

Investigation into Multiple Allegations That Secretary of Commerce Wilbur L. Ross, Jr., Failed to Comply with His Ethics Agreement and Violated Conflict of Interest Laws

INVESTIGATIVE REPORT NO. 18-0286

DECEMBER 3, 2020



U.S. Department of Commerce
Office of Inspector General
Office of Investigations

Contents

Background	1
I. Allegations	1
II. Scope of Investigation	3
Compliance with Ethics Agreement (Asset Divestiture).....	5
I. Allegations	5
II. Applicable Law – Public Financial Disclosure Requirements.....	8
III. Investigative Methodology.....	12
IV. Factual Background.....	14
A. <i>Requirements in Secretary Ross’s Ethics Agreement</i>	14
B. <i>Timeline of Events</i>	16
C. <i>Assets Requiring Divestiture Within 90 Days of Confirmation</i>	34
D. <i>Assets Requiring Divestiture Within 180 Days of Confirmation</i>	59
V. Analysis/Findings.....	61
A. <i>Air Lease Corporation</i>	62
B. <i>Bank of Cyprus</i>	64
C. <i>BankUnited, Inc.</i>	65
D. <i>Invesco, Ltd.</i>	66
E. <i>Other Entities</i>	68
Potential Conflicts of Interest	70
I. Allegations	70
II. Applicable Law	71
III. Investigative Methodology.....	74
IV. Factual Background.....	75
A. <i>Secretary Ross’s Ethics Agreement</i>	75
B. <i>Timeline of Events</i>	76
C. <i>Interests in the Oil and Gas Industry</i>	80
D. <i>Interests in the Rail and/or Steel Industries (e.g., The Greenbrier Companies, Inc.)</i>	91
E. <i>Boeing Co.</i>	104
V. Analysis/Findings.....	108
A. <i>Criminal Conflicts of Interest</i>	108
B. <i>Basic Obligations of Public Service</i>	118

Secretary Ross’s Short Sale of Navigator Holdings Ltd. Stock	123
I. Allegations	123
II. Applicable Law	125
III. Investigative Methodology.....	126
IV. Factual Background.....	126
A. <i>Navigator’s Business</i>	126
B. <i>Secretary Ross’s Initial Disclosure of His Investments in Navigator</i>	126
C. <i>Secretary Ross’s Ethics Agreement’s Treatment of Investments in the Transoceanic Shipping Sector</i>	128
D. <i>Timeline of Events</i>	129
V. Analysis/Findings.....	141
A. <i>Secretary Ross’s Failure to Disclose His Direct Holdings of Navigator Shares on His Nominee OGE Form 278e</i>	142
B. <i>Secretary Ross’s Short Sale of Navigator Shares and Insider Trading Allegations</i>	145
C. <i>Conflicts of Interest Analysis</i>	148
D. <i>Analysis of a Potential Violation of 5 C.F.R. § 2635.702</i>	150

Cover: Herbert C. Hoover Building main entrance at 14th Street Northwest in Washington, DC. Completed in 1932, the building is named after the former Secretary of Commerce and 31st President of the United States.

Background

I. Allegations

On November 20, 2017, the U.S. Department of Commerce (the Department) Office of Inspector General (OIG) initiated an investigation into issues raised in a letter from members of the U.S. Senate to the Inspector General, dated November 13, 2017.¹ This letter requested an OIG investigation of Secretary of Commerce Wilbur L. Ross, Jr., and his [REDACTED] “to ensure that their conduct and representations are consistent with all ethical requirements of the U.S. Department of Commerce.”² The letter requested an investigation of the following areas:

1. Ascertaining the true value of Secretary Ross’s personal wealth.
2. Determining whether Secretary Ross complied with the divestment requirements in his ethics agreement.
3. Determining whether Secretary Ross complied with the recusal requirements in his ethics agreement and the adequacy of that agreement.
4. Determining whether senior Department officials have been allowed to serve despite conflicts of interest.³

The Inspector General also received a letter from eight members of the U.S. House of Representatives, dated June 27, 2018, that requested our office “review Secretary Ross’s compliance with federal ethics requirements, his ongoing issues with conflicts of interest, and his potentially false statements regarding certain financial holdings.”⁴ The June 27, 2018, letter also references

1. Secretary Ross’s short sale of stock in Navigator Holdings Ltd.; and
2. a potential conflict between two certifications of ethics agreement compliance that Secretary Ross signed in June 2017 and November 2017 and an Office of Government Ethics (“OGE”) Periodic Transaction Report (OGE Form 278-T) related to sales of his shares in Invesco and The Greenbrier Companies.⁵

¹ U.S. Senators to Peggy E. Gustafson, November 13, 2017. *Letter from U.S. Senate to the Inspector General of the U.S. Department of Commerce*. Available at <https://www.blumenthal.senate.gov/imo/media/doc/11.13.17%20Ltr%20to%20Commerce%20IG.pdf> (accessed August 19, 2020). This letter was signed by Senators Richard Blumenthal, Margaret Wood Hassan, Cory A. Booker, Maria Cantwell, Tammy Baldwin, and Tammy Duckworth.

² *Id.*, at 1.

³ *Id.*, at 1–4.

⁴ U.S. Representatives to Peggy E. Gustafson, June 27, 2018. *Letter from U.S. House of Representatives to the Inspector General of the U.S. Department of Commerce*. This letter was signed by Representatives Frank Pallone, Jr., Eliot Engel, Maxine Waters, Jerrold Nadler, Eddie Bernice Johnson, Nydia Velazquez, Elijah Cummings, and Raul M. Grijalva.

⁵ *Id.* at 1–3.

The letter closes with a request to “review whether Secretary Ross violated conflict of interest and other ethics rules, whether he has any ongoing conflicts of interest, and whether he has any additional holdings he has not reported or divested in compliance with his ethics agreement.”⁶

In addition to the two Congressional letters previously mentioned, our office received several additional allegations and requests for investigation related to Secretary Ross’s potential conflicts of interest and potential violations of ethics rules from other sources.⁷ We also have knowledge of a number of other allegations and requests for investigation related to Secretary Ross’s potential conflicts of interest and potential violation of ethics rules that were directed to other federal agencies.⁸ Finally, our office is aware of similar claims, allegations, and information raised by various media publications.⁹

⁶ *Id.* at 3.

⁷ *E.g.* (1) Noah Bookbinder to Peggy E. Gustafson, December 21, 2017. *CREW Requests Investigation into Wilbur Ross*. Available at <https://www.citizensforethics.org/legal-filing/crew-requests-investigatation-wilbur-ross/> (accessed August 25, 2020); (2) Senator John Thune to Peggy E. Gustafson, July 15, 2018. *Letter from Senator Thune to the Inspector General of the U.S. Department of Commerce*; (3) Campaign Legal Center to Inspector General Gustafson, August 13, 2018. *Complaint regarding Commerce Secretary Wilbur L. Ross Jr. from the Campaign Legal Center to the Inspector General for the U.S. Department of Commerce*. Available at <https://campaignlegal.org/sites/default/files/2018-08/Hon%20Wilbur%20L%20Ross%20Jr%20Complaint%20%2813%20Aug%202018%29.pdf> (accessed August 25, 2020); (4) Noah Bookbinder to Rod J. Rosenstein and Peggy E. Gustafson, August 16, 2018. *Request for Investigation of Criminal Conflicts of Interest and False Statements by Secretary of Commerce Wilbur L. Ross*. Available at <https://www.citizensforethics.org/legal-filing/crew-requests-immediate-investigation-into-wilbur-ross-conflicts-of-interest/> (accessed August 25, 2020); (5) Delaney N. Marsco to Inspector General Gustafson, November 1, 2018. *Supplemental Complaint Concerning Ethics Violations by Sec. Wilbur Ross*. Available at <https://campaignlegal.org/sites/default/files/2018-11/Supplemental%20Complaint%20-%20Hon.%20Wilbur%20Ross%20Jr.%20%281%20Nov%202018%29.pdf> (accessed August 25, 2020); and (6) Delaney N. Marsco to Inspector General Gustafson, February 7, 2019. *Supplemental Complaint Concerning Ethics Violations by Sec. Wilbur Ross*. Available at <https://campaignlegal.org/sites/default/files/2019-02/Supplemental%20Complaint%20-%20CLC%20-%20Hon.%20Wilbur%20Ross.pdf> (accessed August 25, 2020).

⁸ *E.g.* (1) Noah Bookbinder to Rod J. Rosenstein and David J. Apol, June 22, 2018. *Request for Investigation into False Statement and Insider Trading by Secretary of Commerce Wilbur L. Ross*. Available at <https://www.citizensforethics.org/news/press-releases/wilbur-ross/> (accessed November 9, 2020); (2) Danielle Brian to Stephanie Avakian and Steven Peikin, June 21, 2018. *POGO Files SEC Complaint on Possible Insider Trading*. Available at <https://www.pogo.org/letter/2018/06/pogo-files-sec-complaint-on-possible-insider-trading/> (accessed August 25, 2020); (3) Senator Elizabeth Warren, Senator Richard Blumenthal, and Representative Elijah Cummings to Jay Clayton, June 27, 2018. *Congressional Letter to Chairman Clayton of the Securities and Exchange Commission*. Available at https://www.warren.senate.gov/imo/media/doc/2018-6-27_Letter_to_SEC_about_Wilbur_Ross_and_Navigator_Holdings1.pdf (accessed August 25, 2020); and (4) Senator Ron Wyden to Jeff Sessions, July 16, 2018. *Letter from Ranking Member of the U.S. Senate Committee on Finance to Attorney General Jeff Sessions*. Available at <https://www.finance.senate.gov/imo/media/doc/071618%20Wyden%20Letter%20to%20DOJ%20Ross%20Referral.pdf> (accessed August 25, 2020).

⁹ *E.g.* (1) Mike McIntire, Sasha Chavkin, and Martha M. Hamilton, “Commerce Secretary’s Offshore Ties to Putin ‘Cronies,’” *The New York Times*, November 5, 2017. Available at <https://www.nytimes.com/2017/11/05/world/wilbur-ross-russia.html> (accessed October 13, 2020); (2) Dan Alexander, “Lies, China and Putin: Solving the Mystery of Wilbur Ross’ Missing Fortune,” *Forbes*, June 18, 2018. Available at <https://www.forbes.com/sites/danalexander/2018/06/18/lies-china-and-putin-solving-the-mystery-of-wilbur-ross-missing-fortune-trump-commerce-secretary-cabinet-conflicts-of-interest/#3d969a0d7e87> (accessed October 13, 2020); and (3) Mike McIntire, “Commerce Secretary Shorted Stock as Negative Coverage Loomed,”

II. Scope of Investigation

In general, these allegations relate to Secretary Ross's financial holdings and ownership of interests in certain companies, actions he took to divest these interests, and actions he took while he maintained these interests. As a primary matter, our office sought to determine whether, how, and on what date Secretary Ross divested certain financial interests as required by the ethics agreement he signed on January 15, 2017, as amended on January 31, 2017 (the "Ethics Agreement").¹⁰ We also investigated actions Secretary Ross took while he held such financial interests, taking into consideration the advice he received from Department ethics officials with respect to limitations on meetings with representatives of certain entities. Finally, our office investigated specific allegations related to Secretary Ross's short sale of shares in Navigator Holdings Ltd. to determine whether he violated any laws related to the sale of these securities.

In order to gather information to assess these various allegations, we conducted 20 interviews of 16 individuals. The interviewees were Department staff members, to include members of the Office of the Secretary and Office of the General Counsel (OGC). We also interviewed Secretary Ross about these allegations in October 2019. In addition, our office issued 15 Inspector General subpoenas, reviewed email messages and calendar records, and reviewed several thousand pages of financial records related to asset divestiture. Due to the complex nature of the issues involved, our office consulted with experts in the fields of finance and government ethics.

Due to the nature and scope of the allegations, our office conducted liaison and de-confliction operations with the Federal Bureau of Investigation (FBI), the U.S. Securities and Exchange Commission (SEC), and the Financial Industry Regulatory Authority (FINRA). Because we found evidence of potential violations of federal criminal law, our office coordinated with the U.S. Department of Justice (DOJ). DOJ decided not to open a criminal investigation into the allegations.

This report details the information that resulted from our investigation of the allegations previously described.¹¹ The **Compliance with Ethics Agreement (Asset Divestiture)** chapter of this report deals with the issues of whether Secretary Ross complied with his

The New York Times, June 19, 2018. Available at <https://www.nytimes.com/2018/06/19/us/politics/wilbur-ross-shortened-stock.html> (accessed October 13, 2020).

¹⁰ Wilbur L. Ross, Jr., to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C4D33DB26307189E852580C8002C7A72/\\$FILE/Ross,%20Wilbur%20L%20finalAmendedEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C4D33DB26307189E852580C8002C7A72/$FILE/Ross,%20Wilbur%20L%20finalAmendedEA.pdf) (accessed August 25, 2020).

¹¹ This report only addresses the allegations related to Secretary Ross. We also investigated [REDACTED] involvement in the matters cited in this report in which [REDACTED] held a financial interest while serving on Secretary Ross's staff, first as a [REDACTED] and later as [REDACTED]. Our case presentation to DOJ included the evidence we identified regarding [REDACTED] involvement in these matters. As noted directly above, DOJ decided not to open a criminal investigation into these allegations. Moreover, [REDACTED] resigned from the Department on [REDACTED], and returned to the private sector; therefore, we deemed it unnecessary to pursue these allegations administratively.

Ethics Agreement and whether he violated any regulations in relation to required disclosures and divestitures of his assets. The **Potential Conflicts of Interest** chapter of this report is concerned with Secretary Ross's potential violation of conflict of interest laws and other related regulations in connection with certain financial interests he or [REDACTED] maintained while he served as Secretary of Commerce. The **Secretary Ross's Short Sale of Navigator Holdings Ltd. Stock** chapter of this report focuses on issues surrounding Secretary Ross's short sale of Navigator Holdings Ltd. shares in October 2017.

Compliance with Ethics Agreement (Asset Divestiture)

I. Allegations

On November 13, 2017, six U.S. Senators addressed a letter to Inspector General Gustafson, in which they requested an investigation of, among other things, “Whether Secretary Ross has complied with the divestment requirements in his ethics agreement.”¹² The letter noted, “As part of the confirmation process, Secretary Ross agreed to divest—or sell off—80 assets over the course of several months.”¹³ The letter further noted that Secretary Ross’s Ethics Agreement included a list of 40 assets he agreed to sell within 90 days of confirmation and a second list of 40 assets he agreed to sell within 180 days of confirmation.¹⁴ The Senators stated the first divestment deadline—for the 40 assets to be sold within 90 days of confirmation—was May 28, 2017, and “no document was filed in that window.”¹⁵ The letter stated that

Five days after the deadline, on June 2, [2017] he signed a document claiming to have sold everything he had agreed to sell on the list.¹⁶ He filed documents – known as transaction reports – that were posted on OGE’s website reflecting his divestment of many of these assets. But as of today there appears to be no proof of divestment of up to fourteen of the assets that appeared on the list of assets he said he had sold, including several Invesco funds.¹⁷

In addition, the Senators stated, “Moreover, the document in which [Secretary Ross] claims to have completed the divestiture warns there was an ‘unanticipated delay’ concerning the sale of three assets: Air Lease Corp., Bank of Cyprus and BankUnited. But Secretary Ross fails to explain the ‘unanticipated delay.’”¹⁸ The letter noted that Secretary Ross filed documents regarding his divestment of Air Lease and BankUnited, but he had not yet filed any documents showing transfer of his interest in Bank of Cyprus.¹⁹

Next, the Senators addressed the assets that Secretary Ross agreed to divest within 180 days of his confirmation, as listed in his Ethics Agreement.²⁰ The Senators stated the

¹² U.S. Senators to Peggy E. Gustafson, November 13, 2017. *Letter from U.S. Senate to the Inspector General of the U.S. Department of Commerce.*

¹³ *Id.* at p. 2.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ The document to which the Senators are referring is Secretary Ross’s OGE *Certification of Ethics Agreement Compliance*, dated June 2, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/\\$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf) (accessed August 25, 2020).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

deadline for divestments of these assets was August 26, 2017, and added, “But that date came and went.” They noted that Secretary Ross filed a document on September 5, 2017, in which he claimed he had been granted a 60-day extension of the deadline by Department ethics officials, and that the next deadline was October 25, 2017.²¹ With respect to the next deadline, the Senators stated, “That date came and went, too.”²² The Senators acknowledged that Secretary Ross signed a document on November 1, 2017, that was made public on November 5, 2017, “claiming to have divested everything.”²³ The Senators cited that Secretary Ross “appears to have filed little proof of divestment of these assets.”²⁴ However, they acknowledged that he had several weeks until he was required to file proof of divestment and noted, “[Secretary Ross] contends that the filing of proof of divestment is somehow not applicable – having checked ‘N/A’ on the form where it requires such proof.”²⁵ The Senators concluded this section of their letter by stating, “To further confuse matters, the ethics forms that Secretary Ross submitted during the confirmation process lists broad ranges for the value of these interests – not specific stakes of ownership. This makes it difficult to determine whether his transactions involving an asset constitute all ownership in that interest or just a portion thereof.”²⁶ The Senators then urged our office “to investigate and confirm that Secretary Ross has complied with all the deadlines in his agreement, whether Secretary Ross has divested all assets per his agreement – including how, e.g., by sale, by gift, etc., whether the process for divestment was conducted in an orderly, legitimate manner, and whether the extensions he was provided by ethics officials were valid.”²⁷

In addition, Inspector General Gustafson received a letter on June 27, 2018, from eight members of the U.S. House of Representatives.²⁸ As previously noted, this letter requested that our office “review Secretary Ross’s compliance with federal ethics requirements, his ongoing issues with conflicts of interest, and his potentially false statements regarding certain financial holdings.”²⁹ The letter cited a June 18, 2018, *Forbes* article in which the author raised issues with certain investments Secretary Ross maintained while serving as the

²¹ *Ibid.* The document to which the Senators are referring is Secretary Ross’s OGE *Certification of Ethics Agreement Compliance*, dated September 5, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/\\$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf) (accessed August 25, 2020).

²² *Ibid.*

²³ *Ibid.* The document to which the Senators are referring is Secretary Ross’s OGE *Certification of Ethics Agreement Compliance*, dated November 1, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/\\$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf) (accessed August 25, 2020).

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.* at p. 2–3.

²⁷ *Ibid.* at p. 3.

²⁸ U.S. Representatives to Peggy E. Gustafson, June 27, 2018. *Letter from U.S. House of Representatives to the Inspector General of the U.S. Department of Commerce*.

²⁹ *Ibid.* at p. 1. This report addresses potential conflicts of interest in a subsequent section.

Secretary of Commerce.³⁰ The Representatives stated, “Rather than fully divesting these assets as he committed to do in his confirmation hearings, Secretary Ross appears to have placed certain assets into a trust that benefits his family members.”³¹

Like the November 13, 2017, letter from the Senators, this letter also noted potential issues with the OGE *Certification of Ethics Agreement Compliance* form that Secretary Ross signed on November 1, 2017, “in which he asserted he had completely divested all holdings required to be divested by his ethics agreement.”³² The letter from the Representatives also cited Secretary Ross’s previous OGE *Certification of Ethics Agreement Compliance* form from June 2017, in which Secretary Ross stated he divested all holdings his Ethics Agreement required him to divest within 90 days of his confirmation, with the previously noted exception of Air Lease Corporation, Bank of Cyprus, and BankUnited.³³ The letter stated, “A recently released ethics disclosure indicates, however, that as late as December 2017, Secretary Ross held assets in companies in which he was formerly employed or served as a director, in direct violation of this ethics agreement.”³⁴ As evidence for this claim, the Representatives stated, “Secretary Ross sold between \$10 and \$50 million of stock in Invesco, seven months after he was required to divest.”³⁵ The letter noted, that regarding this divestiture, Secretary Ross stated, “In December 2017, I discovered that the previously held stock had not been sold. I then promptly sold those shares.”³⁶ As further evidence for the “direct violation” of the Ethics Agreement, the letter stated, “On December 14, 2017, Secretary Ross sold between \$250,000 and \$500,000 of shares in the Greenbrier Companies, a railroad equipment and services provider. Secretary Ross served as Director of Greenbrier Companies from 2009 to 2012.”³⁷ The letter noted, “According to [Secretary Ross’s] revised financial disclosure, ‘these holdings were inadvertently not included’ in his nominee report.”³⁸ The Representatives concluded the letter by requesting that our office “review whether Secretary Ross violated conflict of interest and other ethics rules, whether

³⁰ *Ibid.* citing Dan Alexander, “Lies, China and Putin: Solving the Mystery of Wilbur Ross’ Missing Fortune,” *Forbes*, June 18, 2018.

³¹ *Ibid.* citing Dan Alexander, “Lies, China and Putin: Solving the Mystery of Wilbur Ross’ Missing Fortune,” *Forbes*, June 18, 2018.

³² *Ibid.* at p. 2 citing Secretary Ross OGE *Certification of Ethics Agreement Compliance*, dated November 1, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/\\$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf) (accessed August 25, 2020).

³³ *Ibid.* citing Secretary Ross OGE *Certification of Ethics Agreement Compliance*, dated June 2, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/\\$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf) (accessed August 25, 2020).

³⁴ *Ibid.*

³⁵ *Ibid.* citing OGE Form 278-T, *Executive Branch Personnel Public Financial Disclosure Report: Periodic Transaction Report*, dated December 21, 2017 (certified by OGE June 18, 2018). Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/F65307D0E7C6CA00852582B0006DEA10/\\$FILE/Wilber-L-Ross-12.21.17-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/F65307D0E7C6CA00852582B0006DEA10/$FILE/Wilber-L-Ross-12.21.17-278T.pdf) (accessed August 25, 2020).

³⁶ *Id.* at p. 2–3, citing OGE Form 278-T (June 18, 2018).

³⁷ *Id.* at p. 3, citing OGE Form 278-T (June 2018).

³⁸ *Ibid.* citing OGE Form 278-T (June 2018).

he has any ongoing conflicts of interest, and whether he has any additional holdings he has not reported or divested in compliance with his ethics agreement.”³⁹

II. Applicable Law – Public Financial Disclosure Requirements

This section of the report is focused on Secretary Ross’s efforts to divest financial interests in order to comply with the requirements outlined in his Ethics Agreement. The information included in the Ethics Agreement is primarily based on the public financial disclosures Secretary Ross was required to make prior to his confirmation as Secretary of Commerce. Secretary Ross was also required to publicly disclose many of the transactions he completed to effect compliance with his Ethics Agreement. These public disclosures are governed in large part by the Ethics in Government Act of 1978, as amended (Ethics Act),⁴⁰ which enacted civil statutes that establish financial disclosure requirements for senior employees of the executive branch.⁴¹ The statutes comprising the Ethics Act are supplemented by 5 C.F.R. Part 2634, which describes the procedures and requirements for the executive branch concerning the public and confidential financial disclosure systems authorized by the Ethics Act, the certification and use of qualified trusts, and the issuance of certificates of divestiture.⁴²

OGE’s website states that the financial disclosure system “serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective employees.”⁴³ The site further states that “the primary purpose of disclosure is to assist agencies in identifying potential conflicts of interest between a filer’s official duties and the filer’s private financial interests and affiliations.”⁴⁴

There are penalties for not complying with the public financial disclosure requirements. The Ethics Act provides that it is unlawful for any person to knowingly and willfully falsify any information that such person is required to report under section 102 of the Ethics Act.⁴⁵ A violation of this provision results in a fine under Title 18 of the United States Code and imprisonment for not more than 1 year, or both.⁴⁶ In addition, the Ethics Act provides for civil monetary penalties for five types of violations.⁴⁷ These penalties can be assessed by an

³⁹ *Id.* This letter also referenced Secretary Ross’s short sale of Navigator Holdings, Ltd. shares, and this report addresses this issue in a separate section.

⁴⁰ Pub. L. 95-521.

⁴¹ See (1) <https://oge.gov/Web/OGE.nsf/Civil%20Statutes/14D2615939F2C9F385257E96006A90E3?opendocument> (accessed August 25, 2020) and (2) <https://oge.gov/Web/OGE.nsf/Statutes> (accessed August 25, 2020). These statutes are codified at 5 U.S.C. app. 4 §§ 101-111.

⁴² See <https://oge.gov/Web/OGE.nsf/OGE%20Regulations> (accessed August 25, 2020).

⁴³ See <https://oge.gov/web/oge.nsf/Public%20Financial%20Disclosure> (accessed August 25, 2020).

⁴⁴ *Ibid.*

⁴⁵ 5 U.S.C. app. § 104(a)(2)(A)(i).

⁴⁶ 5 U.S.C. app. § 104(a)(2)(B)(i).

⁴⁷ See 85 Federal Register 2279. Available at <https://www.govinfo.gov/content/pkg/FR-2020-01-15/pdf/2020-00479.pdf> (accessed August 25, 2020).

appropriate United States district court, based upon a civil action brought by DOJ.⁴⁸ The five violations are

1. knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report;
2. knowing and willful breach of a qualified trust by trustees and interested parties;
3. negligent breach of a qualified trust by trustees and interested parties;
4. misuse of a public report; and
5. violation of outside employment/activities provisions.^{49 50}

OGE is responsible for implementing the public and confidential financial disclosure systems for the executive branch.⁵¹ In particular, the Director of OGE is responsible for monitoring and investigating compliance with the public financial disclosure requirements of the Ethics Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available financial statements filed pursuant to the Ethics Act.⁵²

Individuals nominated to a position—appointment to which requires the advice and consent of the Senate—must, within 5 days of the transmittal by the President to the Senate of their nomination, file a report containing the information described in 5 U.S.C. app. § 102(b).⁵³ (This document is referred to in this report as the “Nominee OGE Form 278e.”) For the Nominee OGE Form 278e, 5 U.S.C. app. § 102(b)(1)(A) requires a filer “for the year of filing and the preceding calendar year,” to report, in general, “the source, type, and amount or value of income ... received during the preceding calendar year, aggregating \$200 or more in value ... [and] the source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds \$200 in amount or value[.]”⁵⁴ In addition, 5 U.S.C. app. § 102(b)(1)(B) requires a filer “as of the date specified in the report but which is less than thirty-one days before the filing date,” to report “the identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which as a fair market value which exceeds \$1,000 as of the close of the preceding

⁴⁸ *Ibid.*

⁴⁹ 85 Federal Register 2279 and 5 U.S.C. app. § 104(a), 5 C.F.R. § 2634.701(b); 5 U.S.C. app. § 102(f)(6)(C)(i), 5 C.F.R. § 2634.702(a); 5 U.S.C. app. § 102(f)(6)(C)(ii), 5 C.F.R. § 2634.702(b); 5 U.S.C. app. § 105(c)(2), 5 C.F.R. § 2634.703; 5 U.S.C. app. § 504(a), 5 C.F.R. § 2634.703.

⁵⁰ Title 5 C.F.R. § 2634.704 also provides for the assessment of a \$200 late filing fee if any report is filed more than 30 days after the later of: (1) the date such report is required to be filed; or (2) the last day of any filing extension period granted pursuant to 5 C.F.R. § 2634.201(g). The designated agency ethics official may waive this fee if he or she “determines that the delay in filing was caused by extraordinary circumstances.” 5 C.F.R. § 2634.704(b)(1).

⁵¹ See <https://oge.gov/web/oge.nsf/Financial+Disclosure/> (accessed August 25, 2020).

⁵² 5 U.S.C. app. § 402(b)(3).

⁵³ 5 U.S.C. app. § 101(b)(1). See also 5 C.F.R. § 2634.201(c).

⁵⁴ 5 U.S.C. app. § 102(b)(1)(A); 5 U.S.C. app. § 102(a).

calendar year”⁵⁵ The implementing regulations for these requirements are included at 5 C.F.R. § 2634.310(b).

OGE’s website provides guidance for the time period a filer should include when completing the various parts of the nominee OGE Form 278e. The reporting period relates to the report’s original due date and is unaffected by any extensions.”⁵⁶ The website states a filer should report information for the period covering the “[p]receding calendar year to filing date” for the following categories:

1. Filer’s Employment Assets & Income and Retirement Accounts [Part 2];
2. Spouse’s Employment Assets & Income and Retirement Accounts [Part 5];
3. Other Assets and Income [Part 6]; and
4. Liabilities [Part 8].⁵⁷

Filers must report information for the preceding 2 calendar years to filing date for:

1. Filer’s Positions Held Outside United States Government [Part 1]; and
2. Filer’s Sources of Compensation Exceeding \$5,000 in a Year [Part 4].⁵⁸

Finally, OGE instructs filers to report “Filer’s Employment Agreements and Arrangements” only “As of Filing Date.”⁵⁹

In addition to the Nominee OGE Form 278e, senior officials occupying a position described in 5 U.S.C. app. § 101(f) are required to file several other public financial disclosure documents.⁶⁰ First, during any calendar year in which they perform the duties of their position or office for a period in excess of 60 days, they are required to file annually on or before May 15 of the succeeding year a report containing the information described in 5 U.S.C. app. § 102(a).⁶¹ (This document is commonly referred to as an annual public financial disclosure report or annual OGE Form 278e.) The supervising ethics office for the Department may grant “reasonable extensions of time for filing any report,” but the total of

⁵⁵ 5 U.S.C. app. § 102(b)(1)(B); 5 U.S.C. app. § 102(a). Of note is that 5 U.S.C. app. § 102(b)(1) does not include 5 U.S.C. app. § 102(a)(5) as an item required to be reported in a Nominee OGE Form 278e. 5 U.S.C. app. § 102(a)(5) concerns disclosing “a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds \$1,000—(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or (B) in stocks, bonds, commodities futures, and other forms of securities.”

⁵⁶ See

<https://oge.gov/Web/278eGuide.nsf/2cf9ac792bc0654a85257ea1005f838a/5df300cba7fca98485257f450074e3a4?OpenDocument> (accessed August 25, 2020).

⁵⁷ See

<https://oge.gov/Web/278eGuide.nsf/Content/Definitions~The+OGE+Form+278e+%E2%80%93+Nominee+Report> (accessed August 25, 2020).

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ 5 U.S.C. app. § 101(a).

⁶¹ 5 U.S.C. app. § 101(d). See also 5 C.F.R. § 2634.201(a).

such extensions shall not exceed 90 days.⁶² Second, they are required to file a report of a transaction involving any purchase, sale, or exchange in stocks, bonds, commodities futures, and other forms of securities which exceeds \$1,000.⁶³ (This document is commonly referred to as a periodic transaction report or OGE Form 278-T.) Each OGE Form 278-T report must include a brief description, the date, and value of the transaction (using the categories of value in 5 C.F.R. § 2634.301(d)(2) through (9)).⁶⁴ Periodic transaction reports must be filed not later than 30 days after receiving notification of the transaction, but in no case later than 45 days after such transaction.⁶⁵ Not all transactions need to be reported, and 5 C.F.R. § 2634.309(b) lists the following types of transactions which do not require an OGE Form 278-T:

1. Transactions solely by and between the reporting individual, the reporting individual's spouse, or the reporting individual's dependent children;
2. Transactions of excepted investment funds (as defined in 5 C.F.R. § 2634.312(c));
3. Transactions involving Treasury bills, notes, and bonds; money market mutual funds or accounts; and bank accounts (as defined in 5 C.F.R. § 2634.301(c)(2)), provided they occur at rates, terms, and conditions available generally to members of the public;
4. Transactions involving holdings of trust and investment funds described in 5 C.F.R. § 2634.312(b) and (c); and
5. Transactions which occurred at a time when the reporting individual was not a public financial disclosure filer or was not a federal government officer or employee.⁶⁶

The regulations dealing with Ethics Agreements are located at 5 C.F.R. §§ 2634.801–2634.805. These regulations define an ethics agreement as

[A]ny oral or written promise by a reporting individual to undertake specific actions in order to alleviate an actual or apparent conflict of interest, such as:

- (1) Recusal;
- (2) Divestiture of a financial interest;
- (3) Resignation from a position with a non-Federal business or other entity;
- (4) Procurement of a waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or
- (5) Establishment of a qualified blind or diversified trust under the [Ethics] Act and subpart D of this part.⁶⁷

5 C.F.R. § 2634.802(b) establishes a time limit that is “not to exceed three months from the date of the agreement (or of Senate confirmation, if applicable)” for the individual to

⁶² 5 U.S.C. app. § 101(g)(1). See also 5 C.F.R. § 2634.201(g).

⁶³ 5 U.S.C. app. § 103(l); 5 U.S.C. app. § 102(a)(5)(B). See also 5 C.F.R. § 2634.201(f); 5 C.F.R. § 2634.309(a).

⁶⁴ 5 C.F.R. § 2634.309(a).

⁶⁵ 5 U.S.C. app. § 103(l).

⁶⁶ 5 C.F.R. § 2634.309(b).

⁶⁷ 5 C.F.R. § 2634.802(a).

complete the actions outlined in the Ethics Agreement.⁶⁸ The regulation allows exceptions to this 3-month deadline “in cases of unusual hardship as determined by the Office of Government Ethics, for those ethics agreements which are submitted to it (see § 2634.803), or by the designated agency ethics official for all other ethics agreements.”⁶⁹

Under 5 C.F.R. § 2634.804(a)(1), nominees to a position requiring the advice and consent of the Senate are required to submit evidence of any action taken to comply with the terms of their Ethics Agreement to the designated agency ethics official.⁷⁰ The designated agency ethics official is then required to promptly notify OGE and the Senate confirmation committee of actions taken to comply with the Ethics Agreement.⁷¹ Section 2634.804(b) provides a list of materials and other appropriate information that constitute evidence of such actions:

1. *Recusal*. A copy of a recusal statement listing and describing the specific matters or subjects to which the recusal applies, a statement of the method by which the agency will enforce the recusal. A recusal statement is not required for a general affirmation that the filer will comply with ethics laws.
2. *Divestiture or resignation*. Written notification that the divestiture or resignation has occurred.
3. *Waivers*. A copy of any waivers issued pursuant to 18 U.S.C. 208(b)(1) or (b)(3) and signed by the appropriate supervisory official.
4. *Blind or diversified trusts*. Information required by subpart D of this part to be submitted to the OGE for its certification of any qualified trust instrument. If OGE does not certify the trust, the designated agency ethics official and, as appropriate, the Senate confirmation committee should be informed immediately.⁷²

III. Investigative Methodology

The chief method through which our office assessed Secretary Ross’s compliance with the divestiture requirements of his Ethics Agreement was through requesting and reviewing documents from Secretary Ross through his private counsel who was retained to represent him in interactions with our office in this investigation. We began the process through a request for copies of all brokerage statements, receipts, and other documentation that would provide evidence of all the divestitures Secretary Ross was required to make.⁷³ We

⁶⁸ 5 C.F.R. § 2634.802(b).

⁶⁹ *Ibid.*

⁷⁰ 5 C.F.R. § 2634.804(a)(1).

⁷¹ *Ibid.*

⁷² 5 C.F.R. § 2634.804(b).

⁷³ Section 6 of Department Administrative Order (DAO) 207-10 (*Inspector General Investigations*) states, “Department officers and employees shall: a. cooperate fully with any OIG investigative activity, including any OIG investigation; [and] b. Department officers and employees shall not: 1. encumber or delay direct communication between the OIG and any party; or 2. withhold information, documents, or other materials from the OIG” DAO 207-10, § 6.02. Department Organization Order (DOO) 10-13 (*Inspector General*) states, “The officers and employees of the Department shall cooperate fully with the officials and employees of the OIG and shall provide

received the first production of responsive documents approximately 1 month after the initial request and met with Secretary Ross's counsel at that time to receive an overview of what was included in the production. This production included mainly brokerage statements and transaction confirmations for the less complex assets, including shares of companies that were directly held by Secretary Ross and [REDACTED]. Following a detailed review of this documentation, we identified numerous instances of missing or incomplete information or information that required clarification. We provided Secretary Ross's counsel with specific written inquiries about certain assets for which the supporting documentation was not provided, incomplete, or unclear. We provided a 7-day deadline for the response and agreed to a 1 week extension of the deadline. Responsive documents and answers to some of our inquiries were provided more than 1 week after the extended deadline. In comparison to the first production of documents providing evidence of divestitures, this second production contained more than twice as many documents showing evidence of Secretary Ross's divestitures, and it included evidence of divestiture of some of the more complex assets.

Following this second and more substantial production, Secretary Ross's counsel indicated they were still tracking down several documents that we specifically requested. Our office then requested that Secretary Ross's counsel identify each document or piece of information they understood to be outstanding and provide those items within 2 days. We informed Secretary Ross's counsel that a subpoena would be issued for the information if it was not provided. In response, our office received additional documents by the specified deadline that addressed many of the outstanding requests. We agreed to suspend the issuance of a subpoena and provided Secretary Ross's counsel with an updated document that outlined the information still needed to verify the divestitures. Shortly thereafter, we again met with Secretary Ross's counsel to discuss the divestiture of certain assets along with the sufficiency of the documentation provided to that point. After we mentioned issuance of a subpoena, Secretary Ross's counsel provided our office approximately 30 additional documents in a series of five productions over a period of approximately 60 days. Approximately 45 days after receipt of the last of the five productions, we provided Secretary Ross's counsel with a document summarizing the timing and nature of the productions received by our office as well our understanding of the divestiture of certain assets. Included in this document were specific questions about divestitures for which we found the documentation to be unclear or not provided along with further requests for documentation of divestitures that had not yet been provided despite multiple requests.

Because the response to our requests for information and documentation of Secretary Ross's divestitures had been incomplete despite repeated attempts to acquire the information, we issued an Inspector General subpoena to Secretary Ross for this information. The response to the subpoena included more than 250 documents and more than 3,000 pages. The response to the subpoena was provided in four productions over an approximately 3-month period.

such information, assistance, and support without delay as is needed for the OIG to properly carry out the provisions of the [Inspector General] Act [of 1978].” DOO 10-13, § 4.01.

We also interviewed members of the Department's OGC Ethics Law and Programs Division (ELPD). Notably, these OGC employees worked with OGE to finalize the Public Financial Disclosure Report (OGE Form 278e) Secretary Ross submitted in connection with his nomination to Secretary of Commerce (i.e., Nominee OGE Form 278e).⁷⁴ These OGC employees also participated in the completion of Secretary Ross's Ethics Agreement, which detailed the assets he would divest and retain upon confirmation as Secretary of Commerce.⁷⁵ We requested, received, and reviewed email communications from these OGC ELPD employees related to their interactions with Secretary Ross and Secretary Ross's counsel regarding his divestitures and compliance with his Ethics Agreement.⁷⁶

Due to the complex nature of Secretary Ross's financial holdings, we consulted with a financial expert. Our office also consulted with an expert in federal government ethics. Finally, we conducted an interview of Secretary Ross and questioned him directly about certain financial interests and divestitures of those interests and compliance with his Ethics Agreement.

