

January 13, 2019

Chairwoman Maxine Waters
House Committee on Financial Services
2221 Rayburn House Office Building
Washington, DC 20515

Chairman Michael Crapo
Senate Committee on Banking, Housing,
and Urban Affairs
239 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Patrick McHenry
House Committee on Financial Services
2004 Rayburn House Office Building
Washington, DC 20515

Ranking Member Sherrod Brown
Senate Committee on Banking, Housing,
and Urban Affairs
503 Hart Senate Office Building
Washington, DC 20510

Dear Chairwoman Waters, Ranking Member McHenry, Chairman Crapo, and Ranking Member Brown:

We are writing to request that your committees open an investigation into the Securities and Exchange Commission's review of WeCompany's aborted Initial Public Offering (IPO) and the integrity of its investigation into potential securities fraud within that same company. Former senior SEC officials have represented WeCompany in each of these two stages of SEC scrutiny —John White, former Director of the SEC's Division of Corporation Finance in the first instance, and Andrew Ceresney, the Director of the SEC's Division of Enforcement in the second — casting doubt on the integrity of the agency review process in both cases.

In the face of such doubts, it is impossible for the public to have full confidence in the SEC's ability and willingness to safeguard securities markets. We ask that you work to restore that confidence by conducting a thorough investigation.

The rapid disintegration of WeCompany's highly-anticipated IPO attracted considerable attention this fall. How was it that a company that had claimed to be worth at least \$47 billion (a figure that countless banking officials vouched for) was now worth, by many estimates, as little as \$3 billion? Subsequent reporting on WeWork's chaotic internal workings shed light on the causes of this precipitous downfall and led many to ask, instead, how did WeCompany maintain the charade for so long? It is our opinion that this is one of the key questions your committees should be posing in the wake of WeWork's collapse.

Only limited information about the SEC's process is available to the public. Documents leaked to the Wall Street Journal show that the SEC was subjecting WeWork's filings to some scrutiny. The leaked correspondence between the SEC and WeCompany shows SEC officials

challenging WeCompany's use of potentially misleading accounting measures and implausible revenue forecasts. Those same documents also reveal, however, that WeCompany's lawyers failed to fully address these misrepresentations. Since the deal collapsed, we cannot know if the SEC would have forced WeCompany to fully rectify the remaining problems prior to giving the offering its blessing.

There is reason to doubt that the agency would have subjected WeCompany to the same level of scrutiny as it would have for other companies. Indeed, reducing scrutiny was likely WeCompany's intention when it decided to hire John White of Cravath, Swaine, & Moore to represent the company through the SEC review process. White was the Director of the SEC's Division of Corporation Finance — which oversees IPOs and reviews regular corporate filings — from 2006 to 2008.

White would have had unusual insight into the specific strengths, weaknesses and organization of the Corporation Finance division that would have allowed him to be unusually effective above and beyond any other experienced securities lawyer. In addition to having familiarity with the institution itself, White also likely would have been personally familiar with some of those reviewing the WeCompany filings. A cursory review on LinkedIn reveals that many individuals who worked in the Division of Corporation Finance under White's leadership continue in the division today. Given his seniority in the division compared to these personnel, it is probable that White would have been involved in some manner in their professional reviews, including potentially holding some sway over promotions, bonuses, or other career milestones.

Finally, it should be noted that White's ties to the SEC likely go beyond those that he personally cultivated in his time at the agency. His spouse, Mary Jo White, served as the SEC's Chair from 2013 to 2017, giving her broad exposure to the agency's personnel and operations. It seems implausible to suggest that this relationship would have no effect on John White's own standing within the agency.

That these advantages were ultimately not enough to save a disastrous IPO does not make them inconsequential, nor does it excuse them from further scrutiny. That is all the more true as, it is plausible that White's elevated stature at the SEC is continuing to work in his and his law firm's favor. White and his colleagues appear to have signed off on numerous misleading and even potentially fraudulent representations of WeCompany's profitability. Under normal circumstances such actions might prompt an SEC lawsuit. Yet given White's deep ties throughout the SEC, we cannot express confidence that the agency would pursue White and his firm even if there were sufficient grounds to do so. And in the absence of SEC action, Cravath and White would not face liability as the SEC is the sole entity with jurisdiction to pursue attorneys and law firms that aid and abet securities fraud.

