Congress must make sure that the Wall Street Establishment is not allowed to undermine the Whistle Blower Program for their own benefit and that offences committed by them are also properly investigated at arm's length and that all offenders are equal before the law.
- 56.8. As previously stated, this is not a political issue, as tens of millions of American savers are both Republicans and Democrats; it is all about protecting vulnerable Main Street Investors from abuse by the Wall Street Establishment.
- 56.9. The above is precisely why a zero-tolerance for any such abuse must be implemented in order to eradicate not only the market abuse itself, but also the way in which large corporations and their dependent lawyers and auditors are allowed to interfere in investigations by authorities for their own personal gain and protection. Proper and effective regulation is vital.
- 56.10. If it is ultimately the Wall Street Establishment and their associates who will arbitrarily decide what abuse shall or shall not be pursued by the authorities, the SEC and the DoJ have become corrupt institutions who are not any longer serving the interests of the vulnerable Main Street Investors the lawmaker intended, and only Congress has the power to put a stop to it.

56.11. To put it plainly; Congress must be on side with the victims, not with the fraudsters, and make sure that important American institutions like the SEC and DoJ are prevented from being infiltrated by individuals who are arbitrarily interpreting laws that discriminate against the victims of sophisticated M&A-fraud to the benefit of the Wall Street Establishment, in stark breach of the Equal Protection Clause under the Fourteenth Amendment to the United States Constitution<sup>129</sup>.

5 June 2019

Sincerely,

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<sup>129</sup> [https://en.wikipedia.org/wiki/Equal\\_Protection\\_Clause](https://en.wikipedia.org/wiki/Equal_Protection_Clause)

## **Disclaimer and Forward-Looking Statements**

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