IV. Factual Background

A. Requirements in Secretary Ross's Ethics Agreement

On January 15, 2017, in connection with his nomination to be the Secretary of Commerce, Mr. Ross drafted and signed a letter to the Department's Designated Agency Ethics Official (DAEO) and Chief of ELPD.⁷⁷ Secretary Ross stated the purpose of the letter was "to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Secretary of the Department of Commerce."⁷⁸ This letter is referred to as Secretary Ross's "Ethics Agreement" in this report. It detailed the assets Secretary Ross was allowed to retain upon confirmation as Secretary of Commerce and listed the assets he was required to divest along with the deadlines for divestiture of those assets. Secretary Ross's Ethics Agreement also listed certain positions from which he was required to resign and certain positions he was permitted to maintain.

⁷⁴ Public Financial Disclosure Report (OGE Form 278e), dated December 19, 2016. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/88642A2CA81AA6C2852580AB00618C8C/\\$FILE/Ross%20Wilbur%20L.%20Final%20278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/88642A2CA81AA6C2852580AB00618C8C/$FILE/Ross%20Wilbur%20L.%20Final%20278.pdf) (accessed August 25, 2020).

⁷⁵ Wilbur L. Ross, Jr., to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce.*

⁷⁶ Prior to review by the investigators assigned to this investigation, all emails received from OGC employees were screened by an OIG attorney for potentially privileged communications between Secretary Ross and his private counsel.

⁷⁷ Wilbur L. Ross, Jr., to the Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce.* This letter was addressed to the Alternate DAEO (ADAEO), and this individual served as ADAEO until being named the DAEO on September 19, 2017. To reduce confusion, this individual will be referred to throughout this report as the DAEO.

⁷⁸ *Id.* at p. 1.

In Section 8 (Resignations from Positions with Entities in which I have Financial Interests and am Divesting Those Interests) of his Ethics Agreement, Secretary Ross listed 22 entities in which he held both a position and a financial interest. Secretary Ross agreed to resign his position with each entity upon confirmation. He also agreed to divest his financial interest in each entity following his confirmation as set forth in Section 9 and in Attachment A of the Ethics Agreement. Each of the entities in Section 8 was included in either Attachment A-I or A-II to the Ethics Agreement. Attachment A-I included the assets Secretary Ross agreed to divest within 90 days of his confirmation, and Attachment A-II included the assets he agreed to divest within 180 days of his confirmation.⁷⁹

In Section 9 (Additional Assets to be Divested) of his Ethics Agreement, Secretary Ross agreed to divest his financial interests in the entities identified in Attachment A within the timeframe identified in that attachment. Attachments A-I and A-II each listed 40 entities that Secretary Ross agreed to divest within 90 days and 180 days of his confirmation, respectively. With respect to the entities Secretary Ross agreed to divest within 180 days, he noted that the reason for the extended timeframe for certain assets was because they are “illiquid and it may take longer to divest them.” Secretary Ross added, “I am, however, committed to divesting all of these assets as promptly as is reasonably practicable, and I may not need the entire 180-day period to complete all divestitures.” Secretary Ross noted that the DAEO advised him that an extension of up to 60 days may be considered for a subset of the 180-day assets if Secretary Ross demonstrated substantial progress toward completing the divestiture of all the assets by the end of the 180-day period.⁸⁰

We spoke with the DAEO on several occasions regarding Secretary Ross’s Ethics Agreement, public financial disclosures, and divestitures. In one of these interviews, the DAEO explained that a nominee, as part of the confirmation process, files a draft financial disclosure report with OGE and their respective agency. The agency, OGE, and the nominee then review each line of this draft to determine whether it is internally consistent and includes everything that it should. The parties also determine what will happen with each listed asset: whether the asset will be kept and the nominee will disqualify himself or herself or whether the asset will be disposed of in some way. The DAEO stated that once there is an agreement about what is going to happen with the assets, it is memorialized in an ethics agreement that the nominee signs. The ethics agreement is sent to the U.S. Senate along with a letter indicating that the nominee can fulfill the duties of the position without violating any conflict of interest laws based on the action the nominee has agreed to take in the ethics agreement. Regarding the accuracy of the documents, the DAEO noted, “We obviously don’t know what [Secretary Ross] has or doesn’t have.”

We also spoke and exchanged written correspondence with Secretary Ross’s counsel regarding Secretary Ross’s compliance with the divestiture requirements of his Ethics

⁷⁹ *Id.*, at p. 4–5 and 9.

⁸⁰ *Id.*, at p. 5 and 9.

Agreement, and those communications involved explanations of how and why certain assets came to be included in the Ethics Agreement. As a general matter, assets listed in Attachment A-I to the Ethics Agreement were those considered to be liquid or directly held and able to be divested more quickly. Assets listed in Attachment A-II to the Ethics Agreement were those considered to be illiquid and not able to be divested quickly. Additionally, several factors led to Secretary Ross's Ethics Agreement being over-inclusive with respect to assets he was required to divest. First, Secretary Ross's Nominee OGE Form 278e covered his interests from approximately January 1, 2015, to December 1, 2016 (the calendar year prior to the year of filing). And, according to Secretary Ross's counsel, OGE did not want to fail to include assets in the Ethics Agreement that were listed on Secretary Ross's Nominee OGE Form 278e. Accordingly, the Ethics Agreement included assets that Secretary Ross or ██████ divested prior to his nomination and confirmation. Second, Secretary Ross's counsel noted that during sustained communications with OGE and the Department's ethics officials as they worked to finalize Secretary Ross's Ethics Agreement, OGE and the Department's ethics officials determined that, in an abundance of caution, Secretary Ross must include, in the list of assets to be divested, entities for which he served as an officer or director, even where he did not hold a direct ownership interest in the entity or any interest at all.

The complex nature of Secretary Ross's investments presented several threshold issues to be addressed in order to evaluate compliance with the requirements of his Ethics Agreement. In particular, Secretary Ross's financial interests included numerous entities that held interests in investment funds that in turn held direct interests in shares of various companies, resulting in Secretary Ross holding an "indirect interest" in the shares of the companies. Our office determined that, as a general matter, if Secretary Ross, through his Ethics Agreement, agreed to divest his interest in a particular investment fund that held direct interests in a number of companies, he also thereby agreed to divest all the underlying holdings as part of the divestment of the investment fund. However, just because a particular investment fund holds shares in a company, and Secretary Ross agreed to divest his interest in that investment fund, it does not mean that he also agreed to divest any direct investments that he may have in that company, unless, of course, he specifically agreed to divest his direct interest in that company. Importantly, the reasoning above is based on the understanding of the parties at the time they executed the Ethics Agreement.

B. Timeline of Events

On November 30, 2016, Wilbur L. Ross, Jr. was nominated to be the Secretary of Commerce.

On December 19, 2016, Mr. Ross certified his Nominee OGE Form 278e (Public Financial Disclosure Report) in connection with his nomination to Secretary of Commerce.⁸¹ By electronically signing the Nominee OGE Form 278e, Mr. Ross certified

⁸¹ Public Financial Disclosure Report (OGE Form 278e), dated December 19, 2016.

that “the statements I have made in this form are true, complete and correct to the best of my knowledge.”⁸²

On January 15, 2017, the DAEO electronically signed Mr. Ross’s Nominee OGE Form 278e as the Agency Ethics Official.⁸³ Included above the DAEO’s signature was the following statement, (notated as “Agency Ethics Official’s Opinion”): “On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations.”⁸⁴ Also on this date, Walter Shaub, then-Director, OGE, electronically signed Mr. Ross’s Nominee OGE Form 278e as a certifying official for OGE.⁸⁵

Mr. Ross signed his Ethics Agreement on January 15, 2017, and Mr. Shaub provided both the Nominee OGE Form 278e and Ethics Agreement to Senator John Thune, the then-Chairman of the Senate Committee on Commerce, Science, and Transportation.⁸⁶

On January 18, 2017, Mr. Ross participated in confirmation hearings related to his nomination to be the Secretary of Commerce.⁸⁷ During the hearing, Senator Maria Cantwell discussed Mr. Ross recusing himself from potential issues involving interests in a certain sector, and in response, Mr. Ross stated, “Oh, I intend to be quite scrupulous about recusal and any topic where there is the slightest scintilla of doubt.”⁸⁸

Also during these hearings, Senator Richard Blumenthal stated:

Let me focus on another area where I think you have really made a very personal sacrifice. Your service has resulted in your divesting yourself of literally hundreds of millions of dollars in assets so that you could reach an agreement with the Office of Government Ethics. I don’t want to embarrass you or presume, but obviously of all of the billions of dollars in holdings that you own now, you have divested more than 90 percent, and you have resigned from 50 positions. The process has been enormously complex and challenging and costly to you personally; correct?⁸⁹

⁸² *Id.* at p. 1.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ Walter Shaub to Senator John Thune, January 15, 2017. *Letter from the Director of OGE to the Chairman of the U.S. Senate Committee on Commerce, Science, and Transportation.*

⁸⁷ Nomination of Wilbur L. Ross, Jr., to be Secretary of the Department of Commerce, hearing before the U.S. Senate Committee on Commerce, Science, and Transportation, January 18, 2017. Available at <https://www.congress.gov/115/chrgr/shrg25974/CHRG-115shrg25974.pdf> (accessed August 25, 2020).

⁸⁸ *Id.* at p. 42.

⁸⁹ *Id.* at p. 50.

Mr. Ross responded, “Yes, sir.”⁹⁰ Senator Blumenthal further asked “You did it to avoid any conflicts of interest; correct?”⁹¹ Mr. Ross responded, “That is correct, sir.”⁹²

On January 31, 2017, Mr. Ross supplemented his Ethics Agreement with a letter to the DAEO in which he acknowledged that he would be required to sign the Ethics Pledge required under the Executive Order dated January 28, 2017, and titled “Ethics Commitments by Executive Branch Appointees.”⁹³

On February 27, 2017, Mr. Ross was confirmed as Secretary of Commerce.⁹⁴

From April 24, 2017, through February 11, 2019, Secretary Ross electronically signed, certified, and filed 33 separate Periodic Transaction Reports (OGE Form 278-T) with OGE.⁹⁵ Each of these Periodic Transaction Reports covered one or more sales or purchases of assets that Secretary Ross completed while serving as Secretary of Commerce.⁹⁶ By signing each OGE Form 278-T, Secretary Ross certified “the statements I have made in this form are true, complete and correct to the best of my knowledge.”⁹⁷ In addition, each form was reviewed and then electronically signed and certified by the DAEO, who, by signing, offered the opinion that “On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations.”⁹⁸ Finally, each OGE Form 278-T was electronically signed and certified by an OGE official.⁹⁹

As noted in the “Summary of Contents” section on each OGE Form 278-T, the “278-T discloses purchases, sales, or exchanges of securities in excess of \$1,000 made on behalf of the filer, the filer’s spouse, or dependent child. Transactions are required to be

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Wilbur L. Ross, Jr., to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*; Executive Order 13770 of January 28, 2017. Available at <https://www.govinfo.gov/content/pkg/FR-2017-02-03/pdf/2017-02450.pdf> (accessed August 25, 2020).

⁹⁴ Roll Call Vote 115th Congress – 1st Session, February 27, 2017. Available at https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=115&session=1&vote=00073 (accessed August 25, 2020).

⁹⁵ List of OGE Form 278-Ts filed by Secretary Ross. Available at <https://extapps2.oge.gov/201/Presiden.nsf/PAS%20IndexA?OpenView&Start=1&Count=1000&Expand=9&RestrictToCategory=R#9> (accessed August 25, 2020).

⁹⁶ Not all OGE Form 278-Ts that Secretary Ross filed are relevant to this investigation. Where the filing date of an OGE Form 278-T is relevant, it will be addressed in this “*Timeline of Events*” section. Where the information provided in an OGE Form 278-T is relevant but the filing date is not an issue, the OGE Form 278-T will be addressed in the “*Analysis/Findings*” section of this chapter.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *Ibid.* Due to the different levels of review and certification, the date OGE posted each OGE Form 278-T to its website and made it available for public review was often not the same date that Secretary Ross signed and certified the OGE Form 278-T, and in some cases was several months later.

disclosed within 30 days of receiving notification of a transaction but not later than 45 days after the transaction.”¹⁰⁰ The OGE Form 278-T also states, “Filers need not disclose (1) mutual funds and other excepted investment funds; (2) certificates of deposit, savings or checking accounts, and money market accounts; (3) U.S. Treasury bill, notes, and bonds; (4) Thrift Savings Plan accounts; (5) real property; and (6) transactions that are solely by and between the filer, the filer’s spouse, and the filer’s dependent children.”¹⁰¹

Sunday, May 28, 2017, was 90 days from the date of Secretary Ross’s confirmation as Secretary of Commerce. Secretary Ross’s Ethics Agreement required him to divest certain assets within 90 days of his confirmation. Most of the assets Secretary Ross was required to divest within 90 days of his confirmation are listed in Attachment A-I of his Ethics Agreement.¹⁰² Because May 28, 2017, fell on a Sunday, and Monday, May 29, 2017, was Memorial Day (a federal holiday), the effective deadline for divestiture of assets required to be divested within 90 days of Secretary Ross’s confirmation was Tuesday, May 30, 2017.¹⁰³

On June 2, 2017, Secretary Ross signed the first of three OGE Certification of Ethics Agreement Compliance documents.¹⁰⁴ This certification covered the divestitures required by Secretary Ross’s Ethics Agreement as well as issues related to recusals and conflicts of interest.¹⁰⁵ The due date for this certification, as specified on the certification form, was June 5, 2017.¹⁰⁶ On the OGE Certification of Ethics Agreement form, above the line where Secretary Ross signed his name, is the following statement, “Any intentionally false or misleading statement or response provided in this certification is a violation of law punishable by a fine or imprisonment, or both, under 18 U.S.C. § 1001.”¹⁰⁷ Next to his signature is the following statement, “I certify that the information I have provided is complete and accurate.”¹⁰⁸ (These two statements also appear in the

¹⁰⁰ OGE Form 278-T. Available at <https://oge.gov/Web/OGE.nsf/OGE+Forms> (accessed August 25, 2020).

¹⁰¹ *Ibid.*

¹⁰² Wilbur L. Ross, Jr. to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*, at p. 8.

¹⁰³ On March 10, 2017, in response to a request from Secretary Ross’s counsel on the same date, an attorney with the Department’s ELPD provided a list of the assets Secretary Ross’s Ethics Agreement required him to divest within 90 and 180 days of confirmation. The ELPD attorney provided May 28, 2017, as the deadline for divestiture of the assets required to be divested within 90 days of confirmation. The ELPD attorney provided August 26, 2017, as the deadline provided for divestiture of the assets required to be divested within 180 days of confirmation. Regarding the deadlines, the ELPD attorney noted, “Yes, he would have until any time before midnight on the last day to comply (but we would prefer that all sales happen well before that time.)”

¹⁰⁴ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated June 2, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/\\$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf) (accessed August 25, 2020).

¹⁰⁵ The recusals and conflict of interest portions will be addressed later in the **Potential Conflicts of Interest** chapter of this report.

¹⁰⁶ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated June 2, 2017.

¹⁰⁷ *Id.* at p. 3.

¹⁰⁸ *Ibid.*

two subsequent OGE Certifications of Ethics Agreement Compliance that Secretary Ross signed on September 5, 2017, and November 1, 2017.¹⁰⁹) In Section 2 of this certification, Secretary Ross confirmed that he completed all of the resignations indicated in his ethics agreement before assuming the duties of his current position.¹¹⁰ In Section 3 of this certification, Secretary Ross answered “N/A” to statements regarding the completion of the divestitures indicated in his Ethics Agreement and the filing of Periodic Transaction Reports (OGE Form 278-T) to disclose the completion of the agreed upon divestitures.¹¹¹ Also in Section 3, Secretary Ross listed the following filing dates for OGE Form 278-T reports that he filed: “4/20, 4/24, 5/12, 5/16, 5/17, 5/18, 5/22, 5/23, 5/24, 6/1, 6/2/17.”¹¹² In Section 11 of the certification (“Comments of Appointee”), Secretary Ross offered the following statement with regard to his response in Section 3:

Note that some holdings in my ethics agreement need not be sold within 90 days. I have divested all holdings required in my ethics agreement to be sold within 90 days except that there was an unanticipated delay with regard to the divestitures of my holdings in Air Lease Corp., Bank of Cyprus, and BankUnited but these have also now been divested; with regard to the Bank of Cyprus, I also hold shares through the WL Ross Group LP which is required to be sold within 180 days.¹¹³

Section 8 of this certification covers “Payments, Accelerations, or Divestitures Required to be Completed Prior to Entering Government Service.”¹¹⁴ In this section, Secretary Ross stated he forfeited Exco Resources unvested stock, and “prior to assumption of duties,” he received/did not forfeit a 2016 bonus payment from Invesco.¹¹⁵ In Section 9 of the certification, Secretary Ross stated that he completed his initial ethics briefing pursuant to 5 C.F.R. § 2638.305 and signed the ethics pledge pursuant to Executive Order 13770.¹¹⁶ In Section 10 (“Additional Ethics Agreement Requirements”) of the certification, Secretary Ross responded “N/A” to the following statement, “I have divested my right to income from the Rothschild & Co. Profit Sharing Plan by irrevocably assigning the right to a charity.” Secretary Ross explained this answer in the comments section of the certification as follows, “My interests in the underlying securities of the Rothschild & Co. Profit Sharing Plan have been liquidated (with transfer of cash proceeds to my IRA); we were not able to figure out an effective way to transfer

¹⁰⁹ Secretary Ross OGE Certifications of Ethics Agreement Compliance, dated September 5, 2017, and November 1, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/\\$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf) (accessed August 25, 2020).

¹¹⁰ *Id.* at p. 1.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Id.* at p. 3.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Id.* at p. 3.

irrevocably my right to income from the retirement fund to charity; the net effect is divestiture of the underlying holdings.”¹¹⁷

According to the DAEO, on August 11, 2017, Secretary Ross explained to him in an email that an unanticipated problem had arisen affecting the Secretary’s ability to divest some of the holdings identified in his Ethics Agreement.¹¹⁸ In this email, Secretary Ross indicated that a firm handling his investments in some partnerships in which he had interests outsourced accounting functions relating to those holdings and was having difficulty producing the financial statements for the funds.¹¹⁹ Secretary Ross noted that a buyer for the funds had been identified, but the financial statements were necessary before the sale could proceed.¹²⁰

The DAEO also reported that on August 23, 2017, he met with Secretary Ross to discuss the status of Secretary Ross’s divestitures, and Secretary Ross identified eight limited partnerships that could not be divested due to the problems he mentioned in the August 11, 2017, email.¹²¹ During this meeting Secretary Ross also identified specific divestitures that had been completed or would be completed by the business day following the August 26, 2017, deadline (note: August 26, 2017, was a Saturday).¹²² In a memorandum to the file regarding this meeting, the DAEO noted, “Some entries listed for divestiture were apparently mistakenly included as they were entities in which [Secretary Ross] held a position but had no financial interest.”¹²³ Regarding Secretary Ross’s divestitures, the DAEO concluded, “The divestiture of 31 of 40 holdings demonstrated substantial progress towards completing the divestiture of all assets listed for divestiture. Furthermore, [Secretary Ross] confirmed that the divestiture of the remaining holdings was in process and would be completed as soon as possible and that the delay in the divestitures was due to factors beyond his control.”¹²⁴ The DAEO extended the deadline to complete the divestitures identified in Secretary Ross’s Ethics Agreement for an additional 60 days.¹²⁵ Included in the DAEO’s memorandum to the file regarding the August 23, 2017, meeting with Secretary Ross is the following statement, “[Secretary Ross] also indicated his holdings in Invesco, which were to be divested no later than 210 days from the date of his appointment, had been divested prior to his appointment.”¹²⁶

¹¹⁷ *Id.* at p. 3.

¹¹⁸ The DAEO memorialized details of the August 11, 2017, email from Secretary Ross and an August 23, 2017, meeting he had with Secretary Ross in a memorandum to the file dated August 30, 2017. Memorandum to File, regarding Extension for Time to Divest Assets, from DAEO, dated August 30, 2017.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

Saturday, August 26, 2017, was the deadline by which Secretary Ross must divest assets that his Ethics Agreement required to be divested within 180 days of his confirmation. Assets required to be divested within 180 days of Secretary Ross's confirmation are listed in Attachment A-II of Secretary Ross's Ethics Agreement.¹²⁷

On August 30, 2017, the DAEO signed a memorandum for the file (previously discussed in this chapter) in which he documented the grant of a 60-day extension to Secretary Ross of the deadline for divestiture of certain assets, as provided for in Secretary Ross's Ethics Agreement.¹²⁸

On September 5, 2017, Secretary Ross signed the second of three OGE Certification of Ethics Agreement Compliance documents.¹²⁹ The form for this certification is identical to the June 2, 2017, OGE Certification of Ethics Agreement Compliance previously described, and like that certification, it also covered divestitures required by Secretary Ross's Ethics Agreement as well as issues related to recusals and conflicts of interest.¹³⁰ The due date for this certification, as specified on the form, was September 5, 2017.¹³¹ In Section 2 of this certification, Secretary Ross again confirmed that he completed all of the resignations indicated in his ethics agreement before assuming the duties of his current position.¹³² In Section 3 of this certification, Secretary Ross answered "No" to the following statement: "I have completed all of the divestitures indicated in my ethics agreement. I also understand that I may not repurchase these assets during my appointment without OGE's prior approval."¹³³ Secretary Ross answered "N/A" to the following statement: "I have filed a period transaction report, or periodic transaction reports, (OGE Form 278-T) to disclose the completion of these agreed upon divestitures."¹³⁴ This answer was accompanied by a reference to see the comment in Section II.¹³⁵ The comment in Section II referenced the 60-day extension the DAEO provided to Secretary Ross to complete the divestitures that were required to be completed within 180 days of his confirmation.¹³⁶ This comment also included the following statement: "During the process of divesting I was informed that due to the outsourcing of the accounting function of the firm that handles some partnerships in which I have interests, documents needed for the sale of some holdings cannot be

¹²⁷ Wilbur L. Ross, Jr. to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*, at p. 9.

¹²⁸ Memorandum to File, regarding Extension for Time to Divest Assets, from DAEO, dated August 30, 2017.

¹²⁹ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated September 5, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/\\$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf) (accessed August 25, 2020)

¹³⁰ The recusals and conflict of interest portions will be addressed later in the **Potential Conflicts of Interest** chapter of this report.

¹³¹ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated September 5, 2017.

¹³² *Id.* at p. 1.

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Id.* at p. 3.

collected within the 180-day period set for the divestitures of these holdings.”¹³⁷ In Section 8 of this certification (“Payments, Accelerations, or Divestitures Required to be Completed Prior to Entering Government Service”), Secretary Ross again addressed an asset related to Invesco.¹³⁸ In connection with the statement, “If I committed that I would forfeit a financial interest or payment, unless it was received or accelerated prior to my assumption of the duties of the government position.” Secretary Ross marked the option that stated, “I received it (or it was accelerated) prior to my assumption of the duties of the position.”¹³⁹ Secretary Ross then explained in the comment section, “All Invesco shares were distributed to me, which I then sold back to Invesco prior to my assumption of duties. The cash proceeds are currently in an escrow account, which will be distributed to me after certain transactions are completed. [See also prior certification.]”¹⁴⁰

On September 11, 2017, Secretary Ross electronically signed and certified a periodic transaction report (OGE Form 278-T) for the sale of BankUnited, Inc. shares on May 31, 2017, in the amount of \$1,001–\$15,000.¹⁴¹ (As described later in this report, Secretary Ross filed another OGE Form 278-T for these same shares on October 31, 2018.)

On October 24, 2017, Secretary Ross executed an agreement establishing the “Wilbur L. Ross Jr. Irrevocable Trust” (the “Trust Agreement”). The assignment of the property listed in the Trust Agreement was effective as of 5:00 p.m. on October 25, 2017. Through the Trust Agreement, Secretary Ross transferred an equity or other interest in at least 15 entities to trustees who hold the interests in trust for the benefit of his two adult children. The provisions of the Trust Agreement state that the Trust Agreement and any trust created under the Trust Agreement shall be irrevocable. The list of entities transferred in the Trust Agreement matches the list of 40 entities in Attachment A-II of his Ethics Agreement, with the addition of WLR Recovery Fund III IAC AIV LP, WLR Recovery Associates IV DSS AIV LP, and WLR Recovery Associates V DSS AIV LP.¹⁴² As previously stated, Attachment A-II of Secretary Ross’s Ethics Agreement lists the entities Secretary Ross was required to divest within 180 days of his confirmation. Certain assets listed in the Trust Agreement were previously transferred, and Article I-A of the Trust Agreement states:

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.* (Emphasis in original.)

¹⁴⁰ *Ibid.*

¹⁴¹ Secretary Ross OGE Form 278-T, dated September 11, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/0A4AC75C5E38AD81852581B00026F2C0/\\$FILE/Wilbur-L-Ross-09.11.2017-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/0A4AC75C5E38AD81852581B00026F2C0/$FILE/Wilbur-L-Ross-09.11.2017-278T.pdf) (accessed August 25, 2020).

¹⁴² The Trust Agreement includes the transfer of WLR Recovery Fund III IAC AIV LP, WLR Recovery Associates IV DSS AIV LP, and WLR Recovery Associates V DSS AIV LP, which were not listed in Attachment A-II of the Ethics Agreement. WLR Recovery Associates IV DSS AIV LP and WLR Recovery Associates V DSS AIV LP were listed in Section 10 of Secretary Ross’s Ethics Agreement as assets he would retain. WLR Recovery Fund III IAC AIV LP was not included in Secretary Ross’s Ethics Agreement nor on his Nominee OGE Form 278e.

The Trustees acknowledge that certain of the assets listed in Schedule A-I have been, or were intended to have been, transferred to unaffiliated third parties, prior to the formation of this Trust, and are listed thereon only to assure that the Donor does not retain any residual or other interest therein and thereby to assure compliance with applicable legal requirements.¹⁴³

Accordingly, Schedule A-I of the Trust Agreement—which lists the assets transferred—states it is transferring, “any equity or other interest in any of the following entities, unless fully and irrevocably transferred to a third party prior to October 25, 2017 and prior to the execution of this Trust Agreement.” Of the 40 assets listed in Schedule A-I, only the following fifteen assets are identified through “Explanatory Notes” as being “transferred in trust hereby”:

1. India Asset Recovery Associates LLC
2. India Asset Recovery Fund Limited (Mauritius)
3. India Asset Recovery GP Ltd. (Cayman)
4. WLR China Energy Associates, Ltd.
5. WLR Master Co-Investment GP, LLC
6. WLR Master Co-Investment SLP Associates LP (Cayman)
7. WLR Master Co-Investment SLP GP, LTD (Cayman)
8. WLR Master Co-Investment SLP, LLC
9. WLR Nanotechnology GP LLC
10. WLR Nanotechnology LP LLC
11. WLR Recovery Associates II, LLC
12. WLR Ross Group (Cayman) Ltd.
13. WLR Select Associates DSS GP, Ltd.
14. WLR Select Associates DSS L.P.
15. WLR Select Associates LLC

In addition, the “Explanatory Notes” to Schedule A-I state the “carried interests and any residual transferred interest” in the following entities was “transferred in trust hereby” with the “capital interest transferred to affiliates of Goldman Sachs”:

1. WLR Recovery Associates III, LLC
2. WLR Recovery Fund III IAC AIV LP
3. WLR Recovery Associates IV LLC
4. WLR Recovery Associates IV DSS AIV LP

¹⁴³ The term “Donor” is not defined within the Trust Agreement, and it appears only in this provision. Throughout the Trust Agreement, the term “Grantor” is used as a defined term for Secretary Ross.

5. WLR Recovery Associates V LLC
6. WLR Recovery Associates V DSS AIV LP¹⁴⁴

Secretary Ross's interest in WLR Conduit MM LLC and his equity interest in WLR-SC Financing Conduit LLC were noted as previously transferred to an independent third party. WLR Recovery Associates LLC was noted as "dissolved prior to October 25, 2017." The 20 other assets that did not have a specific "Explanatory Note" in Schedule A-1 of the Trust Agreement were covered by the following note, "All other interests listed are believed to be transferred to unrelated third parties prior to the date hereof but if any such interest has not been fully and irrevocably so transferred as of the close of business on October 25, 2017, it is transferred in trust hereby."

October 25, 2017, was the extended deadline by which Secretary Ross must divest assets that his Ethics Agreement required to be divested within 180 days of his confirmation.

On October 26, 2017, Senators Richard Blumenthal, Maria Cantwell, Tom Udall, Tammy Baldwin, Margaret Wood Hassan, and Tammy Duckworth provided a letter to David Apol, then-Acting Director, OGE, in which they requested information about whether OGE had taken specific actions with regard to Secretary Ross in light of a recent *Forbes* article that contended Secretary Ross failed to reveal nearly \$2 billion in assets in his nominee public financial disclosure report.¹⁴⁵

On November 1, 2017, Secretary Ross signed the third and final OGE Certification of Ethics Agreement Compliance.¹⁴⁶ The form for this certification is identical to the June 2, 2017, and September 5, 2017, OGE Certification of Ethics Agreement Compliance documents described above, and like those certifications, it also covered divestitures required by Secretary Ross's Ethics Agreement as well as issues related to recusals and conflicts of interest.¹⁴⁷ The due date for this certification, as specified on the form, was November 1, 2017.¹⁴⁸ In Section 2 of this certification, Secretary Ross again confirmed that he completed all of the resignations indicated in his ethics agreement before

¹⁴⁴ The capital interests were transferred to affiliates of Goldman Sachs through an Agreement of Purchase and Sale, dated October 25, 2017.

¹⁴⁵ U.S. Senators to David Apol, October 26, 2017. *Letter from Senators Blumenthal, Cantwell, Udall, Baldwin, Wood Hassan, and Duckworth to Apol*. Available at <https://www.blumenthal.senate.gov/imo/media/doc/10.26.17%20OGE%20Letter%20on%20Sec%20Ross.pdf> (accessed August 25, 2020). The article the letter referenced is: Dan Alexander, "The Mystery of Wilbur Ross' Missing Billions," *Forbes*, October 16, 2017. <https://www.forbes.com/sites/danalexander/2017/10/16/the-mystery-of-wilbur-ross-missing-billions/#5497fafb1c90> (accessed August 25, 2020).

¹⁴⁶ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated November 1, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/\\$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf) (accessed August 25, 2020).

¹⁴⁷ The recusals and conflict of interest portions will be addressed later in the **Potential Conflicts of Interest** chapter of this report.

¹⁴⁸ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated November 1, 2017.

assuming the duties of his current position.¹⁴⁹ In Section 3 of this certification, Secretary Ross answered “Yes” to the following statement: “I have completed all of the divestitures indicated in my ethics agreement. I also understand that I may not repurchase these assets during my appointment without OGE’s prior approval.”¹⁵⁰ Secretary Ross answered “N/A” to the following statement: “I have filed a period transaction report, or periodic transaction reports, (OGE Form 278-T) to disclose the completion of these agreed upon divestitures.”¹⁵¹ This answer was not accompanied by any additional comments. In Section 11 (“Comments of Appointee”) Secretary Ross stated, “This form supplements the Certification of Ethics Agreement Compliance forms dated June 5, 2017 (signed June 2, 2017) and September 5, 2017 (signed September 5, 2017).”¹⁵²

On November 2, 2017, Apol responded to the Senators’ letter of October 26, 2017, and stated that OGE sought information from Department officials “who are in the best position to ascertain the relevant facts and are responsible for monitoring their employees’ compliance with financial disclosure requirements.”¹⁵³

As described above, on November 13, 2017, six members of the U.S. Senate sent a letter to Inspector General Gustafson in which they requested an investigation of, among other things, “Whether Secretary Ross has complied with the divestment requirements in his ethics agreement.”¹⁵⁴

On November 16, 2017, Secretary Ross provided a letter to Mr. Apol and stated the purpose of the letter was “to provide information to assist you in responding to a request from six members of the Senate Committee on Commerce, Science, and Transportation for information regarding the financial disclosure report I filed as a nominee for the position of Secretary of Commerce.”¹⁵⁵ In his letter to Mr. Apol, Secretary Ross cited the October 16, 2017, *Forbes* article and stated, “The estimate of my wealth as reported in the press is not accurate; the accurate information is provided

¹⁴⁹ *Id.* at p. 1.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² *Id.* at p. 3.

¹⁵³ David Apol to U.S. Senators, November 2, 2017. *Letter from David Apol to Senators Blumenthal, Cantwell, Udall, Baldwin, Wood Hassan, and Duckworth.* Available at [https://oge.gov/web/oge.nsf/Congressional%20Correspondence/AAA5A976A6EBCD89852581CD006FCD1A/\\$FILE/Letter%20to%20Senators%20Blumenthal,%20Cantwell,%20Udall,%20Baldwin,%20Hassan,%20and%20Duckworth.pdf?open](https://oge.gov/web/oge.nsf/Congressional%20Correspondence/AAA5A976A6EBCD89852581CD006FCD1A/$FILE/Letter%20to%20Senators%20Blumenthal,%20Cantwell,%20Udall,%20Baldwin,%20Hassan,%20and%20Duckworth.pdf?open) (accessed August 25, 2020).

¹⁵⁴ U.S. Senators to Peggy E. Gustafson, November 13, 2017. *Letter from U.S. Senate to the Inspector General of the U.S. Department of Commerce.*

¹⁵⁵ Wilbur L. Ross, Jr., to David Apol, November 16, 2017. *Letter from Secretary Ross to the Acting OGE Director.* Available at [https://oge.gov/web/oge.nsf/All%20Documents/DFB4180B6057C445852581DE0073D59C/\\$FILE/Follow-up%20letter%20to%20Senators%20Blumenthal,%20Cantwell,%20Udall,%20Baldwin,%20Hassan,%20and%20Duckworth.pdf?open](https://oge.gov/web/oge.nsf/All%20Documents/DFB4180B6057C445852581DE0073D59C/$FILE/Follow-up%20letter%20to%20Senators%20Blumenthal,%20Cantwell,%20Udall,%20Baldwin,%20Hassan,%20and%20Duckworth.pdf?open) (accessed August 25, 2020).

in my nominee public financial disclosure report (OGE Form 278).¹⁵⁶ Secretary Ross further stated:

With regard to the creation of trusts, there was no trust created by either myself or ██████ during the period between the election and my appointment as Secretary. Any statement to the contrary I made to the press was a result of a mistake or misunderstanding. At the time of my conversation with the reporter I was in the process of creating a trust as a mechanism to divest my assets in order to comply with my ethics agreement.¹⁵⁷

Mr. Apol provided Secretary Ross's letter to Senators Blumenthal, Cantwell, Udall, Baldwin, Wood Hassan, and Duckworth on November 17, 2017.¹⁵⁸

On April 27, 2018, Secretary Ross provided a memorandum to the DAEO with the subject line "Summary of Asset Dispositions."¹⁵⁹ In the memorandum, Secretary Ross noted, "Over the past year, ██████ and I have disposed of a large number of our personal investments in order to fulfill the obligations that I undertook in my January 15, 2017, Ethics Agreement."¹⁶⁰ He added, "Though not required, I also divested other assets to remove any possible concern that retaining them would in the future impinge on the performance of my duties as Secretary."¹⁶¹ Secretary Ross stated the purpose of the memorandum was "to summarize the actions that I took over the past 16 months in accord with the Ethics Agreement, and that I reported in 29 separate Periodic Transaction Reports (OGE Form 278-Ts)."¹⁶² Secretary Ross then stated, "As reported, ██████ and I completed all of the required divestments within the required periods, with the inadvertent exception of certain Invesco stock, as explained below."¹⁶³ In the memorandum, Secretary Ross explained his divestitures of certain investments, including the following: FireEye Inc., Sun Bancorp, Inc., The Greenbrier Companies, Inc., Navigator Holdings Ltd., Invesco, Ltd., and WLR Recovery Fund IV.¹⁶⁴ Secretary Ross also stated:

I did not include many of the divestments made pursuant to the Ethics Agreement on Transaction Reports because the applicable filing requirements did not require reporting of those divestments. Each of these divestments were within one of the following five categories:

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ David Apol to U.S. Senators, November 17, 2017. *Letter from David Apol to Senators Blumenthal, Cantwell, Udall, Baldwin, Wood Hassan, and Duckworth*. Available at [https://oge.gov/web/oge.nsf/All%20Documents/DFB4180B6057C445852581DE0073D59C/\\$FILE/Follow-up%20letter%20to%20Senators%20Blumenthal,%20Cantwell,%20Udall,%20Baldwin,%20Hassan,%20and%20Duckworth.pdf?open](https://oge.gov/web/oge.nsf/All%20Documents/DFB4180B6057C445852581DE0073D59C/$FILE/Follow-up%20letter%20to%20Senators%20Blumenthal,%20Cantwell,%20Udall,%20Baldwin,%20Hassan,%20and%20Duckworth.pdf?open) (accessed August 25, 2020).

¹⁵⁹ Memorandum from Secretary Ross to DAEO, dated April 27, 2018.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ *Id.* at p. 1–4.

(1) transfers to an irrevocable trust of which neither ██████ nor I is a beneficiary; (2) gifts to persons whose interests are not attributable to me; (3) sales of Excepted Investment Funds; (4) transactions below the value threshold for reporting; and (5) dissolutions of entities holding only cash.¹⁶⁵

Secretary Ross included an attachment to the memorandum that listed “assets divested pursuant to the Ethics Agreement but not disclosed in a Transaction Report for one of these five reasons.”¹⁶⁶ This list of assets differed slightly from Attachment A-II to the Ethics Agreement (assets/entities to be divested within 180 days of confirmation) and the list of assets transferred in the Trust Agreement. (As previously noted, the list of assets in Attachment A-II to the Ethics Agreement and the list of assets transferred in the Trust Agreement are nearly identical, with the difference being that the Trust Agreement includes the transfer of WLR Recovery Fund III IAC AIV LP, WLR Recovery Associates IV DSS AIV LP, and WLR Recovery Associates V DSS AIV LP, which were not listed in Attachment A-II of the Ethics Agreement. These assets were also not included in the list of assets in the April 27, 2018, memorandum.) The list Secretary Ross provided in the April 27, 2018, memorandum included “Invesco Core Plus Fixed Income,” “SSgA Inflation Protected Bond Index Fund,” and “SSgA U.S. Bond Index Non-Lending Series Fund Class C.”¹⁶⁷ These three assets were listed in Attachment A-I to the Ethics Agreement (assets/entities to be divested within 90 days of confirmation) and not included in the list of assets transferred through the Trust Agreement, as the Trust Agreement transferred assets required to be divested within 180 days. In addition, the list of assets in the April 27, 2018, memorandum did not include the following assets which were included in Attachment A-II of the Ethics Agreement and listed in Schedule A-I of the Trust Agreement: WLR Recovery Associates III, LLC, WLR Recovery Associates IV, LLC, WLR Recovery Associates V, LLC, and WLR Conduit MM LLC. (As previously noted, Schedule A-I to the Trust Agreement states that WLR Conduit MM LLC was previously transferred to an independent third party.)