For these reasons, we call on your committees to investigate to determine if White's involvement in this case impacted the SEC's review of the WeCompany IPO or its consideration of legal action against White's law firm, Cravath, Swaine, & Moore.

The investigation cannot, however, end there because WeCompany's dealings with the SEC did not end with the collapse of its IPO. As Bloomberg reported last month, the SEC's Enforcement Division is now investigating WeCompany for potential rule violations in the lead up to its failed IPO.

In this latest round of scrutiny WeCompany has elected to employ the same strategy as it did in its IPO; it hired the former head of the SEC division that is conducting the probe. In this case, that is Andrew Ceresney, former Director of the SEC's Enforcement Division.

As with White, Ceresney's former role as the head of the Enforcement Division should raise concerns about the integrity of the SEC's review. Ceresney's insider knowledge of the division's strategies and weaknesses could allow WeCompany to evade proper scrutiny. Additionally, like White, Ceresney likely would have been involved in decisions regarding promotions and other career milestones for some of those officials involved in reviewing WeCompany's case.

Moreover, Ceresney is closely linked professionally to former SEC Chairwoman Mary Jo White, the Senior Chair of Ceresney's law firm (Debevoise & Plimpton) and the woman who appointed him to head the SEC's Enforcement Division. It seems possible that very few parties involved in assessing WeCompany's efforts have an undivided interest in getting to the bottom of this story.

Given these concerns, we believe that your committees should also investigate the Enforcement Division's handling of its WeCompany investigation.

It is our expectation that both of these investigations will yield fruitful results on multiple fronts by providing legislators insight into the weaknesses of the SEC's review processes, thereby paving the way for efficacious legislative fixes. First and foremost, an investigation of WeCompany's reliance on former SEC personnel will shed light on the function and effect of the revolving door on enforcement outcomes. Some have argued that former personnel's inside knowledge makes the enforcement process run more efficiently and function more effectively. WeCompany's example would seem to suggest otherwise. An investigation into this case may undercut these persistent claims and suggest avenues to reduce the revolving door's negative effects, including by, if necessary, shutting it for good.

By scrutinizing the WeCompany IPO, legislators may also gain insight into the gaps in existing regulatory frameworks. While some have argued that securities regulations are too burdensome, WeCompany's IPO failing only at the last minute and the difficulties other "unicorns" have faced going public in recent years suggest that present regulations may in fact be too lenient.

Finally, it is worth assessing whether attorneys or accountants who push excessively aggressive, creative bookkeeping ought to face some accountability from enforcement agencies. It seems plausible (although certainly not proven) that, for example, John White was

adding prestige to an, at best, ethically problematic set of offerings that took in ostensibly sophisticated investors. The potential for prestigious revolving door attorneys and CPAs to advance problematic accounting into the nation's capital markets is concerning. Whether or not the Public Company Accounting Oversight Board (PCAOB) and other government institutions are set up to police this possibility merits significant scrutiny.

Thus, we call on your committees to thoroughly investigate both the SEC Enforcement Division and the Corporation Finance division's dealings with WeCompany to verify that revolving door figures did not corrupt either review process and to ensure that the SEC has the necessary tools to fulfill its mandate.

Jeff Hauser
Executive Director,
Revolving Door Project at the Center for Economic
Policy and Research (CEPR)
1611 Connecticut Ave, Suite 400
Washington, DC 20009

David Segal
Executive Director
Demand Progress Education Fund
1201 Connecticut Ave
Washington, DC 20036

cc:

Chairman Jay Clayton
Commissioner Robert J. Jackson Jr.
Commissioner Hester M. Peirce
Commissioner Elad L. Roisman
Commissioner Allison Herren Lee
William Hinman, Director, Division of Corporation Finance
Stephanie Avakian, Co-Director, Division of Enforcement
Steven Peikin, Co-Director, Division of Enforcement