On May 14, 2018, Secretary Ross emailed the DAEO and requested an extension to the May 15, 2018, filing deadline for his annual public financial disclosure report (OGE Form 278e) that covered 2017. Secretary Ross stated the reason for the extension request was that the several funds he owned during 2017 had not sent him IRS Form K-1s. He noted he did not know when the materials would be provided and requested the longest extension the DAEO could provide.

On May 15, 2018, the DAEO responded to Secretary Ross regarding the extension request and granted Secretary Ross a 90-day extension for the filing of his annual financial disclosure report. The DAEO informed Secretary Ross the report was due on August 13, 2018.

As previously described in the “*Background*” section of this report, on June 27, 2018, eight members of the House of Representatives provided a letter to the Inspector

¹⁶⁵ *Id.* at p. 5.

¹⁶⁶ *Ibid.*

¹⁶⁷ *Id.* at p. 6.

General that requested our office “review Secretary Ross’s compliance with federal ethics requirements, his ongoing issues with conflicts of interest, and his potentially false statements regarding certain financial holdings.”¹⁶⁸ Regarding specific divestitures, the letter noted Secretary Ross failed to divest his interests in Invesco and The Greenbrier Companies, Inc. by the deadlines specified in his Ethics Agreement.¹⁶⁹

On July 12, 2018, then-Acting OGE Director Apol provided a letter to Secretary Ross in which he stated:

Public trust demands that all employees act in the public’s interest, and are free from any actual or perceived conflicts when fulfilling the governmental responsibilities entrusted to them. Agency heads in particular bear a heightened responsibility, as they are required to ‘exercise personal leadership in ... establishing and maintaining an effective agency ethics program and fostering an ethical culture in the agency.’¹⁷⁰ As the Acting Director of OGE, I am writing to you to express my concern regarding how recent actions on your part may have negatively affected the public trust.¹⁷¹

Mr. Apol continued, “As you know, various financial disclosure forms and compliance documents that you have submitted to OGE in the past year have contained various omissions and inaccurate statements.”¹⁷² As an example, Mr. Apol cited that Secretary Ross signed a Certification of Ethics Agreement Compliance on November 1, 2017, in which he represented that he completed divestitures required by his Ethics Agreement, but then submitted a transaction report covering two sales of Invesco Ltd. stock on December 19 and 20, 2017.¹⁷³ Mr. Apol noted that the Invesco transactions were “well after the date of [Secretary Ross’s] compliance document and the date by which [Secretary Ross] agreed to divest this asset.”¹⁷⁴ Mr. Apol also stated, “You also opened new short positions on various holdings that you committed to divesting in your Ethics Agreement, in contravention of that agreement ... which appear to have been an ineffective attempt to remedy your actual or apparent failure to timely divest your assets per your Ethics Agreement.”¹⁷⁵ Regarding Secretary Ross’s activities, Mr. Apol wrote to Secretary Ross:

You have advised both OGE and your DAEO that the various omissions and inaccuracies on your part were inadvertent, and we have no information to

¹⁶⁸ U.S. Representatives to Peggy E. Gustafson, June 27, 2018. *Letter from U.S. House of Representatives to the Inspector General of the U.S. Department of Commerce.*

¹⁶⁹ *Id.* at p. 2–3.

¹⁷⁰ *Citing* 5 C.F.R. § 2638.107.

¹⁷¹ David Apol to Wilbur L. Ross, Jr., July 12, 2018. *Letter from David Apol to Secretary Ross.* Available at [https://www.oge.gov/Web/OGEnsf/0/F8A904F56D6DB8A2852585B9006C48F3/\\$FILE/Letter%20to%20Secretary%20of%20Commerce.pdf](https://www.oge.gov/Web/OGEnsf/0/F8A904F56D6DB8A2852585B9006C48F3/$FILE/Letter%20to%20Secretary%20of%20Commerce.pdf) (accessed October 20, 2020).

¹⁷² *Ibid.*

¹⁷³ *Id. citing* lines 15 and 16 of OGE Form 278-T certified by OGE on June 18, 2018 (showing two sales of Invesco Ltd., each in the range of \$5,000,001–\$25,000,000).

¹⁷⁴ *Ibid.*

¹⁷⁵ *Id. citing* endnote to line 12 of OGE Form 278-T certified by OGE on June 18, 2018, and related to shares of Sun Bancorp, Inc.

contradict that assertion. Unfortunately, even inadvertent errors regarding compliance with your ethical obligations can undermine public trust in both you and the overall ethics program. Furthermore, your actions, including your continued ownership of assets required to be divested in your Ethics Agreement and your opening of short sale positions, could have placed you in a position to run afoul of the primary criminal conflict of interest law, 18 U.S.C. § 208. Your DAEO has advised OGE that after reviewing your calendars, briefing books, and correspondence, he found no information indicating any such violation, however, your failure to divest created the potential for a serious criminal violation on your part and undermined public confidence.¹⁷⁶

Mr. Apol also advised Secretary Ross, “As a high level public official, you have an affirmative duty to protect the public trust and serve as a model of ethical behavior. This duty includes exercising the care necessary to fully and timely comply with your ethics commitments, and be accurate in statements to OGE regarding the same.”¹⁷⁷ Finally, Mr. Apol noted that Secretary Ross would be filing his Annual OGE Form 278 soon and urged him to devote necessary resources to ensure his report and all future communications with OGE are complete and accurate.¹⁷⁸

Secretary Ross responded on July 12, 2018, to Mr. Apol’s letter through a Department press release. The press release included the following statements:

Today I received the enclosed letter from the Office of Government Ethics (OGE). I agree with OGE that “the success of our Government depends on maintaining the trust of the people we serve.” I take my ethics obligations very seriously and am committed to serving the American people.

I have made inadvertent errors in completing the divestitures required by my ethics agreement. My investments were complex and included hundreds of items. I self-reported each error, and worked diligently with my department’s officials to make sure I avoided any conflicts of interest.

My ethics agreement allowed me to retain some private equity holdings. To maintain the public trust, I have directed that all of my equity holdings be sold and the proceeds placed in U.S. Treasury securities.¹⁷⁹

On July 15, 2018, Senator John Thune provided a letter to our office that requested an “independent review of the conclusion reached by the Commerce Department’s Designated Agency Ethics Official that errors Secretary of Commerce Wilbur Ross made in his efforts to comply with his Ethics Agreement did not result in a violation of conflict of interest law.”¹⁸⁰ In the letter Senator Thune referenced the July 12, 2018,

¹⁷⁶ *Id.* at p. 2.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ Statement from U.S. Secretary of Commerce Wilbur Ross, dated July 12, 2018. Available at <https://www.commerce.gov/news/press-releases/2018/07/statement-us-secretary-commerce-wilbur-ross> (accessed November 16, 2020).

¹⁸⁰ Letter from Senator Thune to OIG, dated July 15, 2018.

letter from then-Acting OGE Director Apol to Secretary Ross that was previously described.¹⁸¹

On August 13, 2018, Secretary Ross electronically signed and filed his annual public financial disclosure report (OGE Form 278e) for report year 2018, covering the assets he held during 2017.¹⁸² This form was subject to review and certification by the DAEO and OGE before it was finalized. This date was the extended deadline by which Secretary Ross had to file this report.

On September 12, 2018, the DAEO certified Secretary Ross's annual public financial disclosure report (OGE Form 278e) covering 2017.¹⁸³

On October 31, 2018, Secretary Ross electronically signed and certified a periodic transaction report (OGE Form 278-T) for the sale of BankUnited, Inc. shares on October 1, 2018, in the amount of \$1,001–\$15,000.¹⁸⁴ The endnote associated with this transaction stated the following, “These shares, issued as directors qualifying shares in 2012, were held in book entry form by BankUnited’s stock transfer agent. I previously reported selling the shares on May 31, 2017, based on a mistaken belief that the agent executed my sell order on that date.”¹⁸⁵

On November 6, 2018, Secretary Ross provided a memorandum to the DAEO with the subject line “Recent Divestments.”¹⁸⁶ In this memorandum, Secretary Ross referenced his previous memorandum to the DAEO, dated April 27, 2018, and he stated this document served as a supplement to the earlier memorandum.¹⁸⁷ Secretary Ross addressed divestment of the following assets in the November 6, 2018, memorandum:

1. Three excepted investments he held through an Invesco 401(k) plan.
2. 100 shares issued to him for his service as director of BankUnited, Inc. from 2009 through 2014.

¹⁸¹ *Ibid.*

¹⁸² Secretary Ross OGE Form 278e, report year 2018. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/\\$FILE/Wilbur-L-Ross-2018-278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/$FILE/Wilbur-L-Ross-2018-278.pdf) (accessed August 25, 2020). Note: the publicly available version of this document, as provided on OGE.gov, does not include Secretary Ross’s electronic signature/certification. The DAEO provided our office a version of this document that preceded his review and submission to OGE. This previous non-public version contains Secretary Ross’s electronic signature/certification.

¹⁸³ Secretary Ross OGE Form 278e. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/\\$FILE/Wilbur-L-Ross-2018-278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/$FILE/Wilbur-L-Ross-2018-278.pdf) (accessed August 25, 2020).

¹⁸⁴ Secretary Ross OGE Form 278-T, dated October 31, 2018. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/1382897FDDC40D57852583A7002D5BE3/\\$FILE/Wilbur-L-Ross-10.31.2018-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/1382897FDDC40D57852583A7002D5BE3/$FILE/Wilbur-L-Ross-10.31.2018-278T.pdf) (accessed August 25, 2020).

¹⁸⁵ *Id.* at p. 2.

¹⁸⁶ Memorandum from Secretary Ross to DAEO, dated November 6, 2018.

¹⁸⁷ *Ibid.*

3. General partner and limited partner interests in the Transportation Recovery Funds, including his interests held through Starboard GP Ltd. and Starboard WLR Associates, L.P.¹⁸⁸

Secretary Ross's investments in the Invesco 401(k) plan and BankUnited, Inc. will be addressed in more detail later in this report. Secretary Ross noted in this memorandum that his Ethics Agreement did not require him to divest his interests in the Transportation Recovery Fund; however, he divested these interests.¹⁸⁹ Secretary Ross stated that his divestment of the Transportation Recovery Fund "also included all of my interests in the various special purpose vehicles owned by the funds."¹⁹⁰ He further stated, "I have no continuing interest in the Starboard funds or the Transportation Recovery Fund (nor in any other transoceanic shipping fund or company)."¹⁹¹

On February 15, 2019, Emory A. Rounds, III, Director, OGE, declined to certify Secretary Ross's annual public financial disclosure report (OGE Form 278e) covering 2017.¹⁹² In the comment section, OGE Director Rounds stated, "The report is not certified because line 4 in Part 2 (and endnote) reports that the filer no longer held BankUnited stock while the transaction report dated October 31, 2018, demonstrates that he did, and because the filer was therefore not in compliance with his ethics agreement at the time of the report."¹⁹³

Also on February 15, 2019, OGE Director Rounds provided a letter to the DAEO that referenced the July 12, 2018, letter from then-Acting OGE Director Apol to Secretary Ross. In the letter, OGE Director Rounds addressed the reasons why he declined to certify Secretary Ross's annual public financial disclosure report (OGE Form 278e) covering 2017.¹⁹⁴ OGE Director Rounds stated that the July 12, 2018, letter from OGE "noted that even inadvertent errors could undermine the public's trust in the Secretary and his Department's overall ethics program."¹⁹⁵ OGE Director Rounds added, "Consequently, OGE emphasized the importance that the Secretary devote the resources necessary to ensure that his report and all future communications with OGE were complete and accurate."¹⁹⁶ In his February 15, 2019, letter to the DAEO, OGE Director Rounds also stated:

¹⁸⁸ *Id.* at p. 1–3.

¹⁸⁹ *Id.* at p. 3.

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

¹⁹² Secretary Ross OGE Form 278e report year 2018. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/\\$FILE/Wilbur-L-Ross-2018-278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/$FILE/Wilbur-L-Ross-2018-278.pdf) (accessed August 25, 2020).

¹⁹³ *Id.* at p. 2.

¹⁹⁴ Emory A. Rounds, III, to DAEO, February 15, 2019. *Letter from the OGE Director to the DAEO*. Available at [https://oge.gov/web/OGEnsf/0/955C1F75C94F1D1F852583A60074C4CB/\\$FILE/Letter%20to%20Commerce%20DAEO.pdf](https://oge.gov/web/OGEnsf/0/955C1F75C94F1D1F852583A60074C4CB/$FILE/Letter%20to%20Commerce%20DAEO.pdf) (accessed August 25, 2020).

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

Thereafter, the Secretary's October 31, 2018 transaction report showed that, despite this admonition, the Secretary had not in fact sold all his BankUnited stock prior to certifying his compliance with his ethics agreement and filing his annual report in 2018. As a result, his annual report inaccurately reported that he had sold all of his stock when in fact he had not done so. Therefore, OGE is declining to certify Secretary Ross's 2018 financial disclosure report because that report was not accurate and he was not in compliance with his ethics agreement at the time of the report.¹⁹⁷

On February 8, 2019, then-Chairman of the House of Representatives Committee on Oversight and Reform, Elijah E. Cummings, sent Secretary Ross a letter informing him that the Committee on Oversight and Reform was "reviewing reports that you may have conflicts of interest that could jeopardize the public trust placed in you as Secretary of Commerce."¹⁹⁸ The letter reminded Secretary Ross that he agreed in writing to divest certain assets and stated, "However, public financial disclosures and other reporting raise questions about whether you have fully complied with this agreement."¹⁹⁹ The letter requested that Secretary Ross produce, by February 22, 2019, documents for the period from January 20, 2017, through the present, dealing with a number of topics, most of which were related to Secretary Ross's divestiture of assets.²⁰⁰

On March 14, 2019, Secretary Ross testified before the House of Representatives Committee on Oversight and Reform regarding matters related to the U.S. Census Bureau.²⁰¹ Prior to this hearing, the Department's then-Assistant Secretary for Legislative and Intergovernmental Affairs, wrote a letter to then-Chairman Cummings and cited then-Chairman Cummings's February 8, 2019, letter to Secretary Ross.²⁰² In his letter, the then-Assistant Secretary stated, "In the days following our receipt of that letter, it became clear that the Committee intended to expand the scope of the March 14 hearing to ask the Secretary questions about his personal finances and ethics obligations—topics that we did not anticipate nor expect to be covered in such detail and depth based on the frequent and cordial communications between our staffs."²⁰³ Based in part on that potential expansion of the hearing, the then-Assistant Secretary

¹⁹⁷ *Ibid.*

¹⁹⁸ Then-Chairman Elijah E. Cummings to Wilbur L. Ross, Jr., February 8, 2019. *Letter from the Then-Chairman of the Committee on Oversight and Reform to the Secretary of Commerce*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-08.EEC%20to%20Ross%20re%20Conflicts%20of%20Interest.pdf> (accessed August 25, 2020).

¹⁹⁹ *Ibid.*

²⁰⁰ *Id.* at p. 2–3.

²⁰¹ Video of the March 14, 2019, hearing is available at <https://oversight.house.gov/legislation/hearings/commerce-secretary-wilbur-l-ross-jr> (accessed August 25, 2020).

²⁰² Department of Commerce, Office of Legislative and Intergovernmental Affairs, to Then-Chairman Elijah E. Cummings, March 5, 2019. *Letter from the U.S. Department of Commerce Assistant Secretary for Legislative and Intergovernmental Affairs to the Then-Chairman of the Committee on Oversight and Reform*. Available at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.03.05%20Letter%20to%20Chairman%20Cummings_0.pdf (accessed August 25, 2020).

²⁰³ *Id.* at p. 1.

sought to postpone the hearing.²⁰⁴ In lieu of postponing the hearing, then-Chairman Cummings agreed to allow Secretary Ross to provide responsive information and documents regarding his financial disclosures after the hearing.²⁰⁵

On April 15, 2019, then-Chairman Cummings submitted questions for the official record to Secretary Ross.²⁰⁶ Among other topics, these questions included a section regarding Secretary Ross's financial interests. Then-Chairman Cummings asked whether Secretary Ross followed financial conflict of interest recusal obligations and whether he made any profit from short positions he opened on assets that he agreed to divest.²⁰⁷

On September 9, 2019, then-Chairman Cummings again wrote to Secretary Ross "regarding the Committee's investigation into your potential conflicts of interest that could jeopardize the public trust placed in you as Secretary of Commerce."²⁰⁸ Then-Chairman Cummings stated, "Rather than cooperate with this investigation, you have refused for more than eight months to produce many responsive documents, and the documents you have produced raise troubling new questions about your compliance with federal ethics requirements."²⁰⁹ This letter references the February 8, 2019, letter, the March 14, 2018, hearing, and the questions for the record submitted to Secretary Ross on April 15, 2019.²¹⁰ Then-Chairman Cummings noted that Secretary Ross did not respond to any of the questions from the April 15, 2019, letter and stated, "[t]he Department has made only limited productions of materials that were already largely publicly available or that were heavily redacted."²¹¹ As of the date of this report, our office is not aware of a response by the Department to this letter.

C. Assets Requiring Divestiture Within 90 Days of Confirmation

Our investigation included a detailed review of the steps Secretary Ross took to comply with his Ethics Agreement's divestiture requirements. In Section 9 (Additional Assets to be Divested) of his Ethics Agreement, Secretary Ross agreed to divest his financial interests in the entities identified in Attachment A within the timeframe identified in that

²⁰⁴ *Id.* at p. 2.

²⁰⁵ Then-Chairman Elijah E. Cummings to Wilbur L. Ross, Jr., March 6, 2019. *Letter from the Then-Chairman of the Committee on Oversight and Reform to the Secretary of Commerce*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-06.EEC%20to%20Ross-DOC%20re%20Documents%20and%20Testimony.pdf> (accessed August 25, 2020).

²⁰⁶ Chairman Elijah E. Cummings to Wilbur L. Ross, Jr., April 15, 2019. *Letter from the Chairman of the Committee on Oversight and Reform to the Secretary of Commerce*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-04-15.%20EEC%20to%20Secretary%20Ross%20re.%203-14%20Hearing%20QFRs.pdf> (accessed August 26, 2020).

²⁰⁷ *Id.* at p. 4.

²⁰⁸ Chairman Elijah E. Cummings to Wilbur L. Ross, Jr., September 9, 2019. *Letter from the Chairman of the Committee on Oversight and Reform to the Secretary of Commerce*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-09-09.EEC%20to%20Ross-DOC%20re%20Conflict%20with%20Productions.pdf> (accessed August 26, 2020).

²⁰⁹ *Id.* at p. 1.

²¹⁰ *Id.* at p. 1–2.

²¹¹ *Id.* at p. 2.

attachment. Attachment A-I listed 40 entities that Secretary Ross agreed to divest within 90 days of his confirmation. The divestitures most relevant to our investigation are discussed within this section of our report.

I. Air Lease Corporation

Part 2 of OGE Form 278e covers the “Filer’s Employment Assets & Income and Retirement Accounts,” and on line 3 of this part of the Nominee OGE Form 278e that Secretary Ross signed and certified on December 19, 2016, he listed an interest in Air Lease Corporation (ALC).²¹² Specifically, he reported the value of his interest in ALC as \$250,001–\$500,000, and he reported that he received income of \$1,001–\$2,500 in “Dividends Capital Gains” from his interest in ALC.²¹³

In his Ethics Agreement, Secretary Ross agreed to divest all of his financial interests in ALC within 90 days of his confirmation as Secretary of Commerce (May 30, 2017).²¹⁴

On June 1, 2017, Secretary Ross electronically signed and certified an OGE Form 278-T in which he reported he sold an interest in ALC in the amount of \$250,001–\$500,000.²¹⁵ He listed the date of sale as June 5, 2017.²¹⁶ On June 2, 2017, Secretary Ross signed an OGE Certification of Ethics Agreement Compliance in which he stated, “I have divested all holdings required in my ethics agreement to be sold within 90 days except that there was an unanticipated delay with regard to the divestitures of my holdings in *Air Lease Corp.* ... but these have also now been divested ...”²¹⁷ Then, more than 1 year later, on June 15, 2018, Secretary Ross filed an additional OGE Form 278-T in which he disclosed that on June 11, 2018, he sold an additional interest in ALC in the amount of \$50,001–\$100,000.²¹⁸ Secretary Ross

²¹² Public Financial Disclosure Report (OGE Form 278e), dated December 19, 2016, at p. 8. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/88642A2CA81AA6C2852580AB00618C8C/\\$FILE/Ross%20Wilbur%20L.%20Final%20278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/88642A2CA81AA6C2852580AB00618C8C/$FILE/Ross%20Wilbur%20L.%20Final%20278.pdf) (accessed August 26, 2020). Secretary Ross did not report his previous service as a director of ALC, from approximately 2010 to December 2013, presumably because it fell outside the time period required by this OGE Form 278e. See <https://airleasecorp.com/index.php/press/air-lease-corporation-announces-the-election-of-a-new-independent-director-and-the-retirement-of-three-directors> (accessed August 26, 2020).

²¹³ *Ibid.*

²¹⁴ Wilbur L. Ross, Jr. to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*, at p. 8.

²¹⁵ Secretary Ross OGE Form 278-T, dated June 1, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CC2CA0AB89E398525814600272FE9/\\$FILE/Wilbur-L-Ross-06.01.2017-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CC2CA0AB89E398525814600272FE9/$FILE/Wilbur-L-Ross-06.01.2017-278T.pdf) (accessed August 26, 2020).

²¹⁶ *Ibid.* June 1, 2017, was a Thursday, and the standard 2 business day clearance required to finalize the trade meant the trade was scheduled to close on Monday, June 5, 2017.

²¹⁷ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated June 2, 2017, at p. 3. (Emphasis added.)

²¹⁸ Secretary Ross OGE Form 278-T, dated June 15, 2018. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/7552585FF9FE4294852582C00027DC19/\\$FILE/Wilbur-L-Ross-06.15.2018-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/7552585FF9FE4294852582C00027DC19/$FILE/Wilbur-L-Ross-06.15.2018-278T.pdf) (accessed August 26, 2020).

offered the following explanation for this sale in the endnotes section of the June 15, 2018, OGE Form 278-T:

Air Lease Corporation retained American Stock and Transfer Company (“AST”) LLC to administer its Directors Stock program. In June, I found that I had respectively 4,529 and 3,377 shares with different issuance dates in an account listed under the name Wilbur Ross and had the shares sold. Unbeknownst to me AST also had 1,631 shares in a separate account labeled Wilbur L. Ross. When I had called them last year seeking share information they never told me about this separate account. The way I learned about it was just recently when they sent me a check for less than \$200 representing dividend payments that had gone unclaimed. I had no record of receiving these payments and had no prior record of these shares. Upon becoming aware of them, I promptly sold the Air Lease shares and filed this Transaction Report.²¹⁹

On August 13, 2018, Secretary Ross electronically signed and filed his annual public financial disclosure report (OGE Form 278e) for report year 2018.²²⁰ In Part 2, line 3 of this document, Secretary Ross listed the value of his ALC shares as \$50,001–\$100,000 with income of \$1,001–\$2,500 from dividends.²²¹ He stated in a related endnote that “[s]hares were divested on 6/11/18, and were the subject of a 278-T transaction report filed on 6/15/18.”²²²

Secretary Ross’s counsel provided our office with multiple documents showing Secretary Ross’s divestitures of his interests in ALC along with explanations of the transactions. With respect to the sale reported on the June 1, 2017, OGE Form 278-T, we received two trade confirmation documents associated with Secretary Ross’s brokerage account. The first trade confirmation showed a short sale of 7,905 shares of ALC at a price of \$36.345731 per share and a net amount of \$286,911.48. The trade date for this transaction was May 31, 2017, and the settlement date was June 5, 2017. The second trade confirmation document showed two transactions for the same amount of ALC shares at the same price on the same date as the first trade confirmation document, and one of the transactions was shown as canceled. We also received Secretary Ross’s monthly brokerage account statements for May 2017 and June 2017 reflecting this transaction. The May 2017 brokerage account statement showed a pending short sale of ALC shares with the same quantity, price, and proceeds that were listed in the trade confirmation. This brokerage account statement also showed a trade date of May 31, 2017, and a settlement date of June 5, 2017. The June 2017 brokerage account statement showed that the ALC

²¹⁹ *Id.* at p. 2.

²²⁰ Secretary Ross OGE Form 278e, report year 2018. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/\\$FILE/Wilbur-L-Ross-2018-278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/$FILE/Wilbur-L-Ross-2018-278.pdf) (accessed August 26, 2020). Note: the publicly available version of this document, as provided on OGE.gov, does not include Secretary Ross’s electronic signature/certification. The DAEO provided our office a version of this document that preceded his review and submission to OGE. The version the DAEO provided our office shows Secretary Ross electronically signed/certified the document on August 13, 2018.

²²¹ *Id.* at p. 8.

²²² *Id.* at p. 8 and 58.

securities were transferred from American Stock Transfer and Trust to Secretary Ross's brokerage account in two transactions. He received 4,528 ALC shares on June 1, 2017, and 3,377 ALC shares on June 2, 2017, for a total of 7,905 shares. These shares were also transferred out of Secretary Ross's brokerage account to the broker to cover the short position in two transactions. The 4,528 ALC shares were transferred on June 2, 2017, and the 3,377 ALC shares were transferred on June 5, 2017.

With respect to the sale reported on the June 15, 2018, OGE Form 278-T, our office received a trade confirmation document associated with Secretary Ross's brokerage account from Secretary Ross's counsel as proof of the divestment. This document showed a sale of 1,631 shares of ALC at a price of \$44.83 per share and a net amount of \$72,953.57. The trade date for this transaction was June 8, 2018, and the settlement date was June 12, 2018.²²³

Further regarding the sale reported on the June 1, 2017, OGE Form 278-T, Secretary Ross's counsel explained that ALC's stock transfer agent, American Stock Transfer and Trust, advised Secretary Ross that its records showed he owned 7,905 shares of ALC in book entry form. Secretary Ross directed American Stock Transfer and Trust to initiate a transfer of the shares to his personal brokerage account. Secretary Ross's counsel added:

Because he was unsure of how long the transfer would take and in order to eliminate the value of his interest in Air Lease pending delivery of the shares, Secretary Ross executed a short sale of 7,905 Air Lease shares on Wednesday May 31[, 2017]. JP Morgan recorded receipt of 4,528 shares from American Stock Transfer on June 1, [2017,] and closed that amount of the short position on June 2[, 2017]. JP Morgan received a second transfer on June 2[, 2017] of 3,377 shares. On Monday, June 5[, 2017], it closed the remaining open position with those shares. At the time he executed this short sale, Secretary Ross was unaware of the Office of Government Ethics ("OGE") guidance for reporting short sales. He thus reported a single sale of Air Lease as having occurred on June 5, 2017, the day that JP Morgan closed the second part of the open position.

The meeting with Secretary Ross's counsel described above occurred approximately 1 month after Secretary Ross reported the sale of additional ALC shares on the OGE Form 278-T dated June 15, 2018. During the meeting, Secretary Ross's counsel provided an explanation for this transaction that comported with the explanation in the endnote of the June 15, 2018, OGE Form 278-T previously described.

We discussed Secretary Ross's divestiture of ALC stock (among other divestitures) in a meeting with Secretary Ross's counsel upon receiving documents responsive to our initial request for proof of Secretary Ross's divestitures. Following this meeting,

²²³ The settlement date of June 12, 2018, differs from the date Secretary Ross reported he sold the ALC shares on the OGE Form 278-T associated with this transaction (June 11, 2018).

Secretary Ross's counsel provided an additional explanation of this divestiture in writing to our request for more information about the first transaction. Most importantly, Secretary Ross's counsel pointed out that the transaction was a version of a short sale in which Secretary Ross opened a short position against his own shares and not against the market. According to Secretary Ross's counsel, in general, when Secretary Ross opened a short position to divest assets, it was in connection with shares of a company that he was awarded as part of his compensation for serving on the company's board of directors. In these situations, the company's stock transfer agent maintained the shares, and Secretary Ross was not issued certificates for the shares.

When discussing this type of short sale in relation to the sale of shares Secretary Ross was awarded for service as a director of a different company, Secretary Ross's counsel further explained that the transaction was well-known in the financial services industry as a "short against the box." Secretary Ross's counsel referred to this as a "type of structured short sale, where one person is both seller and buyer." The concept of a "short against the box" is important because, in addition to ALC, Secretary Ross used this method to divest or attempt to divest multiple assets.

Secretary Ross's counsel addressed a short against the box transaction in greater detail in a memorandum to our office in the context of Secretary Ross's sale of his interest in The Greenbrier Companies, Inc. ("Greenbrier"). As related by Secretary Ross's counsel, "A 'short sale' is a securities trade in which an investor sells shares that he 'borrows,' usually from inventory held by a brokerage firm, priced as of the date of the trade." The investor later purchases equivalent shares on the market and returns the shares to the lender/broker to close the trade. As noted by Secretary Ross's counsel, "Profit or loss on the trade is determined by the spread between the sale and purchase prices." Secretary Ross's counsel explained that the difference between a standard "short sale" and a "short against the box" is that the "seller sells securities not with a promise to deliver later the equivalent number of borrowed shares, but instead with a promise to deliver an equivalent number of shares *that he already owns.*" According to Secretary Ross's counsel, a short against the box "neutralizes the seller's interest in the underlying security because any gains, losses, or dividends are exactly offset." Secretary Ross's counsel added, "Specifically, in a short against the box, the seller bears no market risk of being forced to purchase shares at a higher price to cover the short sale, thereby losing money, nor is there a possibility of profiting from a lower price." Secretary Ross's counsel also addressed the difference in the treatment of dividends in a standard short sale and a short against the box. As explained by Secretary Ross's counsel, "Further, in a simple short sale, the buyer of the shares would receive any dividends directly, and the short seller would need to pay an equivalent amount to the lender of the shares out of his own funds." In a short against the box, the buyer of the shares would receive dividends directly, and the seller would also receive dividends directly. Secretary Ross's counsel explained that in this situation, "... the seller would turn over to the lender the dividends received on the seller's own shares prior to their delivery.

Thus, in a short against the box, any dividends received and paid post-sale cancel one another out.”

Further explaining Secretary Ross’s use of a short against the box, Secretary Ross’s counsel noted, “In general, U.S. Securities and Exchange Commission rules require a broker-dealer to settle a trade for the purchase or sale of a security within two business days, unless the parties agree to a different settlement date at the time of the trade.”²²⁴ As previously noted, this discussion of a short against the box was provided directly in relation to Secretary Ross’s divestiture of Greenbrier shares, but it applies to the other short against the box transactions, including ALC. With respect to the Greenbrier situation, Secretary Ross’s counsel stated that Secretary Ross was faced with a deadline for divesting securities he owned but did not possess, could not be sure when he would receive the shares, and anticipated the transfer of the shares from the stock transfer agent to his brokerage account would be delayed beyond the required settlement period. As a result, “... Secretary Ross believed short selling against the box was the only way to exit his financial stake in Greenbrier immediately, prior to the delivery of the shares from the stock transfer agent.” Secretary Ross’s counsel continued,

Because shorting against the box neutralizes the share owner’s financial position in the investment, the May 25, 2017 transaction effectively terminated Secretary Ross’s financial interest in Greenbrier on that date. In essence, the sale simply extended the time for delivery by him of the shares to close the position. His contemporaneous execution of other trades in the same manner demonstrates his firm belief that selling short against the box terminated his financial interests in those stocks, including Greenbrier, and was in fact the only means of exiting his positions in stocks that he did not then control and could not sell directly with confidence that the trade would be closed within the required settlement period.

We confirmed the basic information about short against the box transactions that Secretary Ross’s counsel provided to our office. To further explain this situation, we note that investors execute a typical or “naked” short sale when they believe a company’s stock or the market in general is going to drop in value or when they think something is wrong with a company. When an investor opens a short position, the investor’s broker borrows shares of the company for the investor and puts money equal to the value of the number of the shares at the current market price into the investor’s account. The investor then owes the broker the number of shares the investor borrowed when directing the broker to open the short position. In general, there are no limitations or deadlines for an investor to close a short position. When an investor decides to close a short position, the investor contacts

²²⁴ Citing SEC Rule 15c6-1(a) (17 C.F.R. 240.15c6-1). The letter also stated in the footnote: “On March 22, 2017, the SEC amended the rule to reduce the settlement period to two business days from three business days, effective September 5, 2017. <https://www.sec.gov/news/press-release/2017-68-0>.”

the broker, the broker buys shares for the investor on the market to replace the borrowed shares, and the broker then closes the short position.

Regarding short against the box transactions, we found that investors do not generally short shares they already own; however, if an investor chose to execute a short against the box, it would usually occur where the investor holds shares in separate accounts, cannot access the shares for some reason, and thinks the shares will decrease in value. Most importantly for the situation at hand, our office agreed with the assessment of Secretary Ross's counsel that a short against the box transaction eliminates any profit or loss on the shares an investor owns but cannot access and functions as a constructive sale of those shares. In addition, our office determined that based on an investor's inability to gain or lose money once the short against the box transaction is initiated, the investor could be considered to lack a conflict of interest with respect to the company (subject to certain voting considerations, as explained later in this report). Additionally, it is useful to note that prior to a change in regulations by the Internal Revenue Service (IRS), short against the box transactions were used to defer tax liability where the value of a company's shares decreased a great deal, but, currently, the execution of a short against the box chiefly makes sense where an investor is not able to acquire shares the investor owns at the time the investor wants to execute a sale of the shares. For example, if an investor has a deadline by which the investor must sell shares in a certain company, and the shares are held by a stock transfer agent, a short against the box would make sense because the process of transferring the shares to the investor's account may take a long time. This is in accordance with the theory proposed by Secretary Ross's counsel regarding using a short against the box to sell shares by a deadline. Our office confirmed that when an investor enters into a short against the box transaction, the investor receives any dividends the company pays on its shares, and the investor is obligated to repay the broker for any dividends the investor receives while the short against the box position remains open.

However, we note that an investor that executes a short against the box transaction maintains the voting rights associated with the shares that the investor is not able to access immediately due to a delay in the transfer of the shares from a third party/stock transfer agent to the investor's account. And these voting rights could come into play if the company was engaged in a proxy battle and an investor wanted to have an effect on the outcome of the vote. Assuming an investor owned more than a *de minimis* amount of shares, an investor engaged in a short against the box transaction for the company's shares could vote in the proxy contest and effect a particular outcome without having an economic stake in the company. Our office is not aware of any such proxy voting situation with respect to any interests Secretary Ross held in the companies in which he executed short against the box transactions, and it is not clear that the amount of shares Secretary Ross held in these situations would have been sufficient to effect any change if such voting rights were exercised. Further, our office is not aware that Secretary Ross exercised any voting rights with respect to his interest in companies in which he executed short against the box transactions.

In addition, we have determined that where an investor executed a short against the box transaction, the investor effectively negated the ability to gain or lose money on the sale of the shares, and by virtue of that aspect of the transaction, the investor was locked into the sale at the time the investor opened the short against the box position and the asset should be considered to be divested. Further, any official government actions an investor took or decisions an investor made with respect to the related company after initiating a short against the box in the company's shares would not increase the value of the asset. Regarding the documentation of a short against the box transaction on OGE Form 278-T, our office has concluded that a filer should report the transaction as a "sale" in the "Type" column of the form and note that the sale was a short against the box. However, a filer would not have to file two versions of an OGE Form 278-T to indicate the opening and closing of the short position.

2. Bank of Cyprus²²⁵

In Part 1, line 33 of his Nominee OGE Form 278e ("Filer's Positions Held Outside United States Government"), Secretary Ross reported that he served as "Director/Vice Chairman" of Bank of Cyprus from November 2014 to the present.²²⁶ In Part 2, line 10.7.9.5 of the Nominee OGE Form 278e, Secretary Ross reported he held an interest in this entity. The placement of Bank of Cyprus on the Nominee OGE Form 278e indicated it was held by WLR Recovery Fund V, L.P. (line 10.7.9), and WLR Recovery Fund V, L.P. was held by WLR Recovery Associates V LLC (line 10.7). WLR Recovery Associates V LLC was in turn held by WL Ross Group, L.P. (line 10).²²⁷ Secretary Ross listed a direct interest in WL Ross Group, L.P. on Part 2, line 10 of his Nominee OGE Form 278e.²²⁸ The value of the interest in Bank of Cyprus held by WLR Recovery Fund V, L.P., was not disclosed, and only the value of WLR Recovery Associates V LLC, as the entity holding an interest in WLR Recovery Fund V, L.P., was reported.²²⁹ Secretary Ross did not report that he directly held any shares of Bank of Cyprus on his Nominee OGE Form 278e.

In Section 8 of his Ethics Agreement ("Resignations From Positions With Entities in Which I Have Financial Interests and am Divesting Those Interests"), Secretary Ross stated that upon confirmation, he would resign from his position with Bank of

²²⁵ This asset was listed in Secretary Ross's Ethics Agreement as an asset he agreed to divest within 90 days of his confirmation. However, as explained in this section, Secretary Ross and his counsel contend it should have been listed as an asset he would divest within 180 days, as he did not directly hold any Bank of Cyprus shares. Instead, Secretary Ross held an interest in Bank of Cyprus through his ownership of an interest in an entity that held shares of Bank of Cyprus, and Secretary Ross agreed to divest his ownership in the entity that owned the Bank of Cyprus shares within 180 days of his confirmation.

²²⁶ Public Financial Disclosure Report (OGE Form 278e), dated December 19, 2016, at p. 4.

²²⁷ *Id.* at p. 15.

²²⁸ *Ibid.*

²²⁹ *Ibid.* The reported value of WLR Recovery Associates V was \$1,000,001–\$5,000,000, with "Dividends Capital Gains" of \$1,000,001–\$5,000,000. The value of the other interests held by WLR Recovery Fund V, L.P. were not reported.

Cyprus.²³⁰ He also stated that he held an interest in this entity and would divest his financial interest in this entity as set forth in Section 9 and Attachment A of the Ethics Agreement.²³¹ Secretary Ross listed Bank of Cyprus in Attachment A-I of his Ethics Agreement as an asset he agreed to divest within 90 days of his confirmation as Secretary of Commerce.²³² Secretary Ross listed WLR Recovery Associates V LLC and WL Ross Group, L.P. (entities that held an interest in Bank of Cyprus by virtue of holding an interest in WLR Recovery Fund V, L.P.) in Attachment A-II of his Ethics Agreement as entities he would divest within 180 days of confirmation, subject to a brief extension of up to 60 days as specified in Section 9 of his Ethics Agreement.²³³

As previously detailed, Secretary Ross signed the first OGE Certification of Ethics Agreement Compliance on June 2, 2017.²³⁴ The date of this certification coincided with the 90-day deadline for divestitures of certain assets as required by Secretary Ross's Ethics Agreement. In Section 3 of this certification, Secretary Ross answered "N/A" to statements regarding the completion of the divestitures indicated in his Ethics Agreement and the filing of Periodic Transaction Reports (OGE Form 278-T) to disclose the completion of the agreed upon divestitures.²³⁵ In Section II of the certification ("Comments of Appointee"), Secretary Ross offered the following statement with regard to his response in Section 3:

Note that some holdings in my ethics agreement need not be sold within 90 days. I have divested all holdings required in my ethics agreement to be sold within 90 days except that there was an unanticipated delay with regard to the divestitures of my holdings in ... Bank of Cyprus... but these have also now been divested; with regard to the Bank of Cyprus, I **also** hold shares through the WL Ross Group LP which is required to be sold within 180 days.²³⁶

These statements seem to indicate that Secretary Ross held and divested shares of Bank of Cyprus other than those he indicated on his Nominee OGE Form 278e as held through the WL Ross Group, L.P./WLR Recovery Associates V LLC/WLR Recovery Fund V, L.P. ownership chain. However, as explained later in this report, Secretary Ross and his counsel later confirmed he had no direct investment in Bank of Cyprus and no holdings other than what was reported on his Nominee OGE Form 278e. Secretary Ross did not specifically mention his interest in or divestiture of Bank of Cyprus on the subsequent Certification of Ethics Agreement Compliance

²³⁰ Wilbur L. Ross, Jr. to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*, at p. 4.

²³¹ *Id.* at p. 5.

²³² *Id.* at p. 8.

²³³ *Id.* at p. 5 and 9.

²³⁴ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated June 2, 2017.

²³⁵ *Ibid.*

²³⁶ *Id.* at p. 3. (Emphasis added.)

documents, and, for reasons provided later in this report, Secretary Ross did not file an OGE Form 278-T to report that he divested his interest in Bank of Cyprus.

In the April 27, 2018, memorandum Secretary Ross provided to the DAEO, he reported the following regarding his interest in Bank of Cyprus:

I previously served as a director of the following entities listed in Part I of Attachment A of the Ethics Agreement: ... Bank of Cyprus. I resigned my position as a director in all of these entities prior to my appointment as Secretary. I did not hold investments in any of these entities, except an indirect interest in the Bank of Cyprus. Because I did not hold any direct investments in these entities, none of them is included in the Transaction Reports [OGE Form 278-T].²³⁷

We addressed Secretary Ross's interest in Bank of Cyprus and his divestiture of that interest with Secretary Ross's counsel. When asked why Secretary Ross did not divest his interest in Bank of Cyprus within the 90-day deadline required by his Ethics Agreement, Secretary Ross's counsel explained, "As shown on his new entrant SF278 [Nominee OGE Form 278e], Secretary Ross held only an indirect interest in Bank of Cyprus. He did not own Bank of Cyprus stock himself." Secretary Ross's counsel confirmed that WLR Recovery Fund V, L.P. held an interest in Bank of Cyprus. WLR Recovery Associates V LLC held WLR Recovery Fund V, L.P., WL Ross Group, L.P. held WLR Recovery Associates V LLC, and Secretary Ross held a direct investment in WL Ross Group, L.P. Secretary Ross's counsel then stated, "All of these entities are encompassed by the list of assets in Attachment B of Secretary Ross's Ethics Agreement. The Agreement required him to divest the Attachment B assets within 180 days or the deadline as extended, whichever date was later. He did so."²³⁸

Secretary Ross's counsel further explained, "Attachment A of the Ethics Agreement was meant to include only assets that Secretary or Mrs. Ross held directly and that were highly liquid – e.g., stocks traded on exchanges. OGE requested that other entities reported on the new entrant SF278 [Nominee OGE 278e] on which Secretary Ross served as a director be listed on Attachment A."²³⁹ According to Secretary Ross's counsel, Secretary Ross did not need to list Bank of Cyprus separately in his Ethics Agreement as an asset to be divested, because he did not own this asset directly. Secretary Ross's counsel added that Secretary Ross had no

²³⁷ Memorandum from Secretary Ross to DAEO, dated April 27, 2018, at p.1. The assets listed in Part I of Attachment A of the Ethics Agreement were those that Secretary Ross agreed to divest within 90 days of his confirmation.

²³⁸ The reference to "Attachment B" should be "Attachment A-II," as the Ethics Agreement does not include an Attachment B.

²³⁹ Our office believes Secretary Ross's counsel is referring to Attachment A-I to the Ethics Agreement when Secretary Ross's counsel referred to "Attachment A" in this statement (see previous footnote regarding the reference to Attachment B).

means of disposing his interest in Bank of Cyprus except through divestment of his interest in WLR Recovery Associates V LLC.²⁴⁰

Similar to other required divestitures, Secretary Ross divested his interest in the entity holding Bank of Cyprus (WLR Recovery Associates V LLC/WLR Recovery Fund V, L.P.) in order to divest his interest in Bank of Cyprus. Secretary Ross accomplished this by divesting his carried interest in WLR Recovery Associates V LLC to a trust through a trust agreement and his capital interest in WLR Recovery Associates V LLC to multiple investors through an agreement of purchase and sale.

We reviewed documentation related to Secretary Ross's divestiture of his interest in WLR Recovery Associates V LLC and WLR Recovery Fund V, L.P. and confirmed he no longer held an interest in these assets, and thereby no longer held an interest in Bank of Cyprus. He divested these interests on October 25, 2017, in accordance with the deadline (as extended by the DAEO) set in his Ethics Agreement.

We also addressed the divestiture of this asset with Secretary Ross during an interview. Secretary Ross confirmed that his only interest in Bank of Cyprus was through his interest in the fund that held an interest in Bank of Cyprus. We confirmed with Secretary Ross that he was not awarded shares of Bank of Cyprus as compensation for his service as a director, and he noted that "European banks" generally do not award shares to directors.

Regarding disclosure of the divestiture of his interest in Bank of Cyprus, our office did not find a requirement to report indirect holdings of assets on OGE Form 278-T, because assets are only reported on OGE Form 278-T at the transaction level. As to the inclusion of Bank of Cyprus on Attachment A-I to the Ethics Agreement as an asset that Secretary Ross was required to divest within 90 days of his confirmation, we determined it was important to look to the understanding of the parties at the time the Ethics Agreement was signed. If Bank of Cyprus was mistakenly listed as an asset to be divested within 90 days of Secretary Ross's confirmation, Secretary Ross should not be considered to have violated his Ethics Agreement if he did not divest the asset within 90 days of his confirmation. Our office also concluded the laws and regulations governing ethics agreements do not provide a specific mechanism for correcting an issue like this, nor do they provide there is a duty to make such a correction.

3. BankUnited, Inc.

In Part I, line 7 of his Nominee OGE Form 278e, Secretary Ross reported that he served as a Director of "BankUnited FSB, BankUnited, Inc." from May 2009 to

²⁴⁰ Secretary Ross's counsel initially informed our office that Secretary Ross "had no means of disposing his interest in Bank of Cyprus, however, except through divestment of his interest in *WL Ross Group, L.P.*" (Emphasis added.) However, Secretary Ross's counsel later changed this statement by replacing "*WL Ross Group, L.P.*" with "*WLR Recovery Associates V LLC.*"

March 2014.²⁴¹ In Part 2, line 4 of this same document, Secretary Ross disclosed that he held an interest in BankUnited, Inc. with a value of \$1,001–\$15,000 and an income amount of “None (or less than \$201).”²⁴² Secretary Ross listed BankUnited, Inc. in Attachment A-I of his Ethics Agreement as an asset he agreed to divest within 90 days of his confirmation as Secretary of Commerce.²⁴³

Secretary Ross submitted three different documents to OGE in which he stated or certified that he divested his interest in BankUnited, Inc. First, as previously mentioned, in the OGE Certification of Ethics Agreement Compliance that Secretary Ross signed on June 2, 2017, he stated, “I have divested all holdings required in my ethics agreement to be sold within 90 days except that there was an unanticipated delay with regard to the divestitures of my holdings in ... *BankUnited* but these have also now been divested ...”²⁴⁴ Second, Secretary Ross formally reported the sale of his BankUnited, Inc. shares on an OGE Form 278-T that he electronically signed and certified on September 11, 2017.²⁴⁵ On this OGE Form 278-T, Secretary Ross reported he divested BankUnited, Inc. shares in the amount of \$1,001–\$15,000 in a sale that took place on May 31, 2017.²⁴⁶ Third, approximately 11 months later, on August 13, 2018, Secretary Ross again certified that he sold his BankUnited, Inc. shares when he electronically signed and filed his annual public financial disclosure report (OGE Form 278e) for report year 2018.²⁴⁷ In Part 2, line 4 of this document, Secretary Ross listed the value of his BankUnited, Inc. shares as “None (or less than \$1,001)” and stated in a related endnote that “[s]hares were divested in 2017.”²⁴⁸ Despite certifying on June 2, 2017, September 11, 2017, and August 13, 2018, that

²⁴¹ Public Financial Disclosure Report (OGE Form 278e), dated December 19, 2016, at p. 2. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/88642A2CA81AA6C2852580AB00618C8C/\\$FILE/Ross%20Wilbur%20L.%20Final%20278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/88642A2CA81AA6C2852580AB00618C8C/$FILE/Ross%20Wilbur%20L.%20Final%20278.pdf) (accessed August 26, 2020).

²⁴² *Id.* at p. 8.

²⁴³ Wilbur L. Ross, Jr. to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*, at p. 8.

²⁴⁴ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated June 2, 2017, at p. 3. (Emphasis added.)

²⁴⁵ Secretary Ross OGE Form 278-T, dated September 11, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/0A4AC75C5E38AD81852581B00026F2C0/\\$FILE/Wilbur-L-Ross-09.11.2017-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/0A4AC75C5E38AD81852581B00026F2C0/$FILE/Wilbur-L-Ross-09.11.2017-278T.pdf) (accessed August 26, 2020).

²⁴⁶ *Id.*

²⁴⁷ Secretary Ross OGE Form 278e, report year 2018. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/\\$FILE/Wilbur-L-Ross-2018-278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/$FILE/Wilbur-L-Ross-2018-278.pdf) (accessed August 26, 2020). Note: the publicly available version of this document, as provided on OGE.gov, does not include Secretary Ross’s electronic signature/certification. The DAEO provided our office a version of this document that preceded his review and submission to OGE. The version the DAEO provided our office shows Secretary Ross electronically signed/certified the document on August 13, 2018. (See CMS Document #59.)

²⁴⁸ *Id.* at p. 8 and 58.

he divested his shares of BankUnited, Inc., Secretary Ross did not divest these shares until October 1, 2018.²⁴⁹

Secretary Ross reported the October 1, 2018, sale of his BankUnited, Inc. shares in the amount of \$1,001–\$15,000 on an OGE Form 278-T that he electronically signed and certified on October 31, 2018.²⁵⁰ As previously mentioned in the “*Timeline of Events*” section, in the endnote on the OGE Form 278-T he signed on October 31, 2018, Secretary Ross offered the following explanation: “These shares, issued as directors qualifying shares in 2012, were held in book entry form by BankUnited’s stock transfer agent. I previously reported selling the shares on May 31, 2017, based on a mistaken belief that the agent executed my sell order on that date.”²⁵¹

Secretary Ross’s mistake with respect to the sale of his BankUnited, Inc. shares led OGE, on February 15, 2019, to decline to certify his 2018 annual public financial disclosure report covering the assets he held in 2017 (OGE Form 278e).²⁵² OGE also issued a letter to the DAEO regarding the reasons it declined to certify Secretary Ross’s OGE Form 278e.²⁵³ In both the OGE Form 278e and the letter to the DAEO, OGE cited that Secretary Ross reported he sold his BankUnited, Inc. stock when he had not done so and that he was not in compliance with his Ethics Agreement at the time of the report, as reasons for declining to certify his OGE Form 278e.²⁵⁴

Following his reporting of the sale of BankUnited, Inc. shares in the October 31, 2018, OGE Form 278-T, Secretary Ross provided a memorandum, dated November 6, 2018, to the DAEO in which he offered a detailed explanation of the issues that occurred with the sale.²⁵⁵ In this memorandum, Secretary Ross explained that BankUnited, Inc. issued 100 shares of its stock to him in 2012 as “directors qualifying shares.”²⁵⁶ Secretary Ross further explained that he received these shares in connection with BankUnited, Inc.’s application to convert from a federal savings association to a national bank and the Office of the Comptroller of the Currency’s related requirement, pursuant to 12 U.S.C. § 72 and 12 C.F.R. § 7.2005, that

²⁴⁹ Secretary Ross OGE Form 278-T, dated October 31, 2018. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/1382897FDDC40D57852583A7002D5BE3/\\$FILE/Wilbur-L-Ross-10.31.2018-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/1382897FDDC40D57852583A7002D5BE3/$FILE/Wilbur-L-Ross-10.31.2018-278T.pdf) (accessed August 26, 2020).

²⁵⁰ Secretary Ross OGE Form 278-T, dated October 31, 2018.

²⁵¹ *Id.* at p. 2.

²⁵² Secretary Ross OGE Form 278e report year 2018. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/\\$FILE/Wilbur-L-Ross-2018-278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/$FILE/Wilbur-L-Ross-2018-278.pdf) (accessed August 26, 2020).

²⁵³ Emory A. Rounds, III to DAEO, February 15, 2019. *Letter from the OGE Director to the DAEO*. Available at [https://oge.gov/web/OGE.nsf/0/955C1F75C94F1D1F852583A60074C4CB/\\$FILE/Letter%20to%20Commerce%20DAEO.pdf](https://oge.gov/web/OGE.nsf/0/955C1F75C94F1D1F852583A60074C4CB/$FILE/Letter%20to%20Commerce%20DAEO.pdf) (accessed August 26, 2020).

²⁵⁴ (1) Secretary Ross OGE Form 278e report year 2018 and (2) *Letter from the OGE Director to the DAEO*, February 15, 2019.

²⁵⁵ Memorandum from Secretary Ross to DAEO, dated November 6, 2018.

²⁵⁶ *Id.* at p. 2.

directors own qualifying shares.²⁵⁷ Secretary Ross stated, “The company’s stock transfer agent, Computershare, held these shares in book entry form; I did not hold stock certificates for these shares.”²⁵⁸ Regarding the sale of these shares, Secretary Ross stated, “On May 31, 2017, I spoke with a representative of Computershare to confirm the number of shares held in my name, and I directed the representative to sell my shares at market price.”²⁵⁹ Secretary Ross added, “I assumed the agent did so ...”²⁶⁰ He explained that he “inadvertently failed to report the sale at the time” and filed an OGE Form 278-T disclosing the May 31, 2017, sale on September 11, 2017, after he “subsequently discovered the oversight.”²⁶¹

However, the shares were not sold on May 31, 2017, and Secretary Ross stated, “In late 2017, I received a communication from Computershare disclosing that I still owned 100 shares of BankUnited.”²⁶² Secretary Ross reported he reviewed his records, did not find documentation confirming the May 2017 sale and contacted Computershare.²⁶³ He stated, “I learned that because the shares were issued to me as directors qualifying shares, the company restricted their resale.”²⁶⁴ Apparently, for that reason Computershare did not sell the shares as I had instructed—without notifying me that my instructions were not followed.”²⁶⁵ Secretary Ross then “immediately contacted BankUnited,” and in January 2018, BankUnited, Inc.’s outside counsel prepared an affidavit for Secretary Ross to sign in which he affirmed he did not have any inside information about the bank’s business.²⁶⁶ Secretary Ross reported that he submitted this affidavit to BankUnited, Inc. and BankUnited, Inc. removed the restriction on the shares.²⁶⁷ According to Secretary Ross, “[A]t my instruction, Computershare transferred the 100 shares to my JP Morgan account. The transfer occurred in February 2018.”²⁶⁸ Secretary Ross still had not sold the shares at this point, and he explained, “In September 2018, I realized that JP Morgan had not sold the shares upon receipt. I immediately instructed JP Morgan to sell the shares, which it did on October 1, 2018, for approximately \$3700.”²⁶⁹ Secretary Ross noted the amount of the sale on October 1, 2018, was consistent with the

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

²⁶² *Ibid.*

²⁶³ *Ibid.*

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid.*

amount of the sale he mistakenly reported in September 2017, and he added that he filed an OGE Form 278-T that corrected the date of the sale.²⁷⁰

As mitigating circumstances for this mistake, Secretary Ross offered the following:

No matter relating to this regional bank has come before me or, so far as I am aware, the Department, during my tenure. In addition, because my holdings were so low in value it is my understanding that under ethics regulations I would not have been disqualified from working on such a matter even if it had been presented to me. I also recall no communication with anyone connected to the bank other than to arrange the sale of the shares. Nonetheless, I regret the errors that occurred while I was divesting these shares.²⁷¹

Secretary Ross's counsel provided our office with four documents showing evidence of Secretary Ross's divestiture of his BankUnited, Inc. shares. The first document was a statement from Computershare that showed Secretary Ross received a net dividend of \$21.00 for 100 common shares of BankUnited, Inc. on October 31, 2017. The second document was a letter, dated January 5, 2018, from Secretary Ross to BankUnited, Inc. and its counsel requesting the removal of the restrictive legend from his 100 shares of BankUnited, Inc. stock. The third document was a consolidated investment account statement for Secretary Ross for the period February 1, 2018, to February 28, 2018. This statement shows that Secretary Ross received 100 shares of BankUnited, Inc. stock with a market value of approximately \$4,117.00 on February 2, 2018, (trade date February 1, 2018).²⁷² The description for this transaction stated that the shares were received from Computershare. The fourth document was a transaction confirmation from J.P. Morgan, showing that on October 1, 2018 (settlement date: October 3, 2018), Secretary Ross sold 100 shares of BankUnited, Inc. stock at a price of \$35.73 per share, and he received a net amount of \$3,562.95 as a result.

We discussed Secretary Ross's divestiture of BankUnited, Inc. stock (among other divestitures) in a meeting with Secretary Ross's counsel and the information Secretary Ross's counsel provided to our office regarding this divestiture included additional details to supplement the information in the November 6, 2018, memorandum to the DAEO. Overall, the information Secretary Ross's counsel provided was consistent with the information in the November 6, 2018, memorandum. Regarding the May 28, 2017, deadline set in Secretary Ross's Ethics Agreement for the divestiture of his interest in BankUnited, Inc., Secretary Ross's counsel noted that the deadline was moved to May 30, 2017, because the deadline fell on Memorial Day weekend. Secretary Ross's counsel explained that "May 2017 was extraordinarily demanding on Secretary Ross" and cited the following events around this time as evidence of the demands on Secretary Ross's time: "he was deeply involved in trade negotiations with China throughout May, concluding an

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

²⁷² Market value is described as "representative of the prior trading day's market value."

initial agreement on May 12 regarding Chinese market-opening measures,” a trip with President Donald Trump to Saudi Arabia on May 21 and 22, 2017, “preparing for and participating in his first round of appropriations hearings before the House Committee on Appropriations (May 25) and the Senate Committee on Appropriations (June 8).” Regarding the sale itself, Secretary Ross’s counsel stated Secretary Ross first became aware that he still owned the 100 shares of BankUnited, Inc. stock when he received a dividend statement for \$21 that was mailed to his home in Florida and which he did not see until weeks after it arrived.

In summary, Computershare served as a stock transfer agent or third party financial institution in the case of Secretary Ross’s BankUnited, Inc. shares. Our office found that, in general, where a company’s director is awarded shares in the company as part of a compensation scheme, and a stock transfer agent or third party financial institution holds these shares for a shareholder, it is not uncommon for there to be mistakes in the award of these shares to the shareholder. We also found that the distribution of such shares can take weeks and involves a multi-step process.

4. Invesco, Ltd.

Invesco, Ltd. (“Invesco”) is an independent investment management firm.²⁷³ In 2006, Invesco (then known as Amvescap PLC) acquired WL Ross & Co. LLC (“WL Ross & Co.”), and combined WL Ross & Co. with its direct private entity business—Invesco Private Capital. At the time of the acquisition, Secretary Ross served as chairman of WL Ross & Co. and following the acquisition, he continued as manager of WL Ross & Co.²⁷⁴

On February 27, 2017, Secretary Ross and WL Ross & Co. entered into a Separation Agreement and Full and Final Release (“Separation Agreement”) that covered his release from employment with Invesco and covered the divestiture of some of his Invesco shares, as described later in this report. In sum, Secretary Ross held both vested unrestricted and unvested restricted stock in Invesco, and he received Invesco stock as part of his compensation as an Invesco employee.²⁷⁵²⁷⁶ Regarding the unvested restricted shares, Secretary Ross’s employment agreement

²⁷³ <https://www.invesco.com/corporate/about-us> (accessed August 31, 2020).

²⁷⁴ <https://www.businesswire.com/news/home/20060723005026/en/AMVESCAP-PLC-Acquire-WL-Ross-LLC-Financial> (accessed August 26, 2020).

²⁷⁵ Wilbur L. Ross, Jr. to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*, at p. 2–3. See also, April 27, 2018, Memorandum from Secretary Ross to DAEO, at p. 3. Secretary Ross refers to the Invesco shares that were not the unvested restricted shares in the Ethics Agreement, December 21, 2017, OGE Form 278-T, and April 27, 2018, memorandum as “stock” and shares that he “previously held” or “already owned.” In order to differentiate these Invesco shares from the unvested restricted shares, our office refers to them herein as “vested unrestricted shares.” Secretary Ross’s counsel referred to the shares in this manner in communications with our office in response to questions we raised about this divestiture.

²⁷⁶ Secretary Ross also held an Invesco-sponsored 401(k) retirement plan; however, because no issues were identified with respect to the 401(k) plan, our analysis focuses primarily on his vested unrestricted and unvested restricted interests. See Memorandum from Secretary Ross to DAEO, dated November 6, 2018, at p. 1.

with WL Ross & Co. and the applicable equity compensation plan of Invesco entitled him to receive equity compensation grants in the form of restricted shares of Invesco. These restricted shares had vesting periods along with a 180-day holding period after the shares vested before Invesco distributed the shares to the employee. The issues related to Secretary Ross's divestitures of the vested unrestricted stock and unvested restricted stock will be treated separately in this section.

a. *Nominee OGE Form 278e*

In Part 2, line 1.4 of his Nominee OGE Form 278e, Secretary Ross reported holding \$5,000,001–\$25,000,000 in Invesco stock with dividend income of \$100,001–\$1,000,000.²⁷⁷ (This disclosure related to the vested unrestricted shares.) At Part 2, line 1.5, Secretary Ross reported holding an additional \$5,000,001–\$25,000,000 in Invesco “restricted stock (unvested).”²⁷⁸ In the endnote associated with the unvested restricted stock, Secretary Ross stated,

Pursuant to written Invesco policy and procedures, and subject to a cap based on his existing holdings, upon Mr. Ross's termination of employment, Invesco Ltd.'s Compensation Committee may determine to award him outstanding equity compensation that he would have otherwise received had he remained employed with WL Ross & Co. LLC with respect to previously issued shares of restricted stock that remain subject to restrictions under the applicable Invesco Ltd. plan.²⁷⁹

In Part 3 (Filer's Employment Agreements and Arrangements), line 1, Secretary Ross listed Invesco as an employer and stated the following:

I received restricted shares of stock as part of my compensation at Invesco. Generally, those restricted shares vest in equal tranches over a four-year period after the date on which they were granted, but Invesco has a policy of vesting all outstanding unvested shares upon a friendly termination. My termination is considered friendly, so my outstanding unvested shares will vest once I resign from Invesco.²⁸⁰

In Section 2 of his Ethics Agreement, Secretary Ross explained that Invesco would vest his unvested restricted stock prior to assuming the duties of the position of Secretary and distribute the vested restricted stock to him within 180 days of its vesting. He agreed to divest those shares within 30 days of distribution and to forfeit any restricted stock that is unvested at the time he

²⁷⁷ Secretary Ross Nominee OGE Form 278e, at p. 7.

²⁷⁸ *Id.* at p. 8.

²⁷⁹ *Id.* at p. 48.

²⁸⁰ *Id.* at p. 29.

assumed the position of Secretary.²⁸¹ Secretary Ross also pledged to “divest all of my other financial interests in Invesco within 90 days of my confirmation, except as specifically provided otherwise in Section 9 (Assets To Be Divested) below and in Attachment A.”²⁸² We acknowledge that Secretary Ross’s Ethics Agreement did not require him to divest the unvested restricted shares within 90 days of his confirmation, but they are addressed in this section related to assets required to be divested within 90 days of his confirmation to prevent unnecessary duplication of information. Secretary Ross also owned many other interests in funds that Invesco managed and that he agreed to divest. This discussion does not relate to those assets.

In Section 2 of his Ethics Agreement, Secretary Ross listed WL Ross & Co. LLC and WL Ross & Co. (India) LLC as affiliates of Invesco and agreed to resign his positions with these entities. These two entities were also included in Attachment A-I of the Ethics Agreement as assets that Secretary Ross agreed to divest within 90 days of confirmation.²⁸³ Secretary Ross included his position as director with each of these entities in his Nominee OGE Form 278e, but there was no financial interest in either of these entities reported on the Nominee OGE Form 278e.²⁸⁴ We asked Secretary Ross’s counsel to explain why Secretary Ross agreed to divest interests in WL Ross & Co. LLC and WL Ross & Co. (India) LLC while not reporting an interest in these entities on his Nominee OGE Form 278e. Secretary Ross’s counsel responded that in connection with Invesco’s acquisition of WL Ross & Co. in 2006, Invesco owned any and all interests in WL Ross & Co. and WL Ross & Co. (India) LLC. Secretary Ross’s counsel added that Secretary Ross did not own any interests in these entities during the reporting period covered by the Nominee OGE Form 278e, but they were included in Secretary Ross’s Ethics Agreement solely at the request of OGE because Secretary Ross previously served on the boards of directors of the entities.

In Section II (Comments of Appointee) of the OGE Certification of Ethics Agreement Compliance that Secretary Ross signed on June 2, 2017, he stated, “I have divested all holdings required in my ethics agreement to be sold within 90 days ...”²⁸⁵ While Secretary Ross noted some exceptions to this statement, the divestiture of Invesco shares was not among them. Secretary Ross did not file an

²⁸¹ Wilbur L. Ross, Jr. to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*, at p. 2. This relates to the shares disclosed at Part 2, line 1.5 of the Nominee OGE Form 278e.

²⁸² *Ibid.* This relates to the shares disclosed at Part 2, line 1.4 of the Nominee OGE Form 278e. In the April 27, 2018, memorandum to the DAEO, Secretary Ross stated, “In my Ethics Agreement, I agreed to divest the shares of Invesco that I already owned within 90 days of my confirmation, and to divest the shares of the vested restricted stock within 180 days of its vesting.”

²⁸³ *Id.* at p. 1.

²⁸⁴ Secretary Ross Nominee OGE Form 278e, at p. 2 and 3.

²⁸⁵ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated June 2, 2017, at p. 3.

OGE Form 278-T prior to or within 45 days after this certification to report the sale of any Invesco shares.

In Section 8 (Payments, Accelerations, or Divestitures Required to be Completed Prior to Entering Government Service) of the OGE Certification of Ethics Agreement Compliance that Secretary Ross signed on September 5, 2017, he stated, “All Invesco shares were distributed to me, which I then sold back to Invesco prior to my assumption of duties. The cash proceeds are currently in an escrow account, which will be distributed to me after certain transactions are completed.”²⁸⁶

In the final OGE Certification of Ethics Agreement Compliance that Secretary Ross signed on November 1, 2017, he certified that he completed all of the divestitures indicated in his Ethics Agreement.²⁸⁷

On December 21, 2017, Secretary Ross filed an OGE Form 278-T reporting two transactions involving Invesco shares.²⁸⁸ These divestitures were reported as follows: (1) 12/19/2017 sale of Invesco Ltd in the amount of \$5,000,001–\$25,000,000; and (2) 12/20/2017 sale of Invesco Ltd in the amount of \$5,000,001–\$25,000,000.²⁸⁹ In the endnote related to the first transaction, Secretary Ross stated the following:

To divest my stock and unvested restricted stock in Invesco as soon as possible I had arrangements with Invesco prior to my appointment for the company to purchase my unvested shares upon the termination of my employment with the company to deposit into an escrow account an amount of cash equivalent to the value of those shares as of that date (subject to certain adjustments). Thus, I would hold no shares in Invesco at the time of my appointment. Unfortunately, I mistakenly believed that all of my previously held Invesco stock was sold at the same time as the purchase of the previously unvested stock; that is, before my appointment as Secretary. In December 2017, I discovered that the previously held stock had not been sold. I then promptly sold these shares.²⁹⁰

As explained later in this report, these two transactions represented the sale of the shares Secretary Ross reported in Part 2, line 1.4 of his Nominee OGE Form 278e (vested unrestricted shares) and do not include the shares reported at Part 2, line 1.5 (unvested restricted shares).

²⁸⁶ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated September 5, 2017, at p. 3.

²⁸⁷ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated November 1, 2017.

²⁸⁸ Secretary Ross OGE Form 278-T, dated December 21, 2017, at p. 3.

²⁸⁹ *Ibid.*

²⁹⁰ *Id.* at p. 4.

b. *Vested Unrestricted Invesco Stock*

As previously noted, Secretary Ross did not divest the Invesco shares he reported on Part 2, line 1.4 of his Nominee OGE Form 278e within 90 days of his confirmation, as required by his Ethics Agreement. We reviewed the documents related to this transaction, addressed this situation with Secretary Ross's counsel, and asked Secretary Ross about it in an interview in order to understand the circumstances surrounding this divestiture and attempt to determine whether Secretary Ross intentionally delayed the divestiture of the vested unrestricted Invesco shares.

We reviewed documentation of the transactions involving the sale of the vested unrestricted Invesco shares, as provided by Secretary Ross's counsel. The documents revealed that Secretary Ross initiated a sale of 381,577 shares of Invesco at a price of \$36.00 on December 18, 2017, through Fidelity Investments. We also reviewed the documents showing the sale of these shares on December 19 and 20, 2017. Those documents showed that on December 19, 2017, Secretary Ross sold 235,171 shares of Invesco in approximately 219 separate transactions. The total settlement amount (less fees charged for each transaction) for all transactions on December 19, 2017, was approximately \$9,725,070.74. Then on December 20, 2017, Secretary Ross sold 146,406 shares of Invesco in approximately 145 separate transactions. The total settlement amount (less fees charged for each transaction) for all transactions on December 20, 2017, was approximately \$5,357,967.29. The total settlement amount (less fees charged for each transaction) for all transactions on December 19 and 20, 2017, was approximately \$15,083,038.03. The information contained in the transaction documents matches the information Secretary Ross provided in the OGE Form 278-T, dated December 21, 2017, in which he reported these sales.

In the April 27, 2018, memorandum, Secretary Ross acknowledged that he agreed to divest the vested unrestricted shares of Invesco within 90 days of his confirmation.²⁹¹ He also explained that he held these shares in an "Invesco-sponsored account held by a third-party financial institution."²⁹² Secretary Ross explained in the December 21, 2017, OGE Form 278-T and the April 27, 2018, memorandum that he did not sell the vested unrestricted Invesco stock by the deadline set in his Ethics Agreement because he "mistakenly believed" the vested unrestricted Invesco stock was sold at the same time as the purchase of the unvested restricted stock.²⁹³ We reviewed the Separation Agreement between Secretary Ross and WL Ross & Co., through which Secretary Ross monetized the unvested restricted Invesco shares. This Separation Agreement did not address the vested unrestricted shares, and Secretary Ross did not provide our office with any other contemporaneous agreements, communications, or

²⁹¹ Memorandum from Secretary Ross to DAEO, dated April 27, 2018, at p. 3.

²⁹² *Ibid.*

²⁹³ *Ibid.*; see also Secretary Ross OGE Form 278-T, dated December 21, 2017, at p. 3

arrangements with Invesco to support his belief that these shares would be sold at the same time the unvested restricted stock was monetized.²⁹⁴

Consistent with his statements in the April 27, 2018, memorandum, Secretary Ross explained during his interview with our office that when he received a check from Invesco as contemplated by the Separation Agreement, it was the only time he ever got an accounting from Invesco, and he stated it did not seem like the amount of the check was enough. Secretary Ross reported he pursued the situation with Invesco, and stated, “it turned out, even though you couldn’t tell it from the language in the [Separation Agreement], it turned out they had only monetized the restricted shares. So, as soon as I found that out, I sold them.” Secretary Ross stated, “I had thought that the monetization agreement covered all my holdings ... Think about, it wouldn’t make any sense. Why would they monetize part of my holdings and not all?” The Secretary confirmed he thought the funds from the vested unrestricted shares would also be held in escrow, and he further explained, “I had thought that the purpose of the monetization from [Invesco’s] point of view was to avoid the shares hitting the market; just substitute cash for them, which they had done as a frequent practice when other people were selling their shares.” When Secretary Ross was asked why he would agree to not have immediate access to the funds from the vested unrestricted shares, he explained, “I liked the idea of monetization neutralizing it, getting it out of the way. So, I was very pro-monetization; get rid of this whole issue. Because Invesco has huge holdings in all kinds of things, and it was a required divestiture in any event. So, I was eager to get rid of it ... My motive was it was a very easy way, one-stop shopping, get rid of the whole thing. One less thing in these 3,000 pages to worry about.”

In response to our question of why he would agree to relinquish access to approximately \$15 million in cash from the sale of the unrestricted vested Invesco shares for 180 days, Secretary Ross responded he was optimistic he could sell the Invesco fund interests more quickly than 180 days (and thereby satisfy the terms of the Separation Agreement to release the funds from escrow sooner). As previously mentioned, he saw it as part of the agreement that resolved issues in his employment contract that were important and useful to him, and he felt he was giving up only “maybe a few days or weeks float on the money.” Secretary Ross added that “[I]n my head, the bargain was they would monetize all of the shares. I’d give up some amount of float on them because I didn’t know exactly when, but I surely didn’t think it would take a whole six months ... so, to me, the trade was they gave me what I wanted on indemnification, release from my employment contract. You know, contractually, I was obligated to stay working for them.”

Regarding the discovery of the vested unrestricted shares, in the April 27, 2018, memorandum, Secretary Ross stated, “In December 2017, I discovered that the

²⁹⁴ Secretary Ross’s counsel acknowledged this point when responding to questions we raised about this divestiture.

previously held stock had not been sold. After obtaining an account statement verifying my holdings, I sold that stock on December 19 and December 20, 2017, as reported in my Transaction Report filed December 21, 2017.”²⁹⁵ We reviewed an email exchange between Secretary Ross and Invesco’s [REDACTED] [REDACTED] from November 10, 2017, to November 13, 2017, in which they discussed the monetization of Secretary Ross’s Invesco shares. This email exchange showed that Secretary Ross contacted Invesco’s [REDACTED] on November 10, 2017, to inform him he needed to file a transaction report, and Secretary Ross requested confirmation of the closing date and amount of purchase price, gross of any other closing offsets, of the monetized shares. Invesco’s [REDACTED] responded, “I don’t believe we sold any shares in connection with the monetization but I will confirm. The monetization date would have been your confirmation date. I will get the price we used to monetize it and the amount we withheld for taxes. I can also provide you a breakdown of the computation of the amount we paid you at the end of October.” On November 13, 2017, Invesco’s [REDACTED] informed Secretary Ross that the net amount paid to him on October 26, 2017, was \$2,266,382.37, which represented the net amount put into escrow (\$2,980,327.92) minus reimbursement for jet usage and purchase of art by WL Ross & Co. Invesco’s [REDACTED] also provided the following details of the transaction, showing the number of shares involved and price used to monetize the shares: “Qty Unvested 188,305;” “FMV as of Term Date \$32.65;” and “Gross Value \$6,148,158.25.”

Secretary Ross responded to Invesco’s [REDACTED] on November 14, 2017, and asked him about the amount of state tax withheld, but, at least in this particular email exchange, Secretary Ross did not question the overall value he received in this transaction.²⁹⁶

We directed Secretary Ross to his email exchange with Invesco’s [REDACTED] [REDACTED] and provided a copy for reference during his interview with our office. Secretary Ross stated, “[a]s of then, I had no idea what the amount was. And then, when I learned the amount, that’s when I called them and said something’s very wrong here. And that’s when it turned out they had only monetized part of the shares rather than all of them.” Regarding the length of time from when he received a response to his inquiry about the amount he received from the monetization of the unvested restricted Invesco shares (November 13, 2017) to the time he sold the vested unrestricted shares (December 20 and 21, 2017), Secretary Ross cited a lack of responsiveness and stated, “It took, it took days and weeks to find out who was the right person who had the information [regarding the number of shares and where they were].” Secretary Ross added

²⁹⁵ Memorandum from Secretary Ross to DAEO, dated April 27, 2018, at p.3.

²⁹⁶ The difference between the gross value and net amount put into escrow is due to various taxes that were withheld.

that he did not “have physical possession” of the vested and unvested shares. He further explained that

Fidelity Securities ... handled the program for [Invesco] and kept the shares. I never had a physical Invesco share. See, if I had, this never would have come up because, if I had had them and they didn't take them, then I would have known that I had them. But they were only existing at Fidelity. I didn't even know it was Fidelity at the time. You can appreciate I was running pretty complicated business, and who was holding what pile of what restricted shares from what companies was not exactly my main focus.”

In response to questions regarding the timing of the email exchange with Invesco's [REDACTED] and his completion of the Certification of Ethics Agreement Compliance on November 1, 2017 (in which he certified he completed all divestitures required by his Ethics Agreement), Secretary Ross responded that his best recollection was that at the time he signed the Certification of Ethics Agreement Compliance he thought he was going to receive payment from Invesco for all of his Invesco shares. He added, “I don't believe I knew, because if I knew I would have disclosed it.”

We also reviewed a memorandum for the file drafted by the DAEO on August 30, 2017. The purpose of this memorandum was to document the DAEO's granting of a 60-day extension to complete divestitures identified in Secretary Ross's Ethics Agreement. In the memorandum, the DAEO stated he met with Secretary Ross on August 23, 2017, to discuss the status of divestitures and Secretary Ross “indicated that his holdings in Invesco, which were to be divested no later than 210 days from the date of his appointment, had been divested prior to his appointment.”

c. *Unvested Restricted Invesco Stock*

We found that the terms of the Separation Agreement between Secretary Ross and WL Ross & Co. were different than he described in (1) Section 2 of the Ethics Agreement, (2) the December 21, 2017, OGE Form 278-T reporting the sale of the vested unrestricted Invesco shares, and (3) the April 27, 2018, memorandum from Secretary Ross to the DAEO. The first difference is in the time period for divestiture of the shares. In the Ethics Agreement, Secretary Ross stated Invesco would vest the unvested restricted stock before he assumed the duties of the Secretary of Commerce and distribute those shares to him within 180 days of its vesting.²⁹⁷ Secretary Ross then agreed to divest those shares within 30 days of distribution.²⁹⁸ In the December 21, 2017, OGE Form 278-T and the April 27, 2018, memorandum, Secretary Ross did not mention the

²⁹⁷ Wilbur L. Ross, Jr. to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*, at p. 2.

²⁹⁸ *Ibid.*

extra 30-day period for divestment after the distribution of the shares to him.²⁹⁹ This difference is accounted for by the change in the way the unvested restricted stock was handled by Invesco upon Secretary Ross's termination of employment with Invesco.

The second difference, as specified to our office by Secretary Ross's counsel and displayed in the Separation Agreement, is that Invesco actually "monetized" the shares; it did not purchase them from or distribute them to Secretary Ross. The Ethics Agreement provided Invesco would distribute the shares of vested restricted stock to Secretary Ross within 180 days of vesting, and Secretary Ross would then divest the shares.³⁰⁰ The December 21, 2017, OGE Form 278-T and the April 27, 2018, memorandum offered a slightly different explanation of this process and provided that Invesco would purchase the shares from Secretary Ross upon termination of his employment with Invesco and deposit cash equivalent to the value of the shares into an escrow account (subject to certain adjustments).³⁰¹ The Separation Agreement made Secretary Ross's resignation from WL Ross & Co. contingent on and effective upon his confirmation as Secretary, and it provided for a slightly different arrangement with respect to the unvested restricted Invesco shares. The Separation Agreement provided the following:

Equity compensation previously granted to [Secretary Ross] that would remain restricted from sale under the applicable Invesco Ltd. plan as of the [date of confirmation] will be forfeited (the "Monetized Shares"). At the earliest practicable date following and in no event later than 14 days after the [date of confirmation], [WL Ross & Co.] shall deposit into an escrow account for the benefit of [Secretary Ross] an amount determined by (i) multiplying the number of Monetized Shares by the closing price of the common stock of Invesco Ltd. on the New York Stock Exchange on the [date of confirmation]; and (ii) subtracting from that product taxes and other applicable withholdings (such amount referred to as the "Escrowed Amount").

The Separation Agreement further stated that subject to Secretary Ross's compliance with certain terms of the Separation Agreement, he will be paid the "Escrowed Amount" on (i) the date that is 180 days after the date of his confirmation; or (ii) the date on which Secretary Ross has completed certain requirements related to his Ethics Agreement, whichever date is later. Accordingly, Invesco did not purchase these shares from Secretary Ross, and it

²⁹⁹ OGE Form 278-T, dated December 21, 2017; Memorandum from Secretary Ross to DAEO, dated April 27, 2018, at p. 3.

³⁰⁰ Wilbur L. Ross, Jr. to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*, at p. 2.

³⁰¹ OGE Form 278-T, dated December 21, 2017; Memorandum from Secretary Ross to DAEO, dated April 27, 2018, at p. 3.

did not sell these shares. Instead, Invesco “monetized” the shares by cancelling the prior issuance of the shares and contributing the value of these shares to an escrow account.

Of note in the April 27, 2018, memorandum is Secretary Ross’s explanation that, “This arrangement eliminated the need to sell those shares after my appointment became effective. Until the escrow was released, I never received an accounting of the arrangements providing detailed information regarding the number of shares.”³⁰²

Regarding the details of the transaction involving the unvested restricted Invesco shares, we found that generally, if a company placed money into an escrow account for an employee as an equivalent to the value of shares owed to an employee, the company would not provide an accounting of the number of shares to the employee. Such an accounting would not be provided because the employee never actually received the shares, and no shares were sold. In addition, our office concluded Invesco’s creation of an escrow account displayed the company was being careful in handling the situation.

We also reviewed a brokerage account statement provided by Secretary Ross’s counsel that showed Secretary Ross received a \$2,266,382.37 credit on October 26, 2017, from Invesco. This amount matches the amount an Invesco representative informed Secretary Ross via email on November 13, 2017, that Secretary Ross received as part of the monetization of the unvested restricted shares subject to the Separation Agreement. Our office is unaware of an OGE Form 278-T filed by Secretary Ross to report this income. In the April 27, 2018, memorandum to the DAEO in which he explained his divestiture of Invesco stock, Secretary Ross stated the following:

I did not include many of the divestments made pursuant to the Ethics Agreement on Transaction Reports because the applicable filing requirements did not require reporting of those divestments. Each of these divestments were within one of the following five categories: (1) transfers to an irrevocable trust of which neither [REDACTED] nor I is a beneficiary; (2) gifts to persons whose interests are not attributable to me; (3) sales of Excepted Investment Funds; (4) transactions below the value threshold for reporting; and (5) dissolutions of entities holding only cash. The Attachment to this memorandum includes a list of assets divested pursuant to the Ethics Agreement but not disclosed in a Transaction Report for one of these five reasons.³⁰³

³⁰² Memorandum from Secretary Ross to DAEO, dated April 27, 2018, at p. 3.

³⁰³ Memorandum from Secretary Ross to DAEO, dated April 27, 2018.

D. Assets Requiring Divestiture Within 180 Days of Confirmation

In Section 9 (Additional Assets to be Divested) of his Ethics Agreement, Secretary Ross agreed to divest his financial interests in the entities identified in Attachment A of his Ethics Agreement within the timeframe identified in that attachment.³⁰⁴ Attachment A-II listed 40 entities that Secretary Ross agreed to divest within 180 days of his confirmation.³⁰⁵ Secretary Ross explained in Section 9 that he extended the timeframe for divestiture to 180 days for certain assets because they are “illiquid and it may take longer to divest them.”³⁰⁶ He added, “I am, however, committed to divesting all of these assets as promptly as is reasonably practicable, and I may not need the entire 180-day period to complete all divestitures.”³⁰⁷ Secretary Ross noted that, with respect to the assets subject to the 180-day deadline, the DAEO advised him that an extension of up to 60 days may be considered for a “subset of these assets” if Secretary Ross demonstrated he made substantial progress toward completing the divestiture of all the assets by the end of the 180-day period.³⁰⁸ As previously explained, August 26, 2017, was the 180-day deadline for divestiture of the assets named in Attachment A-II, and the DAEO extended this deadline by 60 days. The extended deadline for assets required to be divested within 180 days of confirmation was October 25, 2017.

Secretary Ross divested these assets through dissolution, transactions with or transfers to independent and/or unrelated third parties, transfer to a trust for the benefit of his two adult children, or a combination of a transfer of a portion of the asset to an independent and/or unrelated third party and the remaining portion, if any, to the trust.

Specifically, a trust agreement, dated October 25, 2017, established the “Wilbur L. Ross Jr. Irrevocable Trust” (the “Trust Agreement” and the “Trust”), and the Trust Agreement essentially served to ensure Secretary Ross divested all interests he had in the entities listed in Attachment A-II to the Ethics Agreement. In general, Schedule A-I to the Trust Agreement listed the assets transferred by the Trust Agreement, and this list of entities matched the entities listed in Attachment A-II to the Ethics Agreement, but it also included WLR Recovery Fund III IAC AIV LP, WLR Recovery Associates IV DSS AIV LP, and WLR Recovery Associates V DSS AIV LP.

Schedule A-I to the Trust Agreement described how Secretary Ross divested each of the entities, as follows:

³⁰⁴ Wilbur L. Ross, Jr. to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*, at p. 5 and 9.

³⁰⁵ *Id.* at p. 8–9.

³⁰⁶ *Id.* at p. 5.

³⁰⁷ *Ibid.*

³⁰⁸ *Id.*, at p. 5 and 9.

Secretary Ross's entire interest in 15 of the assets was transferred to the Trust.³⁰⁹

Two entities, WLR Conduit MM LLC and WLR-SC Financing Conduit LLC (entire equity interest represented by transfer of WLR Conduit MM LLC), were previously transferred to an independent third party investor.

The capital interest of the following entities was transferred to affiliates of Goldman Sachs through an asset purchase agreement and the carried interest and any residual interest was transferred in trust pursuant to the Trust Agreement:

1. WLR Recovery Associates III, LLC
2. WLR Recovery Fund III IAC AIV LP
3. WLR Recovery Associates IV LLC
4. WLR Recovery Associates IV DSS AIV LP
5. WLR Recovery Associates V LLC
6. WLR Recovery Associates V DSS AIV LP.

With respect to the remaining entities listed on Schedule A-I that were not in one of the three categories previously mentioned, the Trust Agreement provided that they were "believed to be transferred to unrelated third parties prior to the date [of the Trust Agreement] but if any such interest [was] not fully and irrevocably so transferred as of the close of business on October 25, 2017, it [was] transferred in trust" by the Trust Agreement. In addition, the Trust Agreement transferred "any equity or other interest in any of the [entities listed in Schedule A-I], unless fully and irrevocably transferred to a third party prior to October 25, 2017." In this way, the Trust Agreement ensured all of Secretary Ross's interests in the entities listed in Attachment A-II to the Ethics Agreement were divested.

In order to verify these divestitures, we reviewed the various agreements through which certain assets were transferred, including an Agreement of Purchase and Sale, dated October 25, 2017, between affiliates of Goldman Sachs, Secretary Ross and [REDACTED] (the "Purchase Agreement"). We also requested, received, and reviewed additional evidence of divestiture in the form of Secretary Ross's brokerage account statements that showed receipt of funds from these transactions and IRS Schedule K-1 documents for tax year 2017 that showed Secretary Ross's interest reduced to zero with the Trust gaining the interest. We corresponded with Secretary Ross's counsel regarding the divestiture of these assets, including receiving written answers to specific questions that we posed about certain of the assets. We reviewed email messages between ELPD attorneys (including the DAEO) and the attorney that prepared the Trust Agreement

³⁰⁹ The following 15 entities were identified in Schedule A-I of the Trust Agreement as being "transferred in trust hereby:" (1) India Asset Recovery Associates LLC; (2) India Asset Recovery Fund Limited (Mauritius); (3) India Asset Recovery GP Ltd. (Cayman); (4) WLR China Energy Associates, Ltd.; (5) WLR Master Co-Investment GP, LLC; (6) WLR Master Co-Investment SLP Associates LP (Cayman); (7) WLR Master Co-Investment SLP GP, LTD (Cayman); (8) WLR Master Co-Investment SLP, LLC; (9) WLR Nanotechnology GP LLC; (10) WLR Nanotechnology LP LLC; (11) WLR Recovery Associates II, LLC; (12) WLR Ross Group (Cayman) Ltd.; (13) WLR Select Associates DSS GP, Ltd.; (14) WLR Select Associates DSS L.P.; and (15) WLR Select Associates LLC.

for Secretary Ross. These email messages showed that the DAEO consulted with OGE about the trust formation during his interaction with Secretary Ross's trust attorney, and they provided confirmation that guidelines regarding divesting an asset by placing it in a trust were contemplated and included in the Trust Agreement. Finally, during an interview of Secretary Ross, we asked Secretary Ross directly about his divestiture of several of these assets.

V. Analysis/Findings

Our review determined that Secretary Ross did not timely comply with certain of divestiture obligations as agreed to in Sections 2 (Positions and Assets Related to Invesco) and 9 (Additional Assets to be Divested) of his Ethics Agreement, as required by 5 C.F.R. §§ 2634.802(b) and 2634.804(b). Specifically, Secretary Ross did not divest certain financial interests in the entities identified in his Ethics Agreement within the 90- and 180-day timeframes identified in the attachment. The evidence establishes that, even though Secretary Ross divested a substantial number of assets within the required deadlines, he continued to own a number of assets even after being given an additional 60 days to divest certain assets, thus not meeting his May 30, 2017, August 26, 2017, and October 25, 2017, deadlines as detailed later in this report. Moreover, his continued ownership of these assets caused Secretary Ross to incorrectly certify that the information he provided on his Certifications of Ethics Agreement Compliance, Nominee OGE Form 278e, and his OGE Forms 278-T was complete and accurate.

We did not identify any evidence Secretary Ross knowingly and willfully falsified any information in violation of the Ethics Act's criminal provisions. This determination was based on a combination of factors, including: (1) an interview of Secretary Ross during which he offered credible explanations for his failure to divest certain of these assets; (2) memoranda Secretary Ross provided to the DAEO in which he offered detailed information about certain divestitures; (3) continued interaction between our office and Secretary Ross's counsel wherein we received documentation for and explanation of the divestiture of the assets; and (4) the vast number of investments, complexity of many of the investments, and the concerted effort Secretary Ross made to divest the assets in a relatively short period of time coupled with the value of the assets he divested as agreed compared to the value of the assets he failed to timely divest. Based on these same factors, we also did not identify any evidence Secretary Ross knowingly and willfully failed to file or report required information or falsified a public financial disclosure in violation of the Ethic Act's civil provisions. Thus, despite the shortcomings identified herein, we determined that Secretary Ross did not violate the Ethics Act.

Our review included a detailed analysis of Secretary Ross's holdings and divestitures pertaining to ALC, Bank of Cyprus, and BankUnited, Inc. as raised in the Senators' November 13, 2017, letter to the Inspector General, in which they requested an investigation of, among other things, "Whether Secretary Ross has complied with the

divestment requirements in his ethics agreement.”³¹⁰ Our review addresses each of these concerns as detailed below.

A. *Air Lease Corporation*

We identified potential issues with respect to Secretary Ross’s financial interests in ALC, the related financial forms he submitted, and his divestitures of his interest in the company. In short, Secretary Ross did not divest his entire interest in ALC by the deadline specified in his Ethics Agreement, and this caused him to make several false certifications related to the divestiture of the asset.

Our review determined the short against the box transaction Secretary Ross initiated on May 31, 2017, to divest his interest of 7,905 ALC shares excluded 1,631 shares of ALC stock, which was not divested until June 12, 2018, more than 1 year after the deadline by which he agreed to divest these shares in his Ethics Agreement.³¹¹ This continued ownership caused Secretary Ross to be in violation of the terms of his Ethics Agreement and contradicted statements in his Certification of Ethics Agreement Compliance documents as follows:

- June 2, 2017, Certification of Ethics Agreement Compliance in which he answered “N/A” to the question regarding whether he “completed all of the divestitures indicated in [his] ethics agreement,” while also stating “I have divested all holdings required in my ethics agreement to be sold within 90 days except that there was an unanticipated delay with regard to my holdings in Air Lease Corp ... but these have also now been divested;”³¹² and
- November 1, 2017, Certification of Ethics Agreement Compliance in which he answered “Yes” to the question of whether he “completed all of the divestitures indicated in [his] ethics agreement.”³¹³

By signing both of these documents, Secretary Ross explicitly agreed that, “Any intentionally false or misleading statement or response provided in this certification is a violation of law punishable by a fine or imprisonment, or both, under 18 U.S.C. § 1001” and that “the information [he has] provided is complete and accurate.”³¹⁴

³¹⁰ U.S. Senators to Peggy E. Gustafson, November 13, 2017. *Letter from U.S. Senate to the Inspector General of the U.S. Department of Commerce.*

³¹¹ Our review did not focus on the fact that Secretary Ross did not initiate the short against the box transaction until May 31, 2017, which was 1 day beyond the first business day after the agreed upon divestiture deadline in his Ethics Agreement of May 29, 2017. See Wilbur L. Ross, Jr. to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*; Secretary Ross OGE Form 278-T, dated June 1, 2017.

³¹² Secretary Ross OGE Certification of Ethics Agreement Compliance, dated June 2, 2017, at p. 1 and 3. We assume Secretary Ross answered “N/A” to the question regarding completion of required divestitures because the 180-day deadline for divestiture of certain assets had not passed at the time he signed this certification.

³¹³ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated November 1, 2017, at p. 1.

³¹⁴ *Id.* at p. 3.

Thus, because Secretary Ross still held an interest in ALC via his 1,631 remaining shares when he signed and submitted these documents, the information he provided therein was not “complete and accurate.”³¹⁵ And, Secretary Ross did not timely comply with his divestiture obligations as agreed to in Section 9 (Additional Assets to be Divested) of his Ethics Agreement, as required by 5 C.F.R. §§ 2634.802(b) and 2634.804(b). However, based on the value of the 1,631 shares relative to other divestments, explanations regarding the late ALC divestiture Secretary Ross provided in public disclosure documents and to our office through his counsel, along with similar problems Secretary Ross reported encountering when shares of other companies were held by a third party stock transfer agent (as was the case with these ALC shares), we found no reason to believe Secretary Ross knew about his remaining interest in ALC at the time he signed these documents.³¹⁶ Accordingly, we found no evidence Secretary Ross knowingly and willfully falsified any information in violation of the Ethics Act’s criminal provisions, or knowingly and willfully failed to file or report required information or falsified a public financial disclosure in violation of the Ethic Act’s civil provisions.

We note that we also assessed whether the date of Secretary Ross’s short against the box transaction, which did not settle until June 5, 2017 (beyond the May 30, 2017, deadline), entails a violation of his Ethics Agreement. We concluded that when an investor executes a short against the box transaction for shares of a company, that investor effectively negates the ability to gain or lose money on the sale of shares. By virtue of this aspect of a short against the box transaction, we considered the shares to be divested, as the investor was locked into the sale of the shares at the time the investor opened the short position. Thus, with respect to the interest in ALC that Secretary Ross divested via the short against the box transaction, these ALC shares were deemed to have been divested on the May 31, 2017, trade date, not the June 5, 2017, settlement date.

We further note that the OGE Form 278-T that Secretary Ross filed on June 1, 2017, to disclose his sale of an interest in ALC did not disclose the sale was a short against the box transaction. We note we did not identify a regulatory requirement for a filer to report that a sale was a short sale or a short against the box.³¹⁷ However, given the complexity of his financial interests and the number of divestitures he was required to make, it would have been a good practice for Secretary Ross to communicate with the Department’s DAEO or private counsel regarding this divestiture and the proper

³¹⁵ In the second of three Certification of Ethics Agreement Compliance documents that Secretary Ross provided to OGE (dated September 5, 2017), Secretary Ross answered “No” to the following statement: “I have completed all the divestitures indicated in my ethics agreement. I also understand that I may not repurchase these assets during my appointment without OGE’s prior approval.” Accordingly, Secretary Ross’s continued ownership of ALC shares did not present an accuracy problem for the Certification of Ethics Agreement Compliance dated September 5, 2017. Secretary Ross OGE Certification of Ethics Agreement Compliance, dated September 5, 2017, at p. 1.

³¹⁶ Secretary Ross OGE Form 278-T, dated June 15, 2018. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/7552585FF9FE4294852582C00027DC19/\\$FILE/Wilbur-L-Ross-06.15.2018-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/7552585FF9FE4294852582C00027DC19/$FILE/Wilbur-L-Ross-06.15.2018-278T.pdf) (accessed August 26, 2020); See CMS document #92 at p. 3–4.

³¹⁷ See 5 C.F.R. § 2634.309.

method for reporting it. Such communication could have potentially prevented some of the issues identified in this report.

B. Bank of Cyprus

We identified inconsistencies in Secretary Ross's reporting of his interest in Bank of Cyprus and what his Ethics Agreement required him to divest. This was most evident in his June 2, 2017, OGE Certification of Ethics Agreement Compliance in which he stated that there was an "unanticipated delay with regard to the divestitures of my holdings in ... Bank of Cyprus ... but these have also now been divested; with regard to the Bank of Cyprus, I also hold shares through the WL Ross Group LP which is required to be sold within 180 days."³¹⁸

The aforementioned statement along with Secretary Ross's inclusion of Bank of Cyprus as an asset he agreed to divest within 90 days of his confirmation as Secretary of Commerce seem to indicate that he held shares of Bank of Cyprus other than those listed on his Nominee OGE Form 278e. However, as previously noted, Secretary Ross's counsel, in correspondence with our office, and Secretary Ross, in his interview with our office and in an April 27, 2018, memorandum to the DAEO, confirmed he did not hold a direct interest in Bank of Cyprus. In addition, we did not identify any direct interest in Bank of Cyprus during a review of Secretary Ross's financial information. Instead, he held a direct investment in WL Ross Group, L.P., which held WLR Recovery Associates V LLC, which held WLR Recovery Fund V, L.P., which held an interest in Bank of Cyprus.

We note that there is no requirement to report indirect holdings of assets on the OGE Form 278-T because assets are only reported on the form at the transaction level. Thus, although Secretary Ross apparently divested his interest in WLR Recovery Associates V LLC and WLR Recovery Fund V, L.P. on October 25, 2017, in accordance with the deadline (as extended by the DAEO) set in his Ethics Agreement, Secretary Ross was not required to report his holdings of these assets on his OGE Form 278-T.

Thus, Bank of Cyprus appears to have been mistakenly listed in Secretary Ross's Ethics Agreement as an asset to be divested within 90 days of his confirmation. Accordingly, his failure to divest the asset within 90 days of his confirmation did not violate his Ethics Agreement. Our office found that the laws and regulations governing ethics agreements do not provide a specific mechanism for correcting an issue like this, nor do they provide for a duty to make such a correction. Moreover, no evidence was identified that Secretary Ross knowingly and willfully falsified any information in violation of the Ethics Act's criminal provisions, or knowingly and willfully failed to file or report required information or falsified a public financial disclosure in violation of the Ethic Act's civil provisions.

³¹⁸ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated June 2, 2017, at p. 3.

C. *BankUnited, Inc.*

Similar to our findings with respect to ALC, we found that Secretary Ross did not divest his interest in BankUnited, Inc. by the 90-day deadline specified in his Ethics Agreement, and this caused him to make several false certifications related to the divestiture of the asset.

In fact, our review determined Secretary Ross did not divest his interest in this asset until October 1, 2018.³¹⁹ His continued ownership of this asset caused him to violate his agreement to divest this asset by the deadline specified in his Ethics Agreement and was in direct contradiction to the following statements:

- June 2, 2017, Certification of Ethics Agreement Compliance in which he stated he had divested his shares of BankUnited, Inc.;³²⁰
- September 11, 2017, certification via his OGE Form 278-T that he divested BankUnited, Inc. shares in the amount of \$1,001–\$15,000 on May 31, 2017;
- November 1, 2017, Certification of Ethics Agreement Compliance in which he certified that he had complied with all the divestitures indicated in his Ethics Agreement;³²¹ and
- August 13, 2018, certification via his annual public financial disclosure report (OGE Form 278e for report year 2018), in which he reported the value of his BankUnited, Inc. shares as “None (or less than \$1,001)” and stated in a related endnote that “[s]hares were divested in 2017.”³²²

Secretary Ross also did not timely file an OGE Form 278-T regarding his first attempt to sell these shares on May 31, 2017. Thus, the evidence establishes that Secretary Ross did not exercise diligence with respect to verifying the sale of this asset on multiple occasions. We deem his actions to be particularly problematic considering he certified

³¹⁹ Secretary Ross OGE Form 278-T, dated October 31, 2018. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/1382897FDDC40D57852583A7002D5BE3/\\$FILE/Wilbur-L-Ross-10.31.2018-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/1382897FDDC40D57852583A7002D5BE3/$FILE/Wilbur-L-Ross-10.31.2018-278T.pdf) (accessed August 26, 2020).

³²⁰ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated June 2, 2017, at p. 3.

³²¹ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated November 1, 2017, at p. 1. Secretary Ross’s continued ownership of BankUnited, Inc. shares did not present an accuracy problem for the Certification of Ethics Agreement Compliance dated September 5, 2017, because Secretary Ross answered “No” in Section 3 of that document in response to the statement that he had “completed all of the divestitures indicated in my ethics agreement.”

³²² Secretary Ross OGE Form 278e, report year 2018. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/\\$FILE/Wilbur-L-Ross-2018-278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/$FILE/Wilbur-L-Ross-2018-278.pdf) (accessed August 26, 2020). Note: the publicly available version of this document, as provided on OGE.gov, does not include Secretary Ross’s electronic signature/certification. The DAEO provided our office a version of this document that preceded his review and submission to OGE. The version the DAEO provided to our office shows Secretary Ross electronically signed/certified the document on August 13, 2018. (See CMS Document #59.)

in three separate documents filed with OGE that he sold these shares when in fact he still maintained ownership of them at the time of filings.

This position is supported by OGE Director Rounds' February 15, 2019, declination to certify Secretary Ross's annual public financial disclosure report (OGE Form 278e) for report year 2018 and covering assets held during 2017.³²³ In the comment section, OGE Director Rounds stated, "The report is not certified because line 4 in Part 2 (and endnote) reports that the filer no longer held BankUnited stock while the transaction report dated October 31, 2018, demonstrates that he did, and because the filer was therefore not in compliance with his ethics agreement at the time of the report."³²⁴

Therefore, the evidence establishes that Secretary Ross's failure to timely comply with the terms of his Ethics Agreement related to divestiture of his interest in BankUnited, Inc. effectively resulted in a violation of his Ethics Agreement. However, we are not aware of any benefit that Secretary Ross might have obtained through continued ownership of these shares between the filing deadline and the October 1, 2018, divestiture date. Indeed, when considering the total value of these shares (approximately \$3,562.95 at the time of sale) in comparison to the value of the other divestitures he made, we have no reason to believe Secretary Ross intentionally maintained ownership of his interest in BankUnited, Inc. and intentionally falsified the documents in which he certified he sold the interest. Moreover, based on the explanations regarding the late divestiture of BankUnited, Inc. shares that Secretary Ross provided in the November 6, 2018, memorandum to the DAEO and to our office through his counsel, along with similar problems Secretary Ross reported encountering when shares of other companies were held by a third party stock transfer agent (as was the case with these BankUnited, Inc. shares), we did not find evidence that Secretary Ross knowingly and willfully falsified any information in violation of the Ethics Act's criminal provisions, or knowingly and willfully failed to file or report required information or falsified a public financial disclosure in violation of the Ethic Act's civil provisions.³²⁵

D. *Invesco, Ltd.*

I. **Vested Unrestricted Shares**

Similar to our findings with respect to ALC and BankUnited, Inc., we found that Secretary Ross did not divest his interest in his vested unrestricted Invesco shares by the 90-day deadline specified in his Ethics Agreement, and this caused him to make several inaccurate certifications related to the divestiture of the asset. Specifically, Secretary Ross did not divest these shares until December 19 and 20, 2017—well past the 90-day deadline for divestment (May 30, 2017) specified in his Ethics Agreement. The failure to divest these Invesco shares also caused Secretary

³²³ Secretary Ross OGE Form 278e report year 2018. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/\\$FILE/Wilbur-L-Ross-2018-278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CA739CF331E63852583A600727D04/$FILE/Wilbur-L-Ross-2018-278.pdf) (accessed August 26, 2020).

³²⁴ *Id.* at p. 2.

³²⁵ Memorandum from Secretary Ross to DAEO, dated November 6, 2018.

Ross to make inaccurate statements in the Certification of Ethics Agreement Compliance documents he signed on June 2, 2017, and November 1, 2017, regarding his compliance with the 90-day deadline and completion of all divestitures in his Ethics Agreement, respectively.

As previously detailed, the email exchange between Secretary Ross and Invesco's [REDACTED] from November 10, 2017, to November 14, 2017, provides some evidence to corroborate Secretary Ross's claim that he did not realize the shares were not already sold, as does his August 23, 2017, representation to the DAEO that all Invesco shares had been divested prior to his appointment. However, a careful reading of the Separation Agreement by Secretary Ross or his representatives would have revealed the vested unrestricted shares were not part of that agreement. And, our office was not informed of any effort by Secretary Ross or his counsel to verify the disposition of the vested unrestricted Invesco shares until mid-November 2017 when Secretary Ross was preparing to document the disposition of Invesco shares on an OGE Form 278-T.

Nonetheless, we found no evidence Secretary Ross intentionally failed to divest these shares in accordance with the requirements of his Ethics Agreement or willfully filed inaccurate information in the Certification of Ethics Agreement Compliance documents he submitted on June 2, 2017, and November 1, 2017. Considering the other information we reviewed during this investigation related to this divestiture, as previously explained, we found Secretary Ross's explanation of the circumstances surrounding this divestiture during his interview with our office to be credible. Accordingly, no evidence was identified that Secretary Ross knowingly and willfully falsified any information in violation of the Ethics Act's criminal provisions, or knowingly and willfully failed to file or report required information or falsified a public financial disclosure in violation of the Ethic Act's civil provisions.

2. Unvested Restricted Shares

In contrast, the divestiture information we reviewed established that Secretary Ross complied with his Ethics Agreement with respect to his divestiture of the unvested restricted Invesco shares that were subject to the Separation Agreement he executed with WL Ross & Co. Specifically, because Invesco placed into an escrow account an amount of cash equivalent to the value of the shares upon his termination of employment with the company, Secretary Ross effectively divested those shares at the time the cash was placed into escrow, even if he could not access that cash until a later time upon the satisfaction of certain conditions as specified in the Separation Agreement. Thus, this transaction occurred prior to his confirmation as Secretary, and 5 C.F.R. § 2634.309(b) provides for an exception to the filing requirement for transactions which occurred at a time when the reporting individual was not a public financial disclosure filer or was not a federal government officer or employee. Therefore, this arrangement satisfied Secretary Ross's Ethics Agreement's divestiture requirements with respect to the unvested restricted Invesco shares.

E. Other Entities

We determined that Secretary Ross's Ethics Agreement, public financial disclosure forms and documents effecting the transfer of assets contained similar errors pertaining to divestitures of his interests in other entities, as follows:

- **FireEye Inc.** Secretary Ross reported an interest in this asset on his Nominee OGE Form 278e, and it was included as an asset he was required to divest in his Ethics Agreement. However, Secretary Ross divested his interest in this asset, held through ██████████, on January 13, 2016. Because the divestiture occurred before his confirmation as Secretary of Commerce, he was not required to file an OGE Form 278-T disclosing the divestiture, and arguably, it was excludable from his Ethics Agreement as an asset he was required to divest.
- **The Greenbrier Companies, Inc.** (“Greenbrier”). We found that Secretary Ross failed to disclose a direct interest of nearly \$500,000 in Greenbrier shares in his Nominee OGE Form 278e. It is likely that this omission and Secretary Ross's counsel's representation to OGE that Secretary Ross no longer owned an interest in Greenbrier led to Greenbrier not being listed as a required divestiture in Secretary Ross's Ethics Agreement. The issue of Secretary Ross's divestiture of his interest in Greenbrier is mitigated or rendered moot by his sale (and initiation of a short against the box transaction) of his Greenbrier shares before the 90-day deadline of May 30, 2017, and his subsequent disclosure of these sales on the OGE Form 278-T documents dated May 17, 2017, June 1, 2017, and December 21, 2017.³²⁶ However, the June 1, 2017, and December 21, 2017, OGE Form 278-T documents failed to disclose the true nature of the transactions as the opening and closing of a short against the box transaction. We addressed this omission with Secretary Ross's counsel and directly with Secretary Ross during an interview. Based on Secretary Ross's OGE Form 278-T documents disclosing the divestiture of this asset and the explanations provided for the omission of this asset from Secretary Ross's Nominee OGE Form 278e, we found no evidence that would lead to a conclusion Secretary Ross knowingly and willfully failed to include his direct interest in Greenbrier on his Nominee OGE Form 278e.³²⁷
- **Sun Bancorp, Inc.** Secretary Ross was late in filing OGE Form 278-T reports with respect to his divestiture of this asset.³²⁸ In addition, Secretary Ross's opening of a short position in 48 shares of Sun Bancorp, Inc. on October 31,

³²⁶ We note that there are some potential issues related to the retention of a financial interest in an entity in which a short position is still open, even if it is a “short against the box,” and Secretary Ross's short against the box position in Greenbrier did not close until well after the 90-day deadline.

³²⁷ Conflict of interest considerations with respect to Secretary Ross's ownership of this asset are addressed in the **Potential Conflicts of Interest** chapter of this report.

³²⁸ Secretary Ross filed an OGE Form 278-T on November 6, 2017, to report a sale of 48 Sun Bancorp, Inc. shares on March 24, 2017. Secretary Ross filed an OGE Form 278-T on December 21, 2017, to report the opening of a short position in 48 Sun Bancorp, Inc. shares on October 31, 2017. In each filing, he indicated that the filing was late. (See Secretary Ross OGE Form 278-T, dated November 6, 2017, and Secretary Ross OGE Form 278-T, dated December 21, 2017.)

2017, to eliminate an interest he did not recall he already sold caused him to provide inaccurate information in his November 1, 2017, Certification of Ethics Agreement Compliance.³²⁹

- **Rothschild & Co. Profit Sharing Plan.** Secretary Ross divested this asset by the 90-day deadline specified in his Ethics Agreement, but he did not report the divestiture of his interest in the Rothschild & Co. Profit Sharing Plan on an OGE Form 278-T. However, he asserted in his June 2, 2017, Certification of Ethics Agreement Compliance that “I have divested my right to income from the Rothschild & Co. Profit Sharing Plan by irrevocably assigning the right to a charity.”³³⁰
- **Assets/Entities Transferred to Affiliates of Goldman Sachs.** Information for the seller of an asset in the Purchase Agreement did not match the ownership information for that asset listed in the Nominee OGE Form 278e. We addressed this issue with Secretary Ross and his counsel, and they confirmed there was a typographical error with respect to one of the sellers in the Purchase Agreement. This error did not alter the transfer of assets under the Purchase Agreement.

Our review determined Secretary Ross’s mistakes and lack of attention to detail on his public financial disclosure forms, as previously described, led to him making incorrect certifications or statements in the Certification of Ethics Agreement Compliance documents, Nominee and annual OGE Forms 278e, and OGE Forms 278-T that he submitted to OGE. In the instances previously noted, these mistakes resulted in his failure to timely comply with his divestiture obligations as agreed to in Sections 2 and 9 of his Ethics Agreement, as required by 5 C.F.R. §§ 2634.802(b) and 2634.804(b).

Nonetheless, we did not identify any evidence Secretary Ross knowingly and willfully falsified any information in violation of the Ethics Act’s criminal provisions, or knowingly and willfully failed to file or report required information or falsified a public financial disclosure in violation of the Ethics Act’s civil provisions. Thus, despite the shortcomings identified herein, we determined that Secretary Ross did not violate the Ethics Act.

³²⁹ See Secretary Ross OGE Certification of Ethics Agreement Compliance, dated November 1, 2017, at p. 1; Memorandum from Secretary Ross to DAEO, dated April 27, 2018, at p. 2.

³³⁰ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated June 2, 2017, at p. 3.

Potential Conflicts of Interest

I. Allegations

As previously mentioned, in the November 13, 2017, letter to the Inspector General, six members of the U.S. Senate requested an investigation of several issues related to Secretary Ross's compliance with the Department's ethical requirements.³³¹ In particular, the Senators questioned whether Secretary Ross complied with the recusal requirements contained in his Ethics Agreement with respect to assets he was allowed to retain (real estate financing and mortgage lending and transoceanic shipping). The Senators noted that Secretary Ross was "pursuing policies that could have a direct and predictable effect on the financial interests of the assets he has retained and the industries in which they hold a presence." As an example they mentioned "trade agreements with China and other countries regarding shipments of liquid natural gas and petroleum products. These commodities are shipped by vessels owned by entities in which he retains a significant financial stake."³³² The Senators "urge[d] [the OIG] to investigate whether Secretary Ross has participated in matters personally and substantially that could affect the assets he was allowed to retain. ..."³³³

In addition, the Inspector General received a letter on June 27, 2018, from eight members of the U.S. House of Representatives.³³⁴ The letter briefly noted issues related to Secretary Ross's divestitures of his interests in Navigator (discussed in the next section), Invesco (discussed in the first section) and Greenbrier (discussed in this section), but it did not include allegations related to specific instances of potential conflicts of interest. The Representatives requested that our office "review whether Secretary Ross violated conflict of interest and other ethics rules, whether he has any ongoing conflicts of interest, and whether he has any additional holdings he has not reported or divested in compliance with his ethics agreement."³³⁵

Not long after the letter from the Representatives, our office received a letter from Senator John Thune, dated July 15, 2018. Senator Thune's letter requested an "independent review of the conclusion reached by the Commerce Department's Designated Agency Ethics Official (DAEO) that errors Secretary of Commerce Wilbur Ross made in his efforts to comply with his Ethics Agreement did not result in a violation of conflict of interest law."³³⁶ In the letter, Senator Thune referenced the July 12, 2018, letter from then-Acting OGE Director Apol to Secretary Ross that was previously described in the first chapter of this

³³¹ U.S. Senators to Peggy E. Gustafson, November 13, 2017. *Letter from U.S. Senate to the Inspector General of the U.S. Department of Commerce.*

³³² *Id.* at p. 3.

³³³ *Ibid.*

³³⁴ U.S. Representatives to Peggy E. Gustafson, June 27, 2018. *Letter from U.S. House of Representatives to the Inspector General of the U.S. Department of Commerce.*

³³⁵ *Ibid.*

³³⁶ Letter from Senator Thune to Secretary Ross, dated July 15, 2018.

report at subsection IV.B, wherein Mr. Apol expressed concern about “omissions and inaccurate statements” in Secretary Ross’s financial disclosure forms.³³⁷

On February 8, 2019, then-Chairman of the House of Representatives Committee on Oversight and Reform—Elijah E. Cummings—sent a letter to Secretary Ross discussing a Committee on Oversight and Reform review into “reports that you may have conflicts of interest that could jeopardize the public trust placed in you as Secretary of Commerce.”³³⁸ The letter cited an October 25, 2018, *Forbes* article related to meetings with Boeing and Chevron. Then-Chairman Cummings stated, “Reports also indicate that, while serving as Secretary, you met with executives at companies in which you held financial interests and participated in matters that could affect other companies in which you held a stake.”

In addition to the letters previously mentioned, our office received several additional allegations and requests for investigation related to Secretary Ross’s potential conflicts of interest from other sources.³³⁹

II. Applicable Law

Conflicts of interest are governed by 18 U.S.C. § 208, which provides the following:

- (a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding,

³³⁷ Letter from Then-Acting OGE Director Apol to Secretary Ross, dated July 12, 2018.

³³⁸ Then-Chairman Elijah E. Cummings to Wilbur L. Ross, Jr., February 8, 2019. *Letter from Then-Chairman of the Committee on Oversight and Reform to the Secretary of Commerce*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-08.EEC%20to%20Ross%20re%20Conflicts%20of%20Interest.pdf> (accessed August 26, 2020).

³³⁹ E.g. (1) Noah Bookbinder to Peggy E. Gustafson, December 21, 2017. *CREW Requests Investigation into Wilbur Ross*. Available at <https://www.citizensforethics.org/legal-filing/crew-requests-investigation-wilbur-ross/> (accessed August 25, 2020); (2) Senator John Thune to Peggy E. Gustafson, July 15, 2018. *Letter from Senator Thune to the Inspector General of the U.S. Department of Commerce*; (3) Campaign Legal Center to Inspector General Gustafson, August 13, 2018. *Complaint regarding Commerce Secretary Wilbur L. Ross Jr. from the Campaign Legal Center to the Inspector General for the U.S. Department of Commerce*. Available at <https://campaignlegal.org/sites/default/files/2018-08/Hon%20Wilbur%20L%20Ross%20Jr%20Complaint%20%2813%20Aug%202018%29.pdf> (accessed August 25, 2020); (4) Noah Bookbinder to Rod J. Rosenstein and Peggy E. Gustafson, August 16, 2018. *Request for Investigation of Criminal Conflicts of Interest and False Statements by Secretary of Commerce Wilbur L. Ross*. Available at <https://www.citizensforethics.org/legal-filing/crew-requests-immediate-investigation-into-wilbur-ross-conflicts-of-interest/> (accessed August 25, 2020); (5) Delaney N. Marsco to Inspector General Gustafson, November 1, 2018. *Supplemental Complaint Concerning Ethics Violations by Sec. Wilbur Ross*. Available at <https://campaignlegal.org/sites/default/files/2018-11/Supplemental%20Complaint%20-%20Hon.%20Wilbur%20Ross%20Jr.%20%281%20Nov%202018%29.pdf> (accessed August 25, 2020); and (6) Delaney N. Marsco to Inspector General Gustafson, February 7, 2019. *Supplemental Complaint Concerning Ethics Violations by Sec. Wilbur Ross*. Available at <https://campaignlegal.org/sites/default/files/2019-02/Supplemental%20Complaint%20-%20CLC%20-%20Hon.%20Wilbur%20Ross.pdf> (accessed August 25, 2020).

application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—Shall be subject to the penalties set forth in section 216 of this title.³⁴⁰

The exceptions provided by 18 U.S.C. § 208(b) that may be applicable in this situation are as follows:

- (b) Subsection (a) shall not apply—
 - (1) if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee;
 - (2) if, by regulation issued by the Director of the Office of Government Ethics, applicable to all or a portion of all officers and employees covered by this section, and published in the Federal Register, the financial interest has been exempted from the requirements of subsection (a) as being too remote or too inconsequential to affect the integrity of the services of the Government officers or employees to which such regulation applies.³⁴¹

The following regulations are also applicable to conflicts of interest:

- 5 C.F.R. § 2635.402 (*Disqualifying Financial Interests*)
 - (a) *Statutory prohibition.* An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.
 - (b) (1) *Direct and predictable effect.*
 - i. A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that

³⁴⁰ 18 U.S.C. § 208(a).

³⁴¹ 18 U.S.C. § 208(b)(1)–(2).

are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this subpart.

- ii. A particular matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

(3) *Particular matter.* The term particular matter encompasses only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. Such a matter is covered by this subpart even if it does not involve formal parties and may include governmental action such as legislation or policy-making that is narrowly focused on the interests of such a discrete and identifiable class of persons. The term particular matter, however, does not extend to the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons. The particular matters covered by this subpart include a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

(4) *Personal and substantial.* To participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

- 5 C.F.R. § 2635.502 (*Personal and business relationships*)
 - (a) *Consideration of appearances by the employee.* Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the

appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.³⁴²

- 5 C.F.R. § 2635.101(b)(14) (*Basic obligation of public service*)

[e]mployees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

III. Investigative Methodology

In order to assess the allegations related to Secretary Ross's potential conflicts of interest, we interviewed members of the Department's OGC ELPD that were responsible for advising Secretary Ross on ethics matters. We also interviewed a number of individuals within the Office of the Secretary that were involved with Secretary Ross's scheduling and appointments. In addition, we spoke with Department employees involved in dealing with important policy initiatives in which conflicts of interest may have occurred.

We requested, received, and reviewed email communications from OGC ELPD employees related to their interactions with Secretary Ross and members of his staff. We conducted an extensive review of the email communications of Secretary Ross and his [REDACTED] and a more limited review of the email communications of other Department officials and employees that may have coordinated or participated in meetings involving a potential conflict of interest. We also reviewed Secretary Ross's schedule and files related to briefings he was provided prior to meetings.

Also, as previously detailed, we reviewed Secretary Ross's divestiture of financial interests through requesting, receiving and reviewing documents from Secretary Ross through his private counsel, who was retained to represent him in interactions with our office in this investigation. We also interacted with Secretary Ross's counsel through oral and written communication to receive additional information and explanations of complex asset structure and divestitures, which were important to determine when Secretary Ross no longer held an interest in a particular entity.

We consulted with a financial expert to better understand the structure of some of Secretary Ross's investments and his methods of divesting those investments. Additionally, we consulted with experts in federal government ethics in order to comprehend the requirements and operation of the ethics laws as applied to political appointees. Finally, we conducted an interview of Secretary Ross and questioned him directly about particular potential conflicts of interest, certain financial interests, divestitures of those interests and compliance with ethics requirements.

³⁴² 5 C.F.R. § 2635.502. Subsection (d) provides for authorization by the agency designee for the employee to participate in a particular matter under certain circumstances.

IV. Factual Background

A. Secretary Ross's Ethics Agreement

As previously explained in the **Compliance with Ethics Agreement (Asset Divestiture)** chapter of this report, on January 15, 2017, in connection with his nomination to be Secretary of the U.S. Department of Commerce, Mr. Ross drafted and signed his Ethics Agreement, in the form of a letter to the Department's Designated Agency Ethics Official (DAEO) and Chief of ELPD.³⁴³ Mr. Ross stated that the purpose of the Ethics Agreement was "to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Secretary of the Department of Commerce."³⁴⁴ The Ethics Agreement details the assets Mr. Ross would be allowed to retain upon confirmation as Secretary and lists the assets he would divest along with the deadlines for divestiture of those assets. The Ethics Agreement also lists certain positions from which he would resign and certain positions he would maintain.

Importantly, the first section of the Ethics Agreement is a "Global Recusal Requirement" that directly references 18 U.S.C. § 208 as follows:

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, 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). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.³⁴⁵

As previously detailed in the first chapter of this report in subsection IV.A with respect to asset divestitures, the Ethics Agreement lays out the assets Secretary Ross agreed to divest and the assets he was allowed to retain. In each of Sections 2, 3, 4, 5, 7, 8, 9, and 10, Secretary Ross referred specifically to the requirements of 18 U.S.C. § 208 and agreed not to participate personally and substantially in any particular matter that to his knowledge has a direct and predictable effect on the related entities, the entities' financial interests, or their underlying assets until he has divested the entity, unless he

³⁴³ Wilbur L. Ross, Jr. to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C4D33DB26307189E852580C8002C7A72/\\$FILE/Ross,%20Wilbur%20L%20finalAmendedEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C4D33DB26307189E852580C8002C7A72/$FILE/Ross,%20Wilbur%20L%20finalAmendedEA.pdf) (accessed August 26, 2020).

³⁴⁴ *Id.* at p. 1.

³⁴⁵ *Ibid.*

first obtains 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).

Section 10 of Secretary Ross's Ethics Agreement permitted him to retain investments in nine entities that he reported were limited to the following sectors: (1) real estate financing and mortgage lending and (2) transoceanic shipping.³⁴⁶ With respect to these entities, Secretary Ross stated, "I will not to participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of the entity, 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)." Additionally, he noted, "My retained interests in these entities will be solely as a passive investor, without prior knowledge of or influence over investment decisions made by the funds' managers." With respect to these assets, Secretary Ross also stated:

As the senior ethics official for the Department of Commerce, you have advised me that it is not necessary at this time for me to divest the entities identified in this section, inasmuch as the likelihood that I will need to participate in any particular matter affecting these entities is remote. However, I will remain vigilant in identifying any particular matters affecting the interests of these entities and their holdings, including both particular matters involving specific parties and particular matters of general applicability. You have explained 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.³⁴⁷

In providing background, the DAEO related that ELPD prepared a draft of the Ethics Agreement that permitted Secretary Ross to keep several assets that the DAEO believed would be permissible and limit Secretary Ross's duties unnecessarily by causing him to recuse himself. This draft was forwarded to the Senate, Secretary Ross's personal attorneys, and OGE. The DAEO recalled that OGE was "furious" and thought Secretary Ross should sell everything. According to the DAEO, Walter Shaub (then-OGE Director) negotiated with Secretary Ross and convinced him to sell almost all of his assets. The DAEO noted that OGE did not issue any opinions as to why Secretary Ross was allowed to retain assets in the two sectors previously noted. The DAEO recalled that Mr. Shaub took the position that it did not matter if it would present a significant recusal issue, adding that Mr. Shaub was concerned about the appearance of a conflict of interest and thought Secretary Ross should sell everything.

B. *Timeline of Events*

As previously noted in the first chapter of this report at subsection IV.B, on June 2, 2017, Secretary Ross signed the first of three OGE Certification of Ethics Agreement

³⁴⁶ *Id.* at p. 5–6.

³⁴⁷ *Ibid.*

Compliance documents.³⁴⁸ Along with certifying as to divestitures, this certification covers issues related to conflicts of interest. In Section 5 of this certification, Secretary Ross certified that he complied with his interim recusal obligations pending the divestitures required by his Ethics Agreement.³⁴⁹ Regarding recusals, Secretary Ross further certified the following:

- a. I am recusing from particular matters in which I know I have a personal or imputed financial interest directly and predictably affected by the matter, unless I have received a waiver or qualify for a regulatory exemption.
- b. I am recusing from particular matters in which any former employer or client I served in the past year is a party or represents a party, unless I have been authorized under 5 C.F.R. § 2635.502(d).
- c. I am recusing from particular matters in which any former employer or client I served in the two years prior to my appointment is a party or represents a party, unless I have received a waiver under Exec. Order 13770.³⁵⁰

Secretary Ross also certified that he did not receive any waivers pursuant to 18 U.S.C. § 208, Executive Order 13770, or 5 C.F.R. § 2635.503(c), and he did not receive an authorization pursuant to 5 C.F.R. § 2635.502(d).³⁵¹ In Section 9 of the certification, Secretary Ross stated that he completed his initial ethics briefing pursuant to 5 C.F.R. § 2638.305 and signed the ethics pledge pursuant to Executive Order 13770.³⁵²

On September 5, 2017, Secretary Ross signed the second OGE Certification of Ethics Agreement Compliance.³⁵³ Regarding recusals, Secretary Ross provided that he was complying with all recusal requirements and that he received no waivers.

On October 24, 2017, Secretary Ross executed the Trust Agreement. The assignment of the property listed in the Trust Agreement was effective as of 5:00 p.m. on October 25, 2017. Through the Trust Agreement, Secretary Ross transferred an equity or other interest in nearly all the entities listed in Attachment A-II of his Ethics Agreement, as previously described in the first chapter of this report at subsection IV.B.

October 25, 2017, was the extended deadline by which Secretary Ross must divest assets that his Ethics Agreement required to be divested within 180 days of his confirmation.

³⁴⁸ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated June 2, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/\\$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf) (accessed August 26, 2020).

³⁴⁹ *Ibid.*

³⁵⁰ *Id.* at p. 2. (Emphasis in original.)

³⁵¹ *Ibid.*

³⁵² *Id.* at p. 3.

³⁵³ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated September 5, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/\\$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf) (accessed August 26, 2020).

On November 1, 2017, Secretary Ross signed the third and final OGE Certification of Ethics Agreement Compliance.³⁵⁴ The form for this certification is identical to the June 2, 2017, and September 5, 2017, OGE Certifications of Ethics Agreement Compliance previously described in the first chapter of this report at subsection IV.B, and like those certifications, it also covered divestitures required by Secretary Ross's Ethics Agreement as well as issues related to recusals and conflicts of interest. In Section 2 of this certification, Secretary Ross again confirmed that he completed all of the resignations indicated in his ethics agreement before assuming the duties of his current position.³⁵⁵ In Section 3 of this certification, Secretary Ross answered "Yes" to the following statement: "I have completed all of the divestitures indicated in my ethics agreement. I also understand that I may not repurchase these assets during my appointment without OGE's prior approval."³⁵⁶ Regarding recusals, Secretary Ross provided the same answers as he did in the previous two Certification of Ethics Agreement Compliance documents, namely, that he was complying with all recusal requirements and that he received no waivers.³⁵⁷

On July 12, 2018, David Apol, then-Acting Director, OGE, provided a letter to Secretary Ross in which he stated:

Public trust demands that all employees act in the public's interest, and are free from any actual or perceived conflicts when fulfilling the governmental responsibilities entrusted to them. Agency heads in particular bear a heightened responsibility, as they are required to 'exercise personal leadership in . . . establishing and maintaining an effective agency ethics program and fostering an ethical culture in the agency.'³⁵⁸ As the Acting Director of OGE, I am writing to you to express my concern regarding how recent actions on your part may have negatively affected the public trust.³⁵⁹

Mr. Apol continued, "As you know, various financial disclosure forms and compliance documents that you have submitted to OGE in the past year have contained various omissions and inaccurate statements."³⁶⁰ Regarding Secretary Ross's actions, Mr. Apol wrote to Secretary Ross:

You have advised both OGE and your DAEO that the various omissions and inaccuracies on your part were inadvertent, and we have no information to contradict that assertion. Unfortunately, even inadvertent errors regarding compliance with your ethical obligations can undermine public trust in both

³⁵⁴ Secretary Ross OGE Certification of Ethics Agreement Compliance, dated November 1, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/\\$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf) (accessed August 26, 2020).

³⁵⁵ *Id.* at p. 1.

³⁵⁶ *Ibid.*

³⁵⁷ *Id.* at p. 2.

³⁵⁸ *Citing* 5 C.F.R. § 2638.107.

³⁵⁹ David Apol to Wilbur L. Ross, Jr., July 12, 2018. *Letter from David Apol to Secretary Ross*. Available at [https://www.oge.gov/Web/OGEnsf/0/F8A904F56D6DB8A2852585B9006C48F3/\\$FILE/Letter%20to%20Secretary%20of%20Commerce.pdf](https://www.oge.gov/Web/OGEnsf/0/F8A904F56D6DB8A2852585B9006C48F3/$FILE/Letter%20to%20Secretary%20of%20Commerce.pdf) (accessed October 20, 2020).

³⁶⁰ *Ibid.*

you and the overall ethics program. Furthermore, your actions, including your continued ownership of assets required to be divested in your Ethics Agreement and your opening of short sale positions, could have placed you in a position to run afoul of the primary criminal conflict of interest law, 18 U.S.C. § 208. Your DAEO has advised OGE that after reviewing your calendars, briefing books, and correspondence, he found no information indicating any such violation, however, your failure to divest created the potential for a serious criminal violation on your part and undermined public confidence.³⁶¹

Mr. Apol also advised Secretary Ross, “As a high level public official, you have an affirmative duty to protect the public trust and serve as a model of ethical behavior. This duty includes exercising the care necessary to fully and timely comply with your ethics commitments, and be accurate in statements to OGE regarding the same.”³⁶² Finally, Mr. Apol noted that Secretary Ross would be filing his Annual OGE Form 278 soon and urged him to devote necessary resources to ensure and all future communications with OGE are complete and accurate.³⁶³

On March 14, 2019, Secretary Ross testified before the House of Representatives Committee on Oversight and Reform regarding matters related to the U.S. Census Bureau.³⁶⁴ Prior to this hearing, the Department’s then-Assistant Secretary for Legislative and Intergovernmental Affairs, wrote a letter to then-Chairman Cummings and cited then-Chairman Cummings’s February 8, 2019, letter to Secretary Ross.³⁶⁵ In his letter, the then-Assistant Secretary stated, “In the days following our receipt of that letter, it became clear that the Committee intended to expand the scope of the March 14 hearing to ask the Secretary questions about his personal finances and ethics obligations—topics that we did not anticipate nor expect to be covered in such detail and depth based on the frequent and cordial communications between our staffs.”³⁶⁶ Based in part on that potential expansion of the hearing, the then-Assistant Secretary sought to postpone the hearing.³⁶⁷ In lieu of postponing the hearing, then-Chairman Cummings agreed to allow Secretary Ross to provide responsive information and documents regarding his financial disclosures after the hearing.³⁶⁸

³⁶¹ *Id.* at p. 2.

³⁶² *Ibid.*

³⁶³ *Ibid.*

³⁶⁴ Video of the hearing is available at <https://oversight.house.gov/legislation/hearings/commerce-secretary-wilbur-l-ross-jr> (accessed August 26, 2020).

³⁶⁵ Department of Commerce, Office of Legislative and Intergovernmental Affairs to Then-Chairman Elijah E. Cummings, March 5, 2019. *Letter from the U.S. Department of Commerce Assistant Secretary for Legislative and Intergovernmental Affairs to the Then-Chairman of the Committee on Oversight and Reform*. Available at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.03.05%20Letter%20to%20Chairman%20Cummings_0.pdf (accessed August 26, 2020).

³⁶⁶ *Id.* at p. 1.

³⁶⁷ *Id.* at p. 2.

³⁶⁸ Then-Chairman Elijah E. Cummings to Wilbur L. Ross, Jr., March 6, 2019. *Letter from the Then-Chairman of the Committee on Oversight and Reform to the Secretary of Commerce*. Available at

On April 15, 2019, then-Chairman Cummings submitted questions for the official record to Secretary Ross.³⁶⁹ Among other topics, these questions included a section regarding Secretary Ross's financial interests. Then-Chairman Cummings asked whether Secretary Ross followed financial conflict of interest recusal obligations and whether he made any profit from short positions he opened on assets that he agreed to divest.³⁷⁰

On September 9, 2019, then-Chairman Cummings again wrote to Secretary Ross "regarding the Committee's investigation into your potential conflicts of interest that could jeopardize the public trust placed in you as Secretary of Commerce."³⁷¹ Then-Chairman Cummings stated, "Rather than cooperate with this investigation, you have refused for more than eight months to produce many responsive documents, and the documents you have produced raise troubling new questions about your compliance with federal ethics requirements."³⁷² This letter references the February 8, 2019, letter, the March 14, 2018, hearing, and the questions for the record submitted to Secretary Ross on April 15, 2019.³⁷³ Then-Chairman Cummings noted that Secretary Ross did not respond to any of the questions from the April 15, 2019, letter and stated, "[t]he Department has made only limited productions of materials that were already largely publicly available or that were heavily redacted."³⁷⁴ As of the date of this report, our office is not aware of a response by the Department to this letter.

C. *Interests in the Oil and Gas Industry*

I. **Allegation and Background**

In the November 13, 2017, letter to the Inspector General, several Senators alleged potential conflicts of interest related to Secretary Ross's participation in trade agreement activities with China. In particular, these Senators alleged the following:

As secretary, Secretary Ross is pursuing policies that could have a direct and predictable effect on the financial interests of the assets he has retained and the industries in which they hold a presence. For example, Secretary Ross has led trade agreements with China and other countries regarding shipments of liquid natural gas and petroleum products. These products are shipped by vessels owned by entities in

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-06.EEC%20to%20Ross-DOC%20re%20Documents%20and%20Testimony.pdf> (accessed August 26, 2020).

³⁶⁹ Then-Chairman Elijah E. Cummings to Wilbur L. Ross, Jr., April 15, 2019. *Letter from the Then-Chairman of the Committee on Oversight and Reform to the Secretary of Commerce*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-04-15.%20EEC%20to%20Secretary%20Ross%20re.%203-14%20Hearing%20QFRs.pdf> (accessed August 26, 2020).

³⁷⁰ *Id.* at p. 4.

³⁷¹ Then-Chairman Elijah E. Cummings to Wilbur L. Ross, Jr., September 9, 2019. *Letter from the Then-Chairman of the Committee on Oversight and Reform to the Secretary of Commerce*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-09-09.EEC%20to%20Ross-DOC%20re%20Conflict%20with%20Productions.pdf> (accessed August 26, 2020).

³⁷² *Id.* at p. 1.

³⁷³ *Id.* at p. 1–2.

³⁷⁴ *Id.* at p. 2.

which he retains a significant financial stake. His trade efforts could also affect other kinds of freight and cargo shipments that could provide his business interests with valuable sources of income.”³⁷⁵

While these allegations do not directly mention Secretary Ross’s assets in the oil and gas industry and are focused more on shipping, they relate to the oil and gas industry. It is important to make a distinction between Liquefied Natural Gas (LNG) and Liquefied Petroleum Gas (LPG) prior to analyzing potential conflicts of interest that are involved in the Mar-a-Lago Summit as it relates to Secretary Ross’s assets in the oil and gas industry. These two forms of gas are involved in the discussion here and in the discussion regarding transoceanic shipping and Navigator (discussed in the **Secretary Ross’s Short Sale of Navigator Holdings Ltd. Stock** chapter of this report). Regarding these types of gas: (1) LNG was the form of gas involved in discussions with Chinese officials at Mar-a-Lago and (2) Navigator is involved in shipping LPG, not LNG.

Additionally, in a February 8, 2019, letter to Secretary Ross from then-Chairman Cummings of the House of Representatives Committee on Oversight and Reform, it mentioned a Committee on Oversight and Reform review into “reports that you may have conflicts of interest that could jeopardize the public trust placed in you as Secretary of Commerce.”³⁷⁶ The letter cited an October 25, 2018, *Forbes* article related to meetings with Boeing and Chevron. Then-Chairman Cummings stated, “Reports also indicate that, while serving as Secretary, you met with executives at companies in which you held financial interests and participated in matters that could affect other companies in which you held a stake.”³⁷⁷

2. Ownership Interests

We identified the interests Secretary Ross held either directly or indirectly in the oil and gas industry, as reported in his Nominee OGE Form 278e. The entities, which Secretary Ross agreed in his Ethics Agreement to divest (either by divesting the directly held interests or by divesting the entities holding an investment in the entity involved in the oil and gas industry), are as follows:

1. Chevron Corp. (“Chevron”)
2. Exco Resources, Inc. (“Exco”)
3. Energen Corp.
4. Laredo Petroleum Inc.

³⁷⁵ U.S. Senators to Peggy E. Gustafson, November 13, 2017. *Letter from U.S. Senate to the Inspector General of the U.S. Department of Commerce*, at p. 3.

³⁷⁶ Then-Chairman Elijah E. Cummings to Wilbur L. Ross, Jr., February 8, 2019. *Letter from the Then-Chairman of the Committee on Oversight and Reform to the Secretary of Commerce*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-08.EEC%20to%20Ross%20re%20Conflicts%20of%20Interest.pdf> (accessed August 26, 2020).

³⁷⁷ *Ibid.*

5. Northern Oil and Gas, Inc.
6. Breitburn Energy Partners
7. Rex Energy Corp.
8. WPX Energy, Inc.
9. American Energy – Permian Basin
10. Amerigas Partners, L.P.
11. Pan Multi Strategy L.P.
12. Comstock Resources, Inc.
13. Approach Resources, Inc.
14. Lightstream Resources.³⁷⁸

As disclosed on his Nominee OGE Form 278e, Secretary Ross's [REDACTED] held a direct interest in Chevron with a reported value of \$250,001–\$500,000.³⁷⁹ This interest was divested in three transactions that settled on May 18, 19, and 22, 2017, and yielded a total of approximately \$393,583.74. These divestitures were reported on two separate OGE Form 278-Ts that were each dated May 23, 2017.³⁸⁰

Secretary Ross held a direct interest in Exco, and he also held an interest in Exco through interests he held in WLR Select Associates LLC and WLR Recovery Associates IV LLC, which each held an interest in Exco. He divested his direct interest through a cancellation of unvested shares on April 12, 2017, and a sale of vested shares that settled on May 12, 2017. He transferred the interests held through WLR Select Associates LLC and WLR Recovery Associates IV LLC through the execution of the Purchase Agreement and Trust Agreement on October 25, 2017.

With the exception of Chevron, Exco, Pan Multi Strategy L.P., and Amerigas Partners, L.P., Secretary Ross held interests in the other entities previously listed through WLR Recovery Associates V LLC/WLR Recovery Fund, V, L.P. or WLR Conduit MM LLC.³⁸¹ He divested his interests in WLR Recovery Associates V LLC/WLR Recovery Fund, V, L.P. on October 25, 2017 (through the Purchase Agreement and Trust Agreement), and in WLR Conduit MM LLC, effective October 1, 2017, through an Assignment and Assumption Agreement.

Pan Multi Strategy, L.P. held an interest in Amerigas Partners, L.P., and Pan Multi Strategy, L.P. was in turn held by Ross FOF, LLC. Ross FOF, LLC's only reported

³⁷⁸ Secretary Ross also identified an interest in "Tennessee Gas Pipeline NTS B/E 8.000% Matures 02/01/2016 CUSIP 880451AY5" in Part 6, line 2.4 of his Nominee OGE Form 278e. This appears to be a bond that matured prior to Secretary Ross's confirmation. See Nominee OGE Form 278e at p. 36.

³⁷⁹ Nominee OGE Form 278e at p. 40 (Part 6, line 24.2.3).

³⁸⁰ OGE Forms 278-T, dated May 23, 2017.

³⁸¹ Nominee OGE Form 278e, at p. 13–14 (Part 2, lines 10.6 and 10.7).

underlying interest was Pan Multi Strategy, L.P.³⁸² Secretary Ross transferred his interest in Pan Multi Strategy, L.P. on June 30, 2017, through a multi-tiered transaction. Any remaining interest in Pan Multi Strategy, L.P. was transferred when Ross FOF, LLC was transferred through the Trust Agreement on October 25, 2017.

In addition to the previously noted holdings in the oil and gas industry, Secretary Ross held interests in Navigator Holdings, Ltd. (“Navigator”), which described its business in the following manner, “We are the owner and operator of the world’s largest fleet of handysize liquefied gas carriers. We provide international and regional seaborne transportation services of petrochemical gas, or ‘LPG’, and ammonia for energy companies, industrial users and commodity traders.”³⁸³ In his Nominee OGE Form 278e, Secretary Ross reported that he held an interest in three entities that held direct investments in Navigator: WLR Recovery Fund IV DSS AIV, L.P. (Cayman), WLR Recovery Fund V DSS AIV, L.P., and WLR Select Co-Investment, L.P. (Cayman).³⁸⁴ Secretary Ross’s Ethics Agreement did not require him to divest his holdings in entities involved in transoceanic shipping, and it did not require him to divest his interests in WLR Recovery Associates IV DSS AIV, L.P. and WLR Recovery Associates V DSS AIV, L.P.³⁸⁵ However, Secretary Ross divested his interests in WLR Recovery Associates IV DSS AIV, L.P. and WLR Recovery Associates V DSS AIV, L.P. on October 25, 2017, by selling the capital interest in the assets through the Purchase Agreement, and through transfer of any carried and residual interest in the assets and to the Wilbur L. Ross Jr. Irrevocable Trust under the Trust Agreement.

Secretary Ross also directly held more than 16,000 shares of Navigator that he did not disclose in his Nominee OGE Form 278e. Secretary Ross divested these interests in May 2017 through a standard sale of 2,058 shares and in October 2017 through a short against the box transaction involving 14,093 shares.³⁸⁶ He reported the May 2017 transaction on an OGE Form 278-T dated June 1, 2017, and the October 2017 transaction on OGE Form 278-Ts dated November 7, 2017 (open of short against the box position), and December 21, 2017 (close of short against the box position).³⁸⁷

³⁸² Nominee OGE Form 278e, at p. 45 (Part 6, line 65).

³⁸³ Navigator Holdings Ltd., SEC Form 6-K, for the quarter ended September 30, 2019. Available at <https://www.navigatorgas.com/wp-content/uploads/2019/11/6K-Q3-2019-Bannerless.pdf> (accessed August 26, 2020).

³⁸⁴ Secretary Ross Public Financial Disclosure Report (OGE Form 278e), dated December 19, 2016, at p. 19 and 28.

³⁸⁵ While Secretary Ross was not required to divest his interest in WLR Recovery Associates V DSS AIV, L.P., Secretary Ross was required to divest his interest in WL Ross Group, L.P., and Secretary Ross held an interest in WLR Recovery Associates V DSS AIV, L.P. through WL Ross Group, L.P.

³⁸⁶ Memorandum from Secretary Ross to DAEO, dated April 27, 2018, at p. 2–3.

³⁸⁷ (1) Periodic Transaction Report (OGE Form 278-T), dated June 1, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CC2CA0AB89E398525814600272FE9/\\$FILE/Wilbur-L-Ross-06.01.2017-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CC2CA0AB89E398525814600272FE9/$FILE/Wilbur-L-Ross-06.01.2017-278T.pdf) (accessed August 26, 2020); (2) Periodic Transaction Report (OGE Form 278-T), dated November 7, 2017, at p. 2. Available at

3. List of Disqualifications

We reviewed a list of Secretary Ross's disqualifications, dated January 23, 2017, that was drafted by ELPD during the confirmation process and distributed to an attorney in the Department's OGC that coordinated with ELPD regarding Secretary Ross's schedule.³⁸⁸ The preamble to the document stated, "To help ensure that the Secretary is not presented with matters from which he is disqualified, please contact an ethics attorney (identified below) for advice before presenting for the Secretary's consideration matters that involve any of the industry sectors or geographic areas identified below." This document listed various "Industry Sectors" and subsectors from which Secretary Ross was disqualified. Among the industry sectors is "Energy." Below the Energy Industry Sector, the following subsectors are listed: methane gas, natural gas production and storage, oil and gas equipment and pipelines, oil and gas exploration and production (on-shore Canada and United States), and oil and gas retail. Another section of this document listed "Geographic Areas" and stated: "Also contact an ethics attorney (identified below) for advice before presenting for the Secretary's consideration matters that will effect companies in the following countries, which are areas in which the Secretary has investments." China was the first of five countries listed in this section of the document.

4. The Mar-a-Lago Summit and Resulting 100-Day Plan

On April 6 and 7, 2017, President Trump hosted a summit at the Mar-a-Lago resort in Palm Beach, Florida, that was attended by a delegation from the Chinese government, Secretary Ross, Treasury Secretary Steven Mnuchin, and other U.S. government officials (the "Mar-a-Lago Summit" or the "Summit"). Secretary Ross's [REDACTED], and the [REDACTED] also attended the Summit. Our review of email communications among Office of Secretary staff showed this was a White House-hosted and -sponsored event and the first notification of the event arrived on or about March 31, 2017. Between April 3 and 5, 2017, [REDACTED] exchanged email messages with officials from the International Trade Administration, Department of the Treasury staff, members of the Executive Office of the President, and U.S. Trade Representative staff regarding talking points for Secretaries Mnuchin and Ross for the Summit. On April 5, 2017, [REDACTED] was asked by a Department of the Treasury official to prepare talking points for Secretary Ross for meetings with Chinese officials at Mar-a-Lago. [REDACTED] responded, "We have asked several groups for what they believe points should be. [Secretary Ross] will then review and decide what he thinks are relevant and priority." When the Department of the Treasury official asked for the timing of the

[https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/7C998256034FCC3F852582B0006DEA0B/\\$FILE/Wilber-L-Ross-11.07.17-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/7C998256034FCC3F852582B0006DEA0B/$FILE/Wilber-L-Ross-11.07.17-278T.pdf) (accessed August 26, 2020); and (3) Periodic Transaction Report (OGE Form 278-T), dated December 21, 2017, at p. 3. Available at

[https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/F65307D0E7C6CA00852582B0006DEA10/\\$FILE/Wilber-L-Ross-12.21.17-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/F65307D0E7C6CA00852582B0006DEA10/$FILE/Wilber-L-Ross-12.21.17-278T.pdf) (accessed August 26, 2020).

³⁸⁸ Additional versions of this document with later dates indicated that this document was updated throughout Secretary Ross's tenure.

delivery of the points, ██████████ responded, “Working on it now with [Secretary Ross].” Later that same day, ██████████ provided a document to a representative from Department of the Treasury and the Department’s then-Director of Strategic Policy and Planning titled “Proposed U.S. Trade Objectives.” This document was composed of 10 line items, including the following: “Offering to American producers long term contracts for the purchase of LNG and LPG would likely cost no extra price but would be helpful to that industry.” The talking points provided by Department of the Treasury staff and members of the Executive Office of the President, and U.S. Trade Representative staff did not include oil and gas interests. ██████████ forwarded the document titled “Proposed U.S. Trade Objectives” along with the talking points provided by Department of the Treasury staff to Secretary Ross on April 5, 2017.

The Mar-a-Lago Summit was a high-level event, and the result of the event was an agreement by the participants to continue dialogue with the goal of pursuing a 100-Day Plan detailing trade priorities between the U.S. and China. Following the Mar-a-Lago Summit, discussions continued between representatives of the Chinese government, Secretary Ross, ██████████, the Department’s Deputy Assistant Secretary for ██████████, and others, to include members of the Department of the Treasury and office of the U.S. Trade Representative.

Our review of emails of Department officials between the end of the Mar-a-Lago Summit and the release of the 100-Day Plan on May 10, 2017, revealed that LNG was a main topic of discussion. However, we received conflicting information regarding whether China introduced the idea of U.S. exports of LNG to China or whether a member of the U.S. delegation initially raised this topic at the Mar-a-Lago Summit. On May 10, 2017, the 100-Day Plan was released to the public. LNG exports to China were included as item number 4 on the 100-Day Plan.³⁸⁹

5. Events Following Release of the 100-Day Plan

Our review of email communications by Department officials—including Secretary Ross and ██████████ following the release of the 100-Day Plan on May 10, 2017, through October 2017—show that they both continued to be involved in discussions on the topic of U.S. exports of LNG to China. As examples of this involvement, on May 12, 2017, Secretary Ross conducted a call with President Trump, the purpose of which was to “update him on the positive development on LNG.” Also on May 12, 2017, during a meeting with a CEO of an American company that exports LNG, Secretary Ross asked for “help in promoting the benefit of the LNG commitment in the 100-Day Plan” and “offered to send a letter to his counterpart in China regarding the ‘geostrategic LNG concerns’” the CEO mentioned during the meeting, pending receipt of “necessary details.” Secretary

³⁸⁹ Joint Release: Initial Results of the 100-Day Action Plan of the U.S. – China Comprehensive Economic Dialogue, dated May 10, 2017.

Ross also facilitated discussions with Chinese officials regarding LNG during the U.S.-China Comprehensive Economic Dialogue in July 2017.³⁹⁰

The second phase of negotiations related to the Mar-a-Lago Summit and the 100-Day Plan was the Comprehensive Economic Dialogue (CED). The CED occurred on July 19, 2017, and was attended by Secretary Ross, Treasury Secretary Mnuchin, and Chinese officials. A goal of the CED was to continue carrying out the items set forth in the 100-Day Plan. While the 1-day meeting ended with no discernible positive results, email messages reviewed by our office showed Secretary Ross continued to encourage the Chinese on U.S. exports of LNG following the CED.

The third phase of negotiations with China related to trade initiatives was the Economic Summit in China in November 2017. The Economic Summit included discussions about U.S. LNG exports to China, but it appears the negotiations stalled after this.³⁹¹

6. Ethics Guidance Provided to Secretary Ross Regarding his Interests in the Oil and Gas Industry

The evidence establishes that neither Secretary Ross nor members of his office sought or received guidance from ELPD on potential conflicts of interest related to his participation at the Mar-a-Lago Summit. We interviewed the three ELPD attorneys responsible for advising Secretary Ross and his staff on ethical obligations, and each confirmed they were not contacted for advice on Secretary Ross's participation at the summit. Moreover, they reportedly did not become aware of Secretary Ross's attendance until approximately November 2017 when they saw it mentioned in media reports. We also interviewed other staff within the Office of the Secretary regarding the Mar-a-Lago Summit, and they were also unaware of this event and Secretary Ross's participation in it until after it occurred.

We questioned ELPD attorneys regarding what advice ELPD would have provided Secretary Ross regarding the Summit had they known about it at the time, considering he still owned oil and gas assets. One ELPD attorney responded they would have recommended that the Secretary not speak on increased LNG exports since he still had assets in the oil and gas industry. Another ELPD attorney responded they would have wanted to know more specifically about the meeting and what points were being discussed, but probably would have cautioned against participating or would have advised Secretary Ross to be in a listening mode.

We also reviewed non-summit related email communications in which ELPD attorneys provided advice to members of the Office of the Secretary for transmission to Secretary Ross regarding Secretary Ross's participation in meetings

³⁹⁰ See <https://www.commerce.gov/news/press-releases/2017/07/statement-secretary-ross-and-secretary-mnuchin-following-us-china> (accessed August 26, 2020).

³⁹¹ Additionally, because Secretary Ross sold his assets related to the oil and gas industry by October 25, 2017, his potential conflicts of interest related to LNG were reduced or nonexistent.

related to or with individuals in the oil and gas industry and found that Secretary Ross was advised at least eight times between March 2, 2017, and April 6, 2017, on such meetings. In those email communications, ELPD generally advised Secretary Ross that because he currently has financial interests in the oil and gas/energy sector, he needed to be in listening mode with respect to such matters and should not agree to take any actions with respect to any suggestions or recommendations that arise in the meeting. Included in those advisements was a March 17, 2017, email from an ELPD attorney regarding a meeting scheduled with the Chevron [REDACTED] on March 22, 2017. The email message from the ELPD attorney indicated the purpose of the meeting was for “Chevron to share its perspectives on global oil and gas developments and to discuss tax reform and trade.” Regarding the restrictions for this meeting, the ELPD attorney advised the following, “Secretary Ross may be in a listening mode concerning Chevron’s topics of discussion. He may discuss tax reform and trade in general. However, he may not discuss Chevron-specific issues or policy issues specifically affecting the oil and gas industry because he has financial interests in Chevron.”

In addition, following his participation in the Mar-a-Lago Summit, between April 12, 2017, and October 25, 2017, we found at least 15 other instances in which Secretary Ross was generally advised that he was disqualified from matters affecting the oil and gas/energy industry sector and should not agree to take any action or make any recommendations concerning that industry sector.

7. Responses from Secretary Ross

We interviewed Secretary Ross regarding his participation in the Mar-a-Lago Summit. Regarding the organization of the meeting, Secretary Ross stated, “we were not and I was not involved, nor to my knowledge anybody in Commerce, with setting up the agenda for the meeting. I believe it was done at the White House level.” Secretary Ross stated that he did not believe anyone at the Department came up with any “bullet points” for discussion, but he added his recollection might be wrong.

Regarding notifying Department ethics attorneys of the meeting and his participation, Secretary Ross stated, “Well, I don’t know, but the whole world knew. So, when specifically they were notified, I don’t know ... Well, look, the whole world knew who was going, when we were going. I mean, this was not a secret meeting.... This was a very widely-publicized... meeting.” Secretary Ross later added, “Well, it may be that [ELPD] didn’t get a specific request from us... That’s probably the case. But that’s different from the idea that this was somehow a secret. It was not[.]”

Secretary Ross was shown the document titled “Proposed U.S. Trade Objectives” previously described in subsection IV.C.4 of this chapter. With respect to the origin of the items in the document, Secretary Ross stated, “I don’t know where the points came from.” He added, “I can tell you that these were not the ones that were actually accepted [in the 100-Day Plan].” As to LPG and LNG exports to China

being included in these trade objectives, Secretary Ross stated he did not know where that idea originated, and his recollection was that only LNG was brought up at the Summit. Secretary Ross also stated, “The reason I’m puzzled, though, with this whole thing is some of these items do not strike me as items I personally would have supported.” Further, regarding the line item involving LPG and LNG, Secretary Ross noted, “It’s also couched in a very funny, funny term, funny language ... I’m pretty sure I didn’t draft these.... It doesn’t feel like my work.” Secretary Ross stated that he did not know who might have drafted the document, and he did not know how these objectives came about or how LNG came to be included as a topic. Secretary Ross confirmed that the only decision that resulted from the Mar-a-Lago Summit was to pursue a 100-Day Plan. Secretary Ross recalled that the topic of LNG exports to China came up during the Mar-a-Lago Summit, and he believed Gary Cohn, then-head of the Consumer Economic Alliance (CEA), brought up LNG in a joint session. Secretary Ross added that he, along with Mr. Cohn and Treasury Secretary Mnuchin, comprised the group that spoke actively during the Mar-a-Lago Summit. He confirmed the Chinese were very receptive to U.S. exports of LNG and added, “In fact, it could very well be the Chinese brought it up themselves.”

Secretary Ross stated that his recollection was that LNG was discussed, not LPG, and added, “Those are very different products.” Secretary Ross explained that the Chinese have very little natural gas and have been “import-dependent” on those products for a long time. He further explained, “The other thing about it is that China had been interested in LNG from us prior to Mar-a-Lago ... But the whole world knew that the U.S. was becoming a huge producer of LNG. So it was not a debated topic.... It was a topic that both sides found agreeable. They found it agreeable because it would give them another source besides the ones they had, uh, and it was agreeable from our point of view because it was an export.”

Regarding handling phone calls with the Chinese on this topic, Secretary Ross confirmed, “Oh, for sure, I had a lot of discussions with them; no question about that.” When we mentioned there was “pretty heavy involvement” by [REDACTED] and “some involvement” by Secretary Ross in the “negotiations for the 100-Day Plan” and specifically the “LNG exports issue,” Secretary Ross responded, “Well, there’s no question about that.” Secretary Ross also acknowledged that his negotiations with Chinese on LNG exports continued after the issuance of the 100-Day Plan.

Secretary Ross was asked when the Department’s ethics attorneys were advised that he retained oil and gas interests and participated in discussions with the Chinese about LNG exports. Secretary Ross responded, “Well, none of my oil and gas interests had anything to do with LNG exports. That’s the first point. Um, second, as you can see, all that was being discussed was the Chinese wanting to be sure that they had equal access to LNG to what other countries had.” Secretary Ross stated he did not see a conflict based on that. He added, “It was the U.S. policy publicly announced that we wanted to export LNG, not me inventing it. The President talked about that before he was elected.... [T]alked about it, I think, in his

Inauguration. Talked about it zillions of times since. So that was not any news to anybody.... Nor was it news to anybody that China needs LNG.” When Secretary Ross was confronted with the fact that he participated in discussions with the Chinese that could have had an industry-wide impact on the oil and gas industry, he stated the following:

Well, it might have. It might have potentially. But my point is that was likely to have occurred totally independently of any of these discussions. LNG, natural gas is a global market. So let’s say we had taken a different tack and said no, China, we’re not going to sell you any LNG. Well, all that would have happened, they [would] have bought their LNG from someone else, and we would have sold our LNG to whatever customer they displaced.... That’s part of why it wasn’t controversial. It isn’t like there’s a shortage of LNG, nor is there a shortage of demand for LNG. These discussions were about the technicalities of how to implement an arrangement between the two. That’s all it was about. It had nothing to do with primary demand for LNG. Primary demand for LNG would have had a possible impact on somebody’s holdings. But primary – this had nothing to do with primary demand. Primary demand didn’t change one bit as a result of the 100-Day Plan or any subsequent thing.... So I don’t agree with the characterization that the outcome of these talks would have been particularly consequential for any of the holdings I had... and especially since they were not exporters.

Secretary Ross acknowledged the method for exporting natural gas is to convert it to LNG and transport it in LNG form, so that if a company has the potential to export natural gas, and China wants to buy that natural gas, it is going to become LNG. Secretary Ross added the following:

The amount of LNG demand internationally is what will ultimately determine the exports that we make. There was nothing in these discussions that addressed the issue how much demand would there be globally for LNG. Whatever it is, it is. All that was being discussed here was some degree of allocation potentially of the demand and the supply.... But the supply would have been the same.... The demand would have been the same. Therefore, there’s no reason to think -- and, in fact, it was one of the reasons that some people said, uh, not in the big meetings, but before them, we shouldn’t even bother to talk about LNG because it’s going to be what it is, and what’s the difference if we sell it to China or if we sell it to South Korea?

Secretary Ross noted that the price of LNG during that period went down “even though the talks were progressing on a very affirmative basis.” He further noted that with respect to the price of LNG before, during, and after the announcements about the talks with China, “you will not find that the market was influenced by these talks, and it shouldn’t have been.” Secretary Ross stated the talks he had with China regarding LNG were a “zillion miles” from having a direct and predictable effect. Secretary Ross explained, “All it was was the, the -- how we would implement the already previously-announced decision by the government that they wanted to

export more LNG.” He later reiterated, “Well, all that we were doing in the talks was enunciating previously-established U.S. policy. That’s what my role was.”

We mentioned to Secretary Ross that he held a financial interest in Chevron and received advice from ELPD attorneys regarding that interest as it related to meetings with Chevron and other companies in the oil and gas industry. We reminded Secretary Ross that for a meeting with Chevron representatives, while he still held an interest in Chevron, he was advised he could be in a listening mode concerning Chevron’s topics of discussion, and he could discuss tax reforms and trade in general, but he could not discuss Chevron-specific issues or policies or issues specifically affecting the oil and gas industry because he had financial interests in Chevron. We provided copies of the email messages from ELPD for the previously mentioned advisements to Secretary Ross and his counsel during the interview, and pointed out that these email messages showed that around the time of the Mar-a-Lago Summit, Secretary Ross received advice that he could not discuss policy issues affecting the oil and gas industry because he had financial interests in that industry.

In response, Secretary Ross explained that he interpreted the advice from ELPD to mean that each oil and gas company has different interests, and he stated, “What [ELPD] didn’t want was me to be discussing with Chevron things that they wanted to be overall industry problem[s] that would benefit Chevron.” Secretary Ross asserted that he followed the advice in those meetings, and stated, in general, “The DOC attorneys, what they had said about the individual company meetings I adhered to.... I not only was aware of the nature of DOC ethics concern, I adhered to it at all those meetings with the individual companies.”

We asserted that these email messages showed that Secretary Ross received advice for multiple individual meetings related to his oil and gas holdings and noted in the meetings with the Chinese related to the Mar-a-Lago Summit (for which he did not receive ELPD advice) Secretary Ross talked about LNG exports. Secretary Ross again tied his actions to the idea that demand for LNG was a constant, and he stated the following:

[G]lobal demand for LNG and Chinese demand for LNG are going to be whatever they are. It has nothing to do with their negotiation with the U.S. ... Do we also sort of agree the global supply will be whatever it’s going to be, regardless of whether they sell it to China or they sell it to South Korea or they sell it to Japan? ... Therefore, to me, this was not going to be relevant to any of those producers because they were going to sell their stuff anyway.... The only question was would they be permitted to sell it to China and under what terms? ... And the reason for that was a very technical thing. Under some sort of legislation here, only countries with whom we had a free trade agreement could do that independently of a Department of Energy certification ... or notice. ... So at the end of the day, it was going to be Department of Energy that decided on particular shipments. And like when Cheniere ships a load of LNG to China, they, they go through this whole process. We don’t

make that decision. ... That would be something that had a particular impact, a measurable impact on a particular company. ... This stuff at this macro, macro-level I don't believe had any impact.

Regarding whether he had participated in trade deals to increase the export of LNG, Secretary Ross stated, "This did not increase the export. It simply addressed the question how American LNG might be allocated among buyers ... I did not do anything that led to an increase in the export of LNG." He added, "I think the more fundamental point is the characterization that it would somehow uniquely benefit the industry is wrong. I, frankly, don't even think it was a close call."

Regarding his role in the talks with the Chinese, Secretary Ross stated, "I was an announcer of policy. Um, it had been U.S. Government policy, especially this Administration, for quite some time to, uh, try to sell more LNG, try to develop more LNG ... try to do everything. ... But, uh, it did not increase the price of the product, did not increase the physical volume sold." He compared that situation to a hypothetical situation where he might be in a meeting with Chevron representatives, and the Chevron representatives inform him that they are concerned about an oversupply and ask him to do something to help get rid of it. Secretary Ross stated, "That's the kind of thing that [ELPD] didn't want me to do, kind of thing I did not do. It was not what these whole discussions were about. This is simply re-announcing established policy."

Secretary Ross also noted that one could argue improving the U.S. economy is going to improve the demand for natural gas and, therefore, he should not have anything to do with discussions that could improve the U.S. economy, and he reiterated, "So it's an already established policy that I'm simply communicating to the Chinese." He explained that as talks got more serious,

[the Department of Energy] came in and started to play the real role. They were not the real interlocutor with the Chinese. So I would be communicating on occasion their position on things. ... Again, that's not me making a decision, number one, or even a recommendation. ... But the overall thing is this is really like saying, because you have interests in commercial activities, you can't have anything to do with building the U.S. economy because it will help them. I mean, if that's the position, then I shouldn't have been able to talk to anybody about anything.

D. Interests in the Rail and/or Steel Industries (e.g., The Greenbrier Companies, Inc.)

I. Allegation and Background

We reviewed the circumstances regarding Secretary Ross's initiation of an investigation under Section 232 of the Trade Expansion Act of 1962 (the "Section 232 Investigation") while holding an interest in Greenbrier. The purpose of the Section 232 investigation was to determine the effects on national security of steel

imports.³⁹² A possible outcome of the investigation would be the imposition of tariffs on imported steel products. Greenbrier is a supplier of equipment and services to the freight rail transportation markets and designs, manufactures, and markets railroad freight car equipment. Greenbrier also provides wheel services, parts, leasing, and other services to the railroad and related transportation industries in North America and provides railcar repair, refurbishment, and retrofitting services.³⁹³ According to a letter from Greenbrier's █████ in connection with the Section 232 investigation, Greenbrier "depend[s] on having access to a stable supply of railcar axles and wheels made of steel."³⁹⁴

Due to what Secretary Ross and his counsel explained as a mistake, Secretary Ross did not initially disclose his direct interest in Greenbrier on his Nominee OGE Form 278e, but he reported he "no longer held" an interest in Greenbrier that had been held through his investment in WLR Recovery Associates IV LLC/WLR Recovery Fund IV, L.P.³⁹⁵ However, "rail," "railroad manufacturing and equipment (Europe and North America)" and "railway components materials" were included as industry sectors in which Secretary Ross was disqualified as of January 23, 2017. As explained by the DAEO in the preamble to the list of industry sectors from which Secretary Ross was disqualified, "Until these holdings are fully divested, he is disqualified from participating as a Government official, including by rendering advice or making recommendations, regarding matters before the Government that would likely affect companies in which he or his spouse have financial interests." Secretary Ross divested his interests in Greenbrier in two separate transactions: (1) a sale of 1,938 shares on April 10, 2017, and (2) a "short against the box" transaction of 9,032 shares that he initiated on May 25, 2017, and that closed on December 15, 2017.

2. Timeline of Events

From 2009 to 2012, Secretary Ross served as a Director of Greenbrier and received Greenbrier stock as compensation in accordance with the company's compensation plan for directors.³⁹⁶

On December 19, 2016, Secretary Ross electronically signed his Nominee OGE Form 278e, which did not report that he held an interest in Greenbrier.

³⁹² U.S. Department of Commerce, *Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel*, 82 Fed. Reg. 19205 (Apr. 26, 2017). Available at <https://www.federalregister.gov/documents/2017/04/26/2017-08499/notice-request-for-public-comments-and-public-hearing-on-section-232-national-security-investigation> (accessed August 26, 2020).

³⁹³ <https://www.gbrx.com/about-us/> (accessed August 26, 2020).

³⁹⁴ Letter from Greenbrier to Industrial Studies, BIS, RE: *Notice of Request for Public Comments on the Secretary of Commerce's Initiation of an Investigation to Determine the National Security Effects of Steel Imports*, dated May 30, 2017. Available at <https://www.bis.doc.gov/index.php/232-steel-public-comments/1798-greenbrier-companies-public-comment/file> (accessed August 26, 2020).

³⁹⁵ Nominee OGE Form 278e, at p. 8.

³⁹⁶ (1) Memorandum from Secretary Ross to DAEO, dated April 27, 2018, at p. 2; see also (2) OGE Form 278-T, dated December 21, 2017, at p. 4.

On January 23, 2017, ELPD provided the Department's Assistant General Counsel for Administration and Transactions with interim guidance regarding Secretary Ross's disqualifications while he worked to divest his assets. "Rail" and "steel" were included in the list of industry sectors from which Ross was disqualified.

On February 28, 2017, Secretary Ross was sworn in as Secretary of Commerce.

On March 25, 2017, the then-Director of the Office of Policy and Strategic Planning, notified Department officials that Secretary Ross was planning to send a letter to President Trump on March 28, 2017, outlining the dire impact of global overcapacity in steel on the national security of the U.S. ELPD was notified of this plan, and, in response, the DAEO informed the Department's Assistant General Counsel for Administration and Transactions, "The Secretary CANNOT send the letter unless he has divested his steel holdings." This restriction was relayed to the then-Director of the Office of Policy and Strategic Planning in an email on the same day.

On March 31, 2017, Secretary Ross's [REDACTED] sent an email to the DAEO with an attachment that included an "Irrevocable Stock or Bond Power" through which Secretary Ross appointed his broker to transfer 1,938 shares of common stock in Greenbrier. Secretary Ross signed this document on March 31, 2017.

On April 6, 2017, Secretary Ross received 1,938 Greenbrier shares into his brokerage account, and he sold these shares on April 10, 2017, resulting in proceeds of \$92,731.27 (trade date: April 10, 2017; settlement date: April 13, 2017).

On April 13, 2017, a representative from Greenbrier contacted Secretary Ross's [REDACTED] and requested a meeting between Secretary Ross and Greenbrier [REDACTED] during the week of May 15–19, 2017. [REDACTED] responded to [REDACTED], "Given [Secretary Ross's] prior relationship with [Greenbrier]. The meeting needs to be a social/ informal meeting. No government issues. No [Greenbrier [REDACTED]] and no [Greenbrier lobbyist]." Greenbrier's [REDACTED] responded to [REDACTED] and [REDACTED], and stated, "Yes. [REDACTED] solo. Plan was always social interaction – [REDACTED] & Secretary." [REDACTED] also responded, "I am coming just by myself."

Later that same day, [REDACTED] emailed the DAEO and asked, "Can the Secretary meet with the [REDACTED] of [G]reenbrier? We were both on the board of [Greenbrier]. It is a rail car manufacturing company. There is no specific agenda. Then [sic] [REDACTED] is in D.C. And wants to say hello. 15 min max. Please advise." The DAEO responded to [REDACTED] question and stated, "The Secretary can meet with the Greenbrier [REDACTED] for a quick social/informal get-together but not to discuss Government business." After an ELPD attorney noted to the DAEO that Greenbrier was not on Secretary Ross's Nominee OGE Form 278e but they received notice he sold it on March 31, 2017, the DAEO responded again to [REDACTED] on April 14, 2017, and stated the following:

I double-checked and the Secretary's financial disclosure report does not list a position with Greenbrier. If his board service ended more than two years before his appointment as Secretary, he is not disqualified from working on matters in which Greenbrier is a party. In that case a substantive meeting with the Greenbrier [REDACTED] can take place; however, because he still owns CSX stock he could not discuss railroad-specific issues. Can you please clarify?

We did not find a response from [REDACTED] in the email messages we reviewed.

On April 17, 2017, the then-Director of the Office of Policy and Strategic Planning informed Secretary Ross that the Department would send a letter from Secretary Ross to the Secretary of Defense on the evening of April 19, 2017. The letter would notify the Department of Defense that the Department of Commerce was initiating the Section 232 investigation. The then-Director of the Office of Policy and Strategic Planning added that President Trump would sign a presidential memorandum directing Secretary Ross "to complete the study [he had] already initiated" at 11:45 a.m. on April 20, 2017, in a signing ceremony.

The next day—April 18, 2017—Secretary Ross responded to the then-Director of the Office of Policy and Strategic Planning's email confirming this plan. Also on April 18, 2017, an ELPD attorney sent an email to Secretary Ross's [REDACTED] and noted ELPD was aware that Greenbrier assets had been sold but that "no transaction report [OGE Form 278-T] has been filed."

On April 19, 2017, in response to a Department official by whom he was asked to clear Secretary Ross to initiate the Section 232 investigation, the DAEO stated the following:

This concerns a matter that will affect companies in the steel industry sector. Although Secretary Ross initially had holdings in two steel manufacturing companies, we have been advised that he has divested these interests so that he is no longer disqualified from participating in matters where the Government action will affect the steel industry sector. Therefore, the Secretary may sign this letter.

Based on the time stamps in the email messages, at 4:34 p.m., or approximately 20 minutes after the DAEO sent this message, Secretary Ross contacted Greenbrier [REDACTED] via email from his personal email account and inquired about his interest in Greenbrier. In the email, Secretary Ross stated the following:

I am being [required] by the Office of Government Ethics to sell my Greenbrier shares I found one certificate but with all the moving about I don't believe I have found the entire amount. Who at Greenbrier could tell me what number of shares I was [issued], in what name they are held and how to deal with the potential of a lost stock certificate. I hate to bother you with this but I am under a bit of time pressure.

Secretary Ross announced the Section 232 investigation on April 19, 2017, and President Trump signed a memorandum directing Secretary Ross to proceed with the Section 232 investigation on April 20, 2017, as previously outlined.³⁹⁷

On April 21, 2017, a representative from Greenbrier emailed [REDACTED] about Secretary Ross's April 19, 2017, email to [REDACTED] regarding [REDACTED] remaining interest in Greenbrier. The Greenbrier representative stated, "[REDACTED] received the below email from Mr. Ross and wanted to confirm it was legitimate before we send out any documents." In response, [REDACTED] wrote, "Yes it is but since that is personal business for [Secretary Ross] please only respond to his personal email and likewise for me on this topic."

On April 26, 2017, an associate with the company Venn Strategies provided a letter to Secretary Ross via email from the [REDACTED] of the Rail Security Alliance ("RSA") regarding a meeting of "the leaders of the nation's leading rail manufacturers" in Washington, DC, to "discuss the economic and security concerns presented by the growing presence of Chinese state-owned enterprise in the United States in critical infrastructure sectors like rail." The letter stated the following:

As you are no doubt aware, Chinese investment by government-owned firms in the U.S. continues to grow exponentially and strategically, raising serious questions about growing risks posed to U.S. national and economic security interests. The leaders of RSA hope to be able to discuss this matter with you and share some information relevant to the Department's policy agenda and priorities.

The letter listed [REDACTED] as a member of the RSA's Executive Board.

The Venn Strategies associate followed up with Secretary Ross's [REDACTED] on May 8, 2017, regarding the meeting request with RSA members on May 16, 2017. The request was forwarded to [REDACTED], and [REDACTED] replied, "If [Secretary Ross] has 15 min then ok....please check with ethics as I believe he has [Greenbrier] stock...which [REDACTED] is the [REDACTED]. I also own stock in [Greenbrier]."

Also on May 8, 2017, a Greenbrier representative contacted Secretary Ross via email with a copy to [REDACTED]. The email message provided information from Computershare regarding obtaining a surety bond for Secretary Ross's lost Greenbrier stock certificates along with instructions for issuance of the shares. In the email message, the Greenbrier representative indicated that he spoke with Secretary Ross regarding this issue on the same day.

³⁹⁷ (1) U.S. Department of Commerce, *Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel*, 82 Fed. Reg. 19205 (Apr. 26, 2017). Available at <https://www.federalregister.gov/documents/2017/04/26/2017-08499/notice-request-for-public-comments-and-public-hearing-on-section-232-national-security-investigation> (accessed August 26, 2020); and (2) DOC Press release, "Presidential Memorandum Prioritizes Commerce Steel Investigation" April 20, 2017. Available at <https://www.commerce.gov/news/press-releases/2017/04/presidential-memorandum-prioritizes-commerce-steel-investigation> (accessed August 26, 2020).

On May 9, 2017, a Department official forwarded the email chain regarding the RSA meeting request, which includes the information from Venn Strategies and the [REDACTED] of the RSA previously described, to ELPD attorneys and asked them to “check the ethics on this one.” A few hours later, an ELPD attorney responded with the following guidance:

This guidance is based on our understanding that Secretary Ross has divested all of his interest in Greenbrier and that he has not served on the Greenbrier board of directors at any time since January 2015.

The Secretary may meet with members of the Executive Board of the Rail Security Alliance to generally discuss matters related to U.S. national and economic security interests and risks posed by investments of Chinese government-owned firms in the U.S. However, because he continues to hold financial interests in rail transportation and equipment (companies not represented at this meeting) he should revert to a listening mode regarding any specific implications affecting the rail sector and should avoid making any recommendations (or agreeing to take any actions) involving these areas.

Following the advice by ELPD regarding the meeting, the Department official that requested an ethics review of the situation clarified that [REDACTED] will not be attending the proposed meeting with RSA, but that [REDACTED] will still have a separate “social” meeting with Secretary Ross on May 18, 2017. [REDACTED] responded only to the Department official that originally requested the ethics advice and stated, “Ok. 15 min meeting. Low priority. Needs ethics clearing because he has rail holdings through [Greenbrier].” ELPD was not a recipient of [REDACTED] email, and we did not find an email showing that any of the recipients or participants in this email chain responded to ELPD to clarify the status of Secretary Ross’s holdings in Greenbrier.

On May 10, 2017, Computershare Investor Services issued a letter to Secretary Ross regarding “obtaining new or replacement securities” in Greenbrier. Specifically, the letter stated the following:

We acknowledge receiving a communication advising us of the loss of Company certificate(s) [(]“Lost Securities”) listed in the enclosed Lost Securities Affidavit and Application for Lost Securities Bond for Computershare Accounts ... A stop transfer restriction has been posted against the Lost Securities and, as required by law, a Securities Information Center report has been electronically filed with the financial community. ... In addition, an open penalty surety bond is required in connection with your request for Replacement Securities.

On May 12, 2017, a Greenbrier representative sent an email message to Secretary Ross, with a copy to [REDACTED], and stated the following:

Once the subject of paper certificates was raised, we have considered best practices for Greenbrier shareholder records and discussed various possibilities with our transfer agent, Computershare. ... We will be instructing Computershare that Greenbrier will cover the cost

of surety bonds required by them for any shareholder who has lost a physical stock certificate. My expectation is that Computershare will not charge you for the issuance of a bond.

On May 15, 2017, a Special Assistant in the Department's Office of Business Liaison informed [REDACTED] that [REDACTED] staff notified him that they "expect the meeting with the Secretary to be social and will not cover specific concerns."

On May 17, 2017, the DAEO emailed Secretary Ross's [REDACTED] and informed [REDACTED] that Secretary Ross was required to complete an OGE Form 278-T for his sale of Greenbrier stock on March 31, 2017. The DAEO noted the report was due on May 30, 2017. Secretary Ross's [REDACTED] responded later that day that the transaction report had been completed. Secretary Ross electronically signed a transaction report on May 17, 2017, disclosing he sold Greenbrier stock in an amount between \$50,001 and \$100,000.³⁹⁸

Also on May 17, 2017, [REDACTED] emailed [REDACTED] a list of CEOs that would be accompanying President Trump on a trip to Riyadh, Saudi Arabia, during the upcoming weekend. [REDACTED] name was among the CEOs listed.

On May 18, 2017, the calendars of Secretary Ross and [REDACTED] show that they met with [REDACTED] for lunch at the White House from 12:00 p.m. to 1:00 p.m.³⁹⁹ Also on May 18, 2017, Secretary Ross's [REDACTED] emailed a Greenbrier representative an attachment that included a "Lost Securities Affidavit and Application for Lost Securities Bond for Computershare Accounts" associated with 9,032 Greenbrier shares that was signed by Secretary Ross on May 15, 2017.

On May 19, 2017, Secretary Ross's [REDACTED] communicated with a Greenbrier representative about the additional paperwork related to Ross's lost stock certificate application. The Greenbrier representative noted that he provided a draft of the form, but needed Secretary Ross's signature. Secretary Ross's representative stated that Secretary Ross was traveling to Saudi Arabia and would return on Monday (May 22, 2017) to take of it.

Email communications between Secretary Ross's [REDACTED], the Greenbrier representative, and the Computershare representative regarding completing the remaining paperwork for Secretary Ross's lost Greenbrier stock certificate continued on May 22, May 23, May 24, June 2, and June 6, 2017.

On May 25, 2017, a representative from the U.S. Chamber of Commerce provided Secretary Ross with a copy of a letter that was sent to President Trump in support of Secretary Ross's "efforts to modernize our relationship with Mexic[o] and

³⁹⁸ OGE Form 278-T, dated May 17, 2017.

³⁹⁹ We also located a meeting cancellation notice for a meeting with [REDACTED] at the Secretary's Office on May 18, 2017, from 1:00 p.m. to 1:15 p.m.

Canada.” The letter was signed by 32 CEOs of U.S. companies, and [REDACTED] signed the letter as [REDACTED] of Greenbrier.

Also on May 25, 2017, Secretary Ross initiated a short sale for 9,032 shares of Greenbrier (trade date: May 25, 2017; settlement date: May 31, 2017). As previously explained in section IV.D.1 of this chapter, this transaction was a “short against the box,” because Secretary Ross owned the shares he was shorting, but he did not have immediate access to them.

On May 31, 2017, [REDACTED] emailed [REDACTED] and notified [REDACTED] that Greenbrier had submitted public comments to the Bureau of Industry and Security (BIS) regarding the Section 232 investigation’s effect on the Sumitomo Corporation of Americas (“Sumitomo”). [REDACTED] attached Greenbrier’s letter to BIS and stated that, “I am sending the attached as a heads-up, regarding Sumitomo. I wanted to be sure you were aware that we are intervening in favor of this particular supplier’s operations in America.” The attached letter stated, “We depend on having access to a stable supply of railcar axles and wheels made of steel, including those received from Sumitomo ... imported from Japan.”⁴⁰⁰

On June 1, 2017, Secretary Ross’s [REDACTED] provided a list of Secretary Ross’s recent sales of assets to the DAEO. In response, the DAEO stated that the date of sale for Secretary Ross’s Greenbrier shares should be changed to May 25, 2017, because ELPD “decided that the date for purposes of the Transaction Reports [OGE Form 278-T] should be the ‘Trade Date’ rather than the ‘Settlement Date’ ... I will be sending the Transaction Report [OGE Form 278-T] back to the Secretary (you) for amendment.” On the same date, Secretary Ross electronically signed an OGE Form 278-T disclosing the sale of Greenbrier stock on May 31, 2017, in an amount ranging between \$250,001 and \$500,000.⁴⁰¹

On June 23, 2017, [REDACTED] sent an email message to [REDACTED] and informed [REDACTED] that Greenbrier confirmed two new members to the company’s board of directors to replace [REDACTED]. [REDACTED] stated, “Thanks for your advice and counsel on new directors for Greenbrier.”

On September 21, 2017, the DAEO provided an updated list of the industry sectors and sub-sectors from which Secretary Ross was disqualified to members of his ELPD staff. The list included the following statement, “Below is a list of industry sectors in which Secretary Ross has financial holdings as of September 1, 2017; depending on the specific issue, the Secretary may be disqualified from participating in a matter affecting companies in any of these industry sectors; review by an ethics official is necessary if such a matter is being considered for presentation to the Secretary.”

⁴⁰⁰ Letter from Greenbrier to Industrial Studies, BIS, Re: *Notice of Request for Public Comments on the Secretary of Commerce’s Initiation of an Investigation to Determine the National Security Effects of Steel Imports*, dated May 30, 2017.

⁴⁰¹ OGE Form 278-T, dated June 1, 2017.

Included on this list was “Rail,” “Railroad Manufacturing and Equipment (Europe and North America),” and “Railway Components Materials.”

On October 3, 2017, a representative from J.P. Morgan Private Bank (“J.P. Morgan”) (with whom Secretary Ross held a brokerage account) emailed Secretary Ross’s [REDACTED] and asked whether [REDACTED] “had any luck securing the lost shares for Greenbrier.” The J.P. Morgan representative further stated, “The only activity for Greenbrier that I see was a receipt of securities (1,938 shares) in April and the subsequent sale of the position. It looks like an additional 9,032 shares were sold short in the margin account in May.” Secretary Ross’s [REDACTED] forwarded this email to the DAEO and stated, “Does this make sense to you? I thought we were done with Greenbrier.” The DAEO responded, “I thought Greenbrier was all gone as well; can you check with the Secretary or JPMorgan and confirm that there are definitely no Greenbrier holdings left at this time?” Secretary Ross’s [REDACTED] contacted Secretary Ross regarding the situation and the Secretary answered, “That is because I haven’t gotten the replacement for the lost certificate since I made a short sale to offset the long position. Net effect is I have no economic interest in [Greenbrier] and will close out the short when the certificate arrives.” Secretary Ross’s [REDACTED] then forwarded Secretary Ross’s response to the DAEO.

Secretary Ross’s monthly brokerage account statement for December 2017 reflected a receipt of 9,032 shares of Greenbrier from “Computershare Investor Services” on December 14, 2017 (trade date: December 14, 2017). These shares were transferred out of the brokerage account on December 15, 2017 (trade date: December 15, 2017).

On December 21, 2017, Secretary Ross electronically signed a third OGE Form 278-T related to the divestiture of his interest in Greenbrier. In this OGE Form 278-T, Secretary Ross reported a sale of Greenbrier holdings on December 14, 2017, in an amount between \$250,001 and \$500,000. Although, as has been previously explained, this transaction represented the closing of his short against the box position, the OGE Form 278-T did not mention this was a short position. The endnote in the OGE Form 278-T associated with this transaction stated the following:

Shares in Greenbrier I earned as a director of the company for the period 2009-2012 were recorded in electronic book entry by a transfer agent but I otherwise did not have record of these shares in a personal account. When I prepared my nominee report these holding were inadvertently not included. Upon realizing that unrestricted shares remained credited to me on the books of Greenbrier, I promptly arranged for the agent to transfer those share interests to a personal account, after which I quickly sold them.⁴⁰²

⁴⁰² OGE Form 278-T, dated December 21, 2017.

3. Explanations Regarding Greenbrier Interests Provided by Secretary Ross and his Counsel

Secretary Ross and his counsel provided multiple explanations regarding divestiture of the Greenbrier shares and potential related conflicts of interest.

As previously noted briefly in the first chapter of this report at subsection V.E, Secretary Ross failed to report a nearly \$500,000 direct interest in Greenbrier shares in his Nominee OGE Form 278e. However, we found no evidence that would lead to a conclusion Secretary Ross knowingly and willfully failed to include his direct interest in Greenbrier on his Nominee OGE Form 278e. In an April 27, 2018, memorandum to the DAEO, Secretary Ross explained certain details related to this oversight and subsequent sales of Greenbrier shares. In that memorandum, Secretary Ross explained he received Greenbrier stock for his service as a Director of Greenbrier, and that stock was maintained by a stock transfer agent for the company. In sum, Secretary Ross stated the failure to report these shares on his Nominee OGE Form 278e was inadvertent, as drafts of his Nominee OGE Form 278e included information about these shares.⁴⁰³ However, the explanation Secretary Ross provided in this memorandum did not mention the lost stock certificate or the fact that the transactions reported in the June 1, 2017, and December 21, 2017, OGE Form 278-T documents were related to the opening and closing of a short against the box transaction, as explained in the “*Timeline of Events*” section of this chapter. Because the memorandum was focused on divestitures and compliance with Secretary Ross’s Ethics Agreement, it also did not address any potential conflicts of interest related to Secretary Ross’s continued ownership of Greenbrier.

In response to our request for documents and additional information about Secretary Ross’s interest in Greenbrier, Secretary Ross’s counsel reiterated Secretary Ross’s statements in the April 27, 2018, memorandum and verified that the June 1, 2017, and December 21, 2017, OGE Form 278-T documents reporting divestiture of these assets should have referenced the fact that the transactions involved a short sale.

Secretary Ross’s counsel directly addressed the potential for a conflict of interest related to Secretary Ross’s Greenbrier shares in an October 17, 2018, letter to the Inspector General that was prompted by the issues raised in the Campaign Legal Center’s August 13, 2018, letter to the Inspector General. Secretary Ross’s counsel summarized the situation as follows:

The Greenbrier holdings did not disqualify Secretary Ross from participating in the § 232 steel investigation for the same reason: Greenbrier never requested an exclusion from the resulting steel tariffs, and downstream economic consequences on Greenbrier from a broad policy change on tariffs are insufficiently direct to create a conflict. Moreover, Secretary Ross did not believe he had a financial interest in

⁴⁰³ Memorandum from Secretary Ross to DAEO, dated April 27, 2018, at p. 2.

Greenbrier at the time he participated in the § 232 investigation, further defeating any alleged conflict.

In this letter to the Inspector General, Secretary Ross's counsel argued that Secretary Ross's usage of a short against the box transaction to divest his interest in Greenbrier neutralized his financial position in the investment, and the May 25, 2017, transaction effectively terminated Secretary Ross's financial interest in Greenbrier on that date. Secretary Ross's counsel further argued the following:

In essence, the sale simply extended the time for delivery by him of the shares to close the position. His contemporaneous execution of other trades in the same manner demonstrates his firm belief that selling short against the box terminated his financial interests in those stocks, including Greenbrier, and was in fact the only means of exiting his positions in stocks that he did not then control and could not sell directly with confidence that the trade would be closed within the required settlement period. This consistent approach and its motivating belief negates the contention that Secretary Ross held the state of knowledge that a conflict of interest violation requires. See 18 U.S.C. § 208(a).

We addressed Secretary Ross's interest in Greenbrier and resulting potential conflicts of interest with Secretary Ross during an interview. Secretary Ross explained his relationship with Greenbrier's [REDACTED], as "mostly business, but it also became personal. We're reasonably friendly ... our main interaction was relating to the company." During an interview with our office, Secretary Ross was shown the "Irrevocable Stock or Bond Power" he signed on March 31, 2017, relating to 1,938 Greenbrier shares that he reported he sold on March 31, 2017, in an OGE Form 278-T, dated May 17, 2017. Secretary Ross stated that at the time he initiated this sale, he believed he was liquidating all of the shares he thought he held in Greenbrier. Secretary Ross was also shown the email he sent to [REDACTED] on April 19, 2017, in which he inquired about additional Greenbrier shares. When asked if this email was the point in time at which he thought there might be other Greenbrier shares, Secretary Ross stated, "Well, I was concerned that there might be. ... And that's what is the tone of the letter, to find out what the factual information was." Secretary Ross was asked what led him to think there might be more Greenbrier shares, and he responded, "Well, it was just cautious. Um, because, um, I thought about it, and I thought 1,937 shares, that doesn't sound like a lot for so many years on the Board. ... Maybe, maybe there are more. ... And since there had been the inadvertent failure to disclose originally, I wanted to find out are there any more. ... And if there were, wanted to complete the divestiture." Secretary Ross added that the reason he wrote to [REDACTED] was because he did not remember the name of Greenbrier's [REDACTED].

Secretary Ross was then directed to the portion of his email to [REDACTED] where he stated, he was "under a bit of time pressure." Secretary Ross indicated this statement referred to the fact that there had already been the mistake with the exclusion of his interest in Greenbrier on his Nominee OGE Form 278e, and he

“didn’t want to leave -- months and months go by in case there was another mistake. I wanted to get ... this whole thing corrected and dealt with, so that it was cleaned up.” It was pointed out to Secretary Ross that the date of his email to [REDACTED] [REDACTED] was the same date that he notified the Department of Defense that the Section 232 investigation was beginning. Secretary Ross stated the timing of these two events was “coincidental.”

Secretary Ross was then asked about the request for a meeting with “the nation’s leading rail manufacturers” that he received on April 26, 2017, and the subsequent advice of ELPD on May 9, 2017, that he could attend because as far as ELPD knew he did not have Greenbrier stock. Secretary Ross responded that it was his recollection that [REDACTED] did not attend the meeting and that “the meeting turned out to be nothing to do with Greenbrier. Uh, what the meeting had to do with was they were concerned that the Chinese rail company was in the process of getting the Chicago Mass Transit contract for ... passenger cars, subway cars. Greenbrier does not, never did, still to this day never has, uh, manufactured any mass transit cars. So, in any event, it was nothing relevant to Greenbrier.” Secretary Ross added, “I was just a passive participant in [the meeting]. ... So, the meeting itself turned out to be totally irrelevant ... Commerce has nothing to do with mass transit systems.” Secretary Ross further stated, “So, the reality is there was nothing at that meeting that had anything remotely to do with Greenbrier.”

We also asked Secretary Ross about his meeting with [REDACTED] at the White House on May 18, 2017. Secretary Ross stated, “What we decided to do was have just a friendly lunch with [REDACTED] at the Navy Mess in the White House as a courtesy. ... Uh, and it was totally a non-business conversation. ... Nonetheless we disclosed it.” Secretary Ross did not recall who set up the lunch with [REDACTED], and he stated “But, the idea was to have a social lunch clearly divorced from any commercial activity. ... Whether it was [REDACTED]’s idea, whether it was [REDACTED]’s idea, whether it was mine, I really don’t know.” He noted that the meeting was “certainly disclosed” to ELPD, and he stated “as far as I know, they raised no objection to it.” Secretary Ross then confirmed that he and [REDACTED] had lunch with [REDACTED] at the White House and did not discuss any business matters.

Finally, we showed Secretary Ross the letter from [REDACTED] to BIS regarding steel imports from Sumitomo. He did not recall the letter and noted he was not copied on the email from [REDACTED] to [REDACTED] to which the letter was attached. Secretary Ross added, “If you read the letter -- and I’m reading it for the first time here -- um, it’s about steel wheels and other components. Um, now that I’m reading it, I don’t even know why he wrote the letter.” Secretary Ross explained that the Section 232 investigation “basically dealt with steel in a very raw form.” He noted that it did not deal with parts that are manufactured from steel. Secretary Ross added, “So, in any event, I, I think it’s very unlikely that the product he’s talking about was even covered. I’m reasonably sure if you read the 232 report, it doesn’t even address steel wheels and steel axles ... because that’s not within the scope of the report.” Secretary Ross confirmed he was not aware of this letter, and to his

recollection, [REDACTED] did not discuss he would be sending this letter when they had lunch at the White House. Secretary Ross also confirmed he had no discussions with [REDACTED], [REDACTED], or the BIS's Director of Industrial Studies (the addressee of the letter from [REDACTED]) regarding the letter, and there was never any influence by him or anyone that he knew of to intervene on behalf of Greenbrier or Sumitomo with respect to this matter. Regarding the letter, Secretary Ross added that it appeared to be referring to steel wheels and axles, and those items were not part of the Section 232 investigation. Furthermore, he noted that "[J]ust based on the information in the letter, I don't think Greenbrier would have been an appropriate applicant in any event because it doesn't, it doesn't, it doesn't look as though they are the importer. It's the importer who is supposed to file the 232s."

Following the interview, Secretary Ross provided our office with an additional explanation in a letter provided through his counsel. In that letter, Secretary Ross stated the following:

ELPD similarly pre-cleared the May 16, 2017 meeting with the Rail Security Alliance provided that I would only discuss U.S. national and economic security issues and would be "listening only" if the visitors raised issues that might affect my financial interest in Greenbrier. None came up. The discussion instead focused on the award of a passenger railcar procurement contract to a Chinese company by the Chicago Transit Authority. Greenbrier only makes freight cars. No one from Greenbrier attended the meeting. DOC staff informed the meeting attendees that such mass transit contracts fell within the responsibilities of the Department of Transportation, not the Commerce Department. DOT has jurisdiction over federal funding of passenger railcar contracts unless the US industry manufacturing such railcars has reason to request a countervailing duty or antidumping duty enforcement action. As far as I am aware, the industry never later discussed that possibility with Commerce Department officials. One week after the meeting, [REDACTED] and I had a purely social luncheon, for which I paid, with Greenbrier [REDACTED] at the White House Mess. We discussed no business, regulatory or exclusion issues regarding Greenbrier.

You showed me a letter, apparently drafted by someone at Greenbrier, for possible submission to the Bureau of Industry and Security in support of requests by Sumitomo for exclusions from steel and aluminum tariffs. I do not recall having seen this draft letter previously. BIS records regarding the steel and aluminum tariff exclusion processes, which are public[ly] available, do not include any correspondence with Greenbrier and BIS has informed me that it neither received such a letter nor any exclusion request from Greenbrier. BIS did receive three exclusion requests from Sumitomo. These requests, however, related to imports of aluminum EC grade rod and, as far as I am aware, had no relevance to the wheels that Sumitomo supplies to Greenbrier. I am advised that Southwire, a U.S. maker of aluminum wire and cable products, objected to Sumitomo requests, which BIS ultimately rejected. I did not participate in that BIS decision in any way.

Regarding this statement, our office clarifies that the letter drafted by ██████████ that was shown to Secretary Ross during the interview was not a draft, and ██████████'s email to which it was attached, as previously explained, informed ██████████ that it had been sent to BIS. In fact, ██████████ forwarded the email message in which the letter was transmitted to BIS to ██████████. While this exchange with ██████████ does not mean Secretary Ross saw or was aware of the letter (and he claimed he was not aware of it during the interview with our office), the letter is available on BIS's website.⁴⁰⁴

E. Boeing Co.

I. Allegation and Background

The February 8, 2019, letter to Secretary Ross from then-Chairman of the House of Representatives Committee on Oversight and Reform, Elijah E. Cummings, mentioned a Committee on Oversight and Reform review into “reports that you may have conflicts of interest that could jeopardize the public trust placed in you as Secretary of Commerce.”⁴⁰⁵ The letter cited an October 25, 2018, *Forbes* article related to meetings with Boeing and Chevron. Then-Chairman Cummings stated, “Reports also indicate that, while serving as Secretary, you met with executives at companies in which you held financial interests and participated in matters that could affect other companies in which you held a stake.”⁴⁰⁶

Our review of Secretary Ross's Nominee OGE Form 278e determined that Secretary Ross reported interests in Boeing Co. (“Boeing”) in four places:

1. Part 5 (Spouse's Employment Assets & Income and Retirement Accounts), line 5; Value; \$250,001–\$500,000 (directly held);
2. Part 6 (Other Assets and Income), line 24.1.3; Value: \$100,001–\$250,000 (held through “U.S. Brokerage Account #10” (line 24) and Spouse – Trust: Under Will No. 1 (line 24.1);
3. Part 6, line 24.2.2; Value: \$250,001–\$500,000 (held through “U.S. Brokerage Account #10” (line 24) and Spouse – Trust: Under Agreement (line 24.2); and
4. Part 6, line 29; Value: Over \$1,000,000 (directly held).⁴⁰⁷

Boeing was listed in Attachment A-I to Secretary Ross's Ethics Agreement as an entity he agreed to divest within 90 days of his confirmation. On May 16, 2017,

⁴⁰⁴ Available at <https://www.bis.doc.gov/index.php/232-steel-public-comments/1798-greenbrier-companies-public-comment> (accessed August 27, 2020).

⁴⁰⁵ Then-Chairman Elijah E. Cummings to Wilbur L. Ross, Jr., February 8, 2019. *Letter from the Then-Chairman of the Committee on Oversight and Reform to the Secretary of Commerce*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-08.EEC%20to%20Ross%20re%20Conflicts%20of%20Interest.pdf> (accessed August 26, 2020).

⁴⁰⁶ *Ibid.*

⁴⁰⁷ Nominee OGE Form 278e at p. 35, 40, and 43.

Secretary Ross filed an OGE Form 278-T reporting a sale of his interest in Boeing on May 1, 2017, with an amount of \$1,000,001–\$5,000,000.⁴⁰⁸

We reviewed documentation associated with this divestiture and found that the amount reported on the OGE Form 278-T dated May 16, 2017, was consistent with the value received for the shares sold. One detail we noted with respect to this disclosure was that the shares were held in four separate accounts, all held by Secretary Ross's [REDACTED] and the reported sale was the aggregate of four separate transactions for the sale of Boeing shares. Secretary Ross's counsel confirmed that Secretary Ross never personally owned any Boeing shares.

On March 30, 2017, prior to the divestiture of the Boeing shares, Secretary Ross met with Boeing's [REDACTED], and three other Boeing executives. Also present at the meeting were a [REDACTED] and an International Trade Specialist with the International Trade Administration (ITA) and [REDACTED]. In advance of the meeting, a Boeing representative contacted the Department to request a meeting with Secretary Ross to “discuss several matters regarding international markets and competitive concerns for the aircraft development industry.” Following receipt of the meeting request, a [REDACTED] with the Department's Office of Business Liaison contacted ELPD for guidance on the proposed meeting. In the email, it was noted ELPD previously provided guidance on February 10, 2017, with respect to a potential “outreach/courtesy call” with Boeing, as follows: “limited call allowed – holdings in Boeing; courtesy call and/or a discussion of the economy in general.” An ELPD attorney responded to this request for guidance with the following statement:

Our earlier advice continues to apply-that [Secretary Ross] could have a courtesy call and discuss the economy in general. The proposed meeting appears to be more than a courtesy call because it outlines specific areas for discussion. The Secretary cannot discuss Boeing-specific issues or matters concerning the aircraft manufacturing industry sector because he currently has financial interests in Boeing (which he will be selling within 90 days). However, he can use the meeting to gather information and input from Boeing so that he can act on that input after he has sold his stock in the company. He just should not make any commitments or express policies relevant to the aircraft industry sector in the meeting.

Note that Boeing often seeks support from Commerce's Advocacy Center to help it sell aircraft overseas, often with direct support from the Secretary in the form of letters to foreign government officials. Presumably, Boeing may ask Secretary Ross for similar support. He cannot commit to giving such support at this time, but may give the support once his holdings in Boeing are divested.

We reviewed a meeting summary that was prepared on March 31, 2017 (the day after the meeting occurred), by an ITA International Trade Specialist that

⁴⁰⁸ OGE Form 278-T, dated May 16, 2017, at p. 2.

participated in the meeting. The summary section stated, “Secretary Ross initiated discussion of two issues: Export-Import Bank and government subsidies to Airbus. [REDACTED] raised one issue: China.” The meeting summary was divided into three sections accordingly. Under the Export-Import Bank (“EX-IM”) heading, it was noted that “Secretary Ross requested of [REDACTED] that Boeing encourage its suppliers to seek EX-IM support. This is necessary, Secretary Ross said, to dilute the concentration of current EX-IM support to three large corporations.” The “Subsidies to Airbus” section included the following information:

- Following a question from the Secretary about next steps, [REDACTED] said that [REDACTED] expects a final ruling from the [World Trade Organization (“WTO”)] in the 3rd quarter of 2017 that will support the U.S contention that Airbus illegally received \$20-25 billion. [ITA note: The actual figure is lower than this.] The key issue is what remedies should be taken, [REDACTED] said.
- Boeing said that it has exchanged views on this issue with [U.S. Trade Representative (“USTR”)].
- After touching on the collaborative Commerce Department-USTR relationship, Secretary Ross asked [REDACTED] to share with the Commerce Department Boeing’s views on remedies. [REDACTED] agreed.

The “China” section of the meeting summary included the following information:

- [REDACTED] emphasized the importance of China to Boeing, noting that one out of every three Boeing aircraft is sold to a Chinese customer.
- [REDACTED] noted the importance of the bilateral aerospace trade surplus in favor of the United States in contrast to the overall U.S. bilateral trade deficit.
- In response to [REDACTED]’s mention of the opening in China of a completion center for Boeing aircraft, Secretary Ross asked two questions. (a) Is there any technology transfer taking place? (Answer: no.) (b) Do the Chinese have access to Boeing computers? (Answer: no.)

2. Responses from Secretary Ross

We questioned Secretary Ross about this meeting with Boeing during an interview. Secretary Ross confirmed that he was aware [REDACTED] held interests in Boeing at the time of his meeting with Boeing. When asked if he recalled this particular meeting, Secretary Ross stated, “Oh, I recall I’ve met with Boeing a lot of times.” He was shown the meeting summary as well as a “Briefing Memorandum for the Secretary” which included background information on the planned meeting topics, the participants, and the guidance from ELPD previously mentioned. We directed Secretary Ross’s attention to ELPD’s guidance, and Secretary Ross stated, “Well, I, I believe I complied with the advice.” We then directed his attention to the meeting summary and asked if any of the information contained therein showed he acted contrary to advice from ELPD. Secretary Ross, in reference to the information in the

meeting summary regarding the Export-Import Bank, stated the Export-Import Bank wanted Boeing to “help them identify Boeing’s suppliers to whom they could lend money. This was not in the context of DOC, nor anything to help Boeing. This was about the Export-Import Bank, of which I’m a Board member.” He noted, “The [Export-Import Bank] question was because I’m on the Board of [the Export-Import Bank]. And all that was doing was conveying what [the Export-Import Bank] would have liked Boeing to do, not anything else.”

Regarding the portion of the meeting summary regarding “Subsidies to Airbus,” Secretary Ross stated, “[A]ll I did was ask questions. So I think that’s quite consistent with the ethics advice.” He elaborated that [REDACTED] was just giving him information and added, “These kinds of disputes [with WTO] are not handled by Commerce. These are handled solely by USTR. So [REDACTED] was simply reporting to me what [REDACTED] had said to USTR. So what is the problem with that?” Regarding the dispute between WTO and Boeing, Secretary Ross further explained the following:

But [there] was recently a decision by the WTO favoring Boeing. Um, and soon, there will be a decision by WTO whether there’s any action against U.S. for the alleged subsidies of Boeing. But that’s not a matter we have anything to do with. That’s USTR, uh, is the official representative to WTO. I don’t even go to WTO meetings. So I, I don’t see anything here that’s the slightest bit inconsistent with the ethics advice.

Regarding the portion of the meeting about Airbus, Secretary Ross confirmed that [REDACTED] was simply informing him about it and stated, “Listening mode means you can take in information. It’s just that’s all you can do with it. There’s nothing in here [meeting summary] to indicate that I did anything but take in information, nor did I ... If listening mode means you can’t listen to his views on a matter and not react -- there’s nothing in here that says I reacted. Um, uh, that has to be what listening mode means. I think it’s totally consistent with listening mode.” Secretary Ross added, “And in any event, there was no action we could take that would have any impact on the WTO. That’s not within our wheelhouse. It’s solely within the wheelhouse of USTR. They don’t consult me on their briefs for it. They don’t -- nothing. Um, so that’s an extremely clear case where, even if I wanted to be in more than a listening mode, there was literally nothing I could do.”

After the interview, Secretary Ross, through his counsel, submitted the following statement in writing to our office regarding the information on Boeing discussed at the interview:

The Department’s Ethics Law and Programs Division (ELPD) pre-cleared my participation in the March 30, 2017, discussion of general conditions facing the civil aircraft manufacturing industry, if I remained in a passive, or “listen only” mode. I followed that advice during the meeting and I took no action afterwards on any topic discussed. About 30 days later, on May 1, [REDACTED] sold [REDACTED] Boeing stock. I never owned Boeing stock.

V. Analysis/Findings

Our review determined that Secretary Ross did not participate on particular matters affecting his financial interests in violation of 18 U.S.C. § 208. Our review of the matters raised regarding the Secretary Ross's alleged participation on matters impacting his financial interests did not identify sufficient evidence his actions had a direct and predictable effect on his financial interests per the statute's guiding regulation at 5 C.F.R. § 2635.402. However, we determined that Secretary Ross violated the general principles of his basic obligation of public service in violation of 5 C.F.R. § 2635.101, as further discussed in the following sections.

A. *Criminal Conflicts of Interest*

For an 18 U.S.C. § 208 violation to occur, it must be established that Secretary Ross participated personally and substantially on a particular matter in which, to his knowledge, he, his spouse, or certain other related individuals or organizations has a financial interest. It must further be established that Secretary Ross's participation had a direct and predictable effect on his financial interests, namely "a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest . . . ;" and that "a real, as opposed to a speculative possibility that the matter will affect the financial interest. . . ." 5 C.F.R. § 2635.402(b)(1)(i) and (ii).

I. **Oil and Gas Industry Sector Interests**

We determined Secretary Ross's participation on matters impacting the oil and gas sector did not violate the criminal conflicts of interests restrictions at 18 U.S.C. § 208. In conducting our analysis, we identified multiple assets within the sector Secretary Ross directly or indirectly owned at the time of the Mar-a-Lago Summit on April 6 and 7, 2017. These assets, which were reported in the Secretary's Nominee OGE Form 278e, and previously mentioned, were as follows:

1. Chevron
2. Exco
3. Energen Corp.
4. Laredo Petroleum Inc.
5. Northern Oil and Gas, Inc.
6. Breitburn Energy Partners
7. Rex Energy Corp.
8. WPX Energy, Inc.
9. American Energy – Permian Basin
10. Amerigas Partners, L.P.
11. Pan Multi Strategy L.P.

12. Comstock Resources, Inc.
13. Approach Resources, Inc.
14. Lightstream Resources

Secretary Ross's interests in these entities were held through a combination of direct investments and investments in entities that held investments in these entities, as detailed in the "Ownership Interests" subsection of this chapter.⁴⁰⁹

In addition to these holdings, Secretary Ross held interests in Navigator both directly and through his interests in entities that held shares of Navigator. As previously described, the evidence establishes Secretary Ross divested the last of his oil and gas interests by October 25, 2017, and he divested the last of his interests in Navigator by November 16, 2017, when the shares were transferred out of his brokerage account to cover the short against the box position.

a. *Knowledge of Ownership*

The evidence also establishes Secretary Ross had knowledge of his ownership of interests in the Energy Industry Sector, to include the Oil and Gas Industry Sector, and that he was further aware of his disqualifications from involvement on certain matters involving the sector, including those involving methane gas, natural gas production and storage, oil and gas equipment and pipelines, oil and gas exploration and production (on-shore Canada and United States), and oil and gas retail. Our review of email communications between ELPD attorneys and members of the Office of the Secretary for transmission to Secretary Ross found that Secretary Ross was advised at least eight times between March 2, 2017, and April 6, 2017, on meetings related to or with individuals in the Energy Industry Sector, to include the Oil and Gas Industry Sector. Specifically, ELPD advised Secretary Ross that, due to his financial interests in the sector, he needed to be in "listening mode" with respect to such matters and should not agree to take any actions with respect to any suggestions or recommendations that arose in the meetings.

ELPD's guidance further instructed for the contacting of an ethics attorney for advice before presenting for the Secretary's consideration matters involving five foreign countries, and China was the first country on the list. Nonetheless, the evidence establishes neither Secretary Ross nor members of his office gave ELPD advanced notice of his attendance at the Mar-a-Lago Summit. In response to questions on whether ELPD was notified, Secretary Ross stated, "Well, I don't know, but the whole world knew. So, when specifically they were notified, I don't know ... Well, look, the whole world knew who was going, when we were going. I mean, this was not a secret meeting. This was very widely publicized." Secretary Ross later added, "Well, it may be that [ELPD] didn't get a specific

⁴⁰⁹ Secretary Ross Nominee OGE Form 278e, at p. 13–14 (Part 2, lines 10.6 and 10.7).

request from us. That's probably the case. But that's different from the idea that this was somehow a secret. It was not ...”

Notwithstanding his ethics restrictions, Secretary Ross attended the April 6–7, 2017, Mar-a-Lago Summit that was attended by a delegation from the Chinese government, and LNG was a main topic of discussion. The Summit resulted in the release of the 100-Day Plan, which was released on May 10, 2017, and LNG exports to China is included as item number four on the plan. Then following the Summit, Secretary Ross's participation continued into the second phase of negotiations, the U.S. – China Comprehensive Economic Dialogue (CED), which occurred on July 19, 2017. CED attendees included Secretary Ross, Treasury Secretary Steven Mnuchin, and Chinese officials. A goal of the CED was to continue carrying out the items set forth in the 100-Day Plan. Email messages reviewed by our office showed Secretary Ross continued to encourage the Chinese on U.S. exports of LNG following the CED.

b. Personal and Substantial Participation

Evidence also exists to show that Secretary Ross's participation at the Summit and on the follow-up negotiations with Chinese officials on LNG exports meets the definition of personal and substantial per 5 C.F.R. § 2635.402. Subsection 402(b)(4) states that

[t]o participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

Evidence supporting a violation includes Secretary Ross's own acknowledgement to our office that he had some involvement in the negotiations for the 100-Day Plan, specifically the LNG exports issue. Secretary Ross stated he, along with Mr. Cohn and Treasury Secretary Mnuchin comprised the group that spoke actively during the Mar-a-Lago Summit. He also acknowledged handling several telephone discussions and negotiations with Chinese officials in furtherance of the initiative before and after the issuance of the 100-Day Plan. This position is further supported by the Secretary's involvement in the U.S. – China CED with the Chinese government on July 19, 2017, which had a goal of carrying-out the items

set forth in the 100-Day Plan. Our review of email communications by Department officials following the May 10, 2017, release of the 100-Day Plan show Secretary Ross continued to be involved in discussions on the topic of U.S. exports of LNG to China through October 2017. For example, Secretary Ross conducted a call with President Trump on May 12, 2017, the purpose of which was to “update him on the positive development on LNG.” Also on May 12, 2017, during a meeting with a CEO of an American company that exports LNG, Secretary Ross asked for “help in promoting the benefit of the LNG commitment in the 100-Day Plan” and “offered to send a letter to his counterpart in China regarding the ‘geostrategic LNG concerns’” the CEO mentioned during the meeting, pending receipt of “necessary details.” Secretary Ross also facilitated discussions with Chinese officials regarding LNG during the U.S.-China Comprehensive Economic Dialogue in July 2017.⁴¹⁰ Thus, evidence exists Secretary Ross’s involvement transcends mere official responsibility and perfunctory involvement.

We also identified mitigating evidence regarding the level of Secretary Ross’s involvement with respect to the 100-Day Plan. With respect to the Summit, the Secretary asserted that “[w]e were not and I was not involved, nor to my knowledge anybody in Commerce, with setting up the agenda for the meeting. I believe it was done at the White House level.” He further asserted his belief that no one from the Department of Commerce created the “bullet points” for discussion, but he added his recollection might be wrong. Regarding the origin of LNG’s inclusion in the talking points, Secretary Ross stated he neither knew who drafted or might have drafted such talking points, nor how they came about or how LNG came to be included as a topic. As further mitigating evidence, a high-level official with ITA responsible for U.S. government export promotion efforts in China that was involved with the 100-Day Plan stated, “I can confirm that the suggestion to include LNG [in the 100-Day Plan] came from the Chinese side.”

Secretary Ross also asserted “[i]t was the U.S. policy publicly announced that we wanted to export LNG, not me inventing it. The President talked about that before he was elected. Talked about it, I think, in his Inauguration. Talked about it zillions of times since. So that was not any news to anybody.... Nor was it news to anybody that China needs LNG.” The Secretary added, “All it was was the, the -- how we would implement the already previously-announced decision by the government that they wanted to export more LNG.” He later reiterated, “Well, all that we were doing in the talks was enunciating previously-established U.S. policy. That’s what my role was.”

Weighing the evidence, including the Secretary’s direct involvement in the negotiations, we determined Secretary Ross’s participation related to the 100-Day Plan’s initiative on LNG exports to China was both personal and substantial.

⁴¹⁰ See <https://www.commerce.gov/news/press-releases/2017/07/statement-secretary-ross-and-secretary-mnuchin-following-us-china> (accessed August 26, 2020).

c. *Direct and Predictable Effect – Close Causal Link*

It is reasonable to conclude that Secretary Ross’s participation in negotiations with Chinese officials regarding the increase of U.S. LNG exports had a direct and predictable effect on his financial interests in the Energy Industry Sector, to include the Oil and Gas Industry Sector. Specifically, it is logical to expect that a close causal link exists between Secretary Ross’s words and actions at the Summit, his continued involvement in the issue after the Summit, and an expected effect on some of his financial interests in the sector as defined at 5 C.F.R. § 2635.402(b)(1)(i). As previously detailed, Secretary Ross maintained interests in the Oil and Gas Industry Sector, to include a direct interest of nearly \$400,000 in Chevron that he did not completely divest until May 22, 2017. Moreover, Secretary Ross’s involvement included requesting help in “promoting the benefit of the LNG commitment in the 100-Day Plan” from the CEO of an American company that exports LNG, and he acknowledged that he engaged in negotiations with Chinese officials regarding LNG exports before and after the issuance of the 100-Day Plan. For example, per remarks by a former Chevron CEO from an April 2016 conference that appears on Chevron’s website, “Chevron’s commitment to gas is clear. We’ve been in the natural gas business for more than 100 years, and we’re positioned to become one of the top 10 LNG suppliers in the world. But no company can do it alone. Partnership is critical – partnership with other resource developers, customers, contractors, government and local communities.”⁴¹¹

When questioned during his interview with our office about the industry-wide impact of his discussions with Chinese officials, Secretary Ross provided the following response:

Well, it might have. It might have potentially. But my point is that was likely to have occurred totally independently of any of these discussions. LNG, natural gas is a global market. So let’s say we had taken a different tack and said no, China, we’re not going to sell you any LNG. Well, all that would have happened, they [would] have bought their LNG from someone else, and we would have sold our LNG to whatever customer they displaced.... That’s part of why it wasn’t controversial. It isn’t like there’s a shortage of LNG, nor is there a shortage of demand for LNG. These discussions were about the technicalities of how to implement an arrangement between the two. That’s all it was about. It had nothing to do with primary demand for LNG. Primary demand for LNG would have had a possible impact on somebody’s holdings. But primary – this had nothing do to with primary demand. Primary demand didn’t change one bit as a result of the 100-Day Plan or any subsequent thing.... So I don’t agree with the characterization that the outcome of these

⁴¹¹ Former Chevron CEO’s comments during his address at the 18th International Conference & Exhibition on Liquefied Natural Gas in Perth, Australia, April 11, 2016. Available at <https://www.chevron.com/stories/lng-for-the-long-term> (accessed August 27, 2020).

talks would have been particularly consequential for any of the holdings I had... and especially since they were not exporters.

Weighing the evidence, with respect to Chevron, we determined Secretary Ross's efforts to negotiate trade initiatives with China regarding LNG exports and promote the 100-Day Plan present substantial evidence of the existence of a close causal link per section 2635.402(b)(1)(i).⁴¹²

d. *Direct and Predictable Effect – Real as Opposed to Speculative Effect*

We identified evidence a deal to export LNG to China would have “a real, as opposed to a speculative” possibility of impacts on Secretary Ross's interests in the sector, including Secretary Ross's acknowledgment the method for exporting natural gas is to convert it to LNG and transport it in LNG form, so that if a company has the potential to export natural gas, and China wants to buy that natural gas, it is going to become LNG. Additional circumstantial evidence comes from a statement on Chevron's website citing the former CEO's remarks at an April 2016 conference, where he asserted, “[w]e've been in the natural gas business for more than 100 years, and we're positioned to become one of the top 10 LNG suppliers in the world.”⁴¹³

We also identified mitigating evidence, including Secretary Ross statement to our office that “... none of my oil and gas interests had anything to do with LNG exports. That's the first point. Um, second, as you can see, all that was being discussed was the Chinese wanting to be sure that they had equal access to LNG to what other countries had.” Secretary Ross stated he did not see a conflict based on that.

Additionally, Secretary Ross noted that the price of LNG during that period went down “even though the talks were progressing on a very affirmative basis.” He further noted that with respect to the price of LNG before, during, and after the announcements about the talks with China, “you will not find that the market was influenced by these talks, and it shouldn't have been.” Secretary Ross stated the talks he had with China regarding LNG were a “zillion miles” from having a direct and predictable effect.

⁴¹² We also analyzed the close causal link element of section 208 with respect to Secretary Ross's financial interests in Navigator. Unlike with Chevron, Navigator only ships LPG as opposed to LNG; and while LPG exports appear to have been included in Secretary Ross's original talking points for the summit, the resulting 100-Day Plan, with respect to energy, only focuses on LNG exports to China. During his interview with our office, Secretary Ross's asserted recollection was that LNG was discussed, not LPG, adding “Those are very different products.” Secretary Ross explained that the Chinese have very little natural gas and have been “import-dependent” on those products for a long time. We did not identify any evidence contradiction the Secretary's assertion. Therefore, insufficient evidence exists to establish Secretary Ross's actions during and after the summit had a close causal link to his financial interests in Navigator.

⁴¹³ Former Chevron CEO's comments during his address at the 18th International Conference & Exhibition on Liquefied Natural Gas in Perth, Australia, April 11, 2016. Available at <https://www.chevron.com/stories/lng-for-the-long-term> (accessed August 27, 2020).

Finally, with respect to the impact on demand, Secretary Ross stated the following:

The amount of LNG demand internationally is what will ultimately determine the exports that we make. There was nothing in these discussions that addressed the issue how much demand would there be globally for LNG. Whatever it is, it is. All that was being discussed here was some degree of allocation potentially of the demand and the supply. But the supply would have been the same. The demand would have been the same. Therefore, there's no reason to think -- and, in fact, it was one of the reasons that some people said, uh, not in the big meetings, but before them, we shouldn't even bother to talk about LNG because it's going to be what it is, and what's the difference if we sell it to China or if we sell it to South Korea?

In weighing the evidence, we determined that Secretary Ross's actions did not have a direct and predictable effect on his financial interests. Specifically, insufficient evidence exists an LNG export deal with China would have a direct and predictable effect on the Secretary's financial interests per 5 C.F.R. § 2635.402(b)(1).

Therefore, we determined Secretary Ross's participation on the LNG export negotiations while owning interests in the Energy Industry Sector, to include the Oil and Gas Industry Sector, did not violate 18 U.S.C. § 208. However, Secretary Ross's interactions with Chinese officials on matters impacting the oil and gas sector without first alerting ELPD potentially creates an appearance issue, which is discussed in the next section.⁴¹⁴

2. The Greenbrier Companies, Inc.

In conducting a conflict of interest analysis under 18 U.S.C. § 208, we also investigated the circumstances surrounding Secretary Ross's financial interest in Greenbrier, a manufacturer of railroad cars, at the time he announced the Section 232 investigation (an investigation to determine the effects on national security of steel imports, a possible outcome of which would be the imposition of tariffs on imported steel products), as well as his interactions with the Greenbrier █████. ⁴¹⁵ According to a letter from Greenbrier's █████ in connection with the Section 232

⁴¹⁴ Our findings with respect to section 208 include an analysis of Secretary Ross's financial interests regarding Chevron. Our office notes that Secretary Ross met with Chevron's █████ on March 22, 2017, while he, through his █████, held an interest in Chevron. We found that Secretary Ross's participation in the meeting with Chevron's █████ did not violate 18 U.S.C. § 208 based on the fact that (1) this meeting was cleared in advance by an ELPD attorney who provided restrictions for Secretary Ross's participation in the meeting; (2) Secretary Ross's confirmation to our office that he followed ELPD's advisement for this meeting; and (3) our finding of no evidence to contradict Secretary Ross's assertion.

⁴¹⁵ U.S. Department of Commerce, *Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel*, 82 Fed. Reg. 19205 (Apr. 26, 2017). Available at <https://www.federalregister.gov/documents/2017/04/26/2017-08499/notice-request-for-public-comments-and-public-hearing-on-section-232-national-security-investigation> (accessed August 27, 2020).

investigation, Greenbrier “depend[s] on having access to a stable supply of railcar axles and wheels made of steel.”⁴¹⁶ Moreover, “rail,” “railroad manufacturing and equipment (Europe and North America),” and “railway components materials” were included on the list of industry sectors from which Secretary Ross was disqualified as of January 23, 2017.

The email messages previously detailed between Secretary Ross and a Greenbrier executive that were contemporaneous with the announcement of the Section 232 investigation serve as evidence Secretary Ross believed he maintained an ongoing financial interest in Greenbrier when he announced the Section 232 investigation on April 19, 2017. Specifically, on the same day as the announcement, Secretary Ross sent an email message to Greenbrier [REDACTED] in which he stated, “I am being [required] by the Office of Government Ethics to sell my Greenbrier shares I found one certificate but with all the moving about *I don't believe I have found the entire amount.*”⁴¹⁷ Additionally, Secretary Ross continued interacting with Greenbrier after that date by executing documents in May 2017 to replace a lost stock certificate for 9,032 shares of Greenbrier stock. ELPD was not alerted to Secretary Ross’s ownership of these 9,032 Greenbrier shares until well after the Section 232 investigation was underway, as shown in an email exchange between the DAEO and Secretary Ross’s [REDACTED] on October 3, 2017, related to an inquiry from a J.P. Morgan representative about the lost Greenbrier shares, and in which the DAEO stated, “I thought Greenbrier was all gone as well.” In response to questions about Secretary Ross’s knowledge of his ongoing financial interests, and in contradiction of the facts previously displayed, Secretary Ross’s counsel provided a letter to our office that stated, “Secretary Ross did not believe he had a financial interest in Greenbrier at the time he participated in the § 232 investigation, further defeating any alleged conflict.”

However, we did not identify sufficient evidence Secretary Ross’s participation in the Section 232 investigation had a direct and predictable effect on his financial interest in Greenbrier. While Greenbrier may depend on access to railcar axles and wheels made of steel, for the purpose of a conflict of interest evaluation in consideration of the Section 232 investigation, Greenbrier uses steel as opposed to manufacturing it. This position is based, in part, on guidance from an ELPD attorney that advised Secretary Ross on Greenbrier. The ELPD attorney told our office ELPD found that Greenbrier, as a “user” of steel, did not meet the definition of “direct” as related to the steel industry under the conflict of interest statute (5 C.F.R. § 2635.402(b)(1)). Our office came to the same conclusion and did not identify any contrary evidence. Therefore, insufficient evidence exists of a close causal link between Secretary Ross’s actions per the Section 232 investigation and his then-held interests in Greenbrier to establish an 18 U.S.C. § 208 violation. However, Secretary Ross’s

⁴¹⁶ Letter from Greenbrier to Industrial Studies, BIS, *Notice of Request for Public Comments on the Secretary of Commerce’s Initiation of an Investigation to Determine the National Security Effects of Steel Imports*, dated May 30, 2017. Available at <https://www.bis.doc.gov/index.php/232-steel-public-comments/1798-greenbrier-companies-public-comment/file> (accessed August 27, 2020).

⁴¹⁷ Emphasis added.

knowledge of his potential interest in Greenbrier when he announced the Section 232 investigation and met with Greenbrier's [REDACTED], combined with his failure to notify ELPD of the 9,032 shares he unknowingly retained, created a potential appearance issue, as discussed later in this report.

3. Boeing, Co.

In assessing the criminal conflicts of interest allegations against Secretary Ross with respect to Boeing, we determined Secretary Ross's [REDACTED] maintained a financial interest in Boeing at the time of the Secretary's March 30, 2017, meeting with then-Boeing [REDACTED] and three other Boeing executives to "discuss several matters regarding international markets and competitive concerns for the aircraft development industry." Secretary Ross confirmed during his interview with our office that he was aware [REDACTED] held interests in Boeing at the time of his meeting with Boeing. This awareness was further demonstrated by the fact a staffer from the Office of the Secretary sought and received guidance from ELPD in advance of both a potential "outreach/courtesy call" with Boeing in February 2017 and the March 30, 2017, meeting with Boeing. ELPD reportedly advised the Secretary he could participate on the call in a limited manner as a courtesy call and/or a discussion of the economy in general, and subsequently advised that he could also attend the in-person meeting, but could not discuss Boeing-specific issues or matters concerning the aircraft manufacturing industry sector or make any commitments or express policies relevant to the aircraft industry sector because he maintained financial interests in Boeing. ELPD further advised he can use the meeting to gather information and input from Boeing ("listening mode").

We also assessed whether Secretary Ross's participation on any particular Boeing matters was personal and substantial, as defined in 5 C.F.R. § 2635.402. Subsection 402(b)(4) states

[t]o participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

To determine the extent of Secretary Ross's participation, we reviewed the meeting summary prepared on March 31, 2017, by an ITA International Trade Specialist that

attended the meeting. The summary stated “Secretary Ross initiated discussion of two issues: Export-Import Bank and government subsidies to Airbus.” Under the Export-Import Bank (“EX-IM”) summary heading, it was noted that “Secretary Ross requested of ██████████ that Boeing encourage its suppliers to seek EX-IM support. This is necessary, Secretary Ross said, to dilute the concentration of current EX-IM support to three large corporations.” The “Subsidies to Airbus” section summary notes that Secretary Ross: (1) asked ██████████ a question about next steps and (2) asked ██████████ to share with the Commerce Department Boeing’s views on remedies after touching on the collaborative Commerce Department-USTR relationship. The “China” section of the meeting notes that, in response to ██████████’s mention of the opening in China of a completion center for Boeing aircraft, Secretary Ross asked: (1) whether there is any technology transfer taking place and (2) whether the Chinese have access to Boeing computers.

In reference to the information in the meeting summary regarding the Export-Import Bank, Secretary Ross stated during his interview with our office that the Export-Import Bank wanted Boeing to “help them identify Boeing’s suppliers to whom they could lend money. This was not in the context of DOC, nor anything to help Boeing. This was about the Export-Import Bank, of which I’m a Board member.” He noted, “The [Export-Import Bank] question was because I’m on the Board of [the Export-Import Bank]. And all that was doing was conveying what [the Export-Import Bank] would have liked Boeing to do, not anything else.”

Regarding the portion of the meeting summary regarding “Subsidies to Airbus,” Secretary Ross stated, “[A]ll I did was ask questions. So I think that’s quite consistent with the ethics advice.” He elaborated that ██████████ was just giving him information and added, “These kinds of disputes [with WTO] are not handled by Commerce. These are handled solely by USTR. So ██████████ was simply reporting to me what he had said to USTR.”

With respect to the portion of the meeting about Airbus, Secretary Ross confirmed that ██████████ was simply informing him about it and stated, “Listening mode means you can take in information. It’s just that’s all you can do with it. There’s nothing in here [meeting summary] to indicate that I did anything but take in information, nor did I ... If listening mode means you can’t listen to his views on a matter and not react -- there’s nothing in here that says I reacted. Um, uh, that has to be what listening mode means. I think it’s totally consistent with listening mode.” Secretary Ross added, “And in any event, there was no action we could take that would have any impact on the WTO. That’s not within our wheelhouse. It’s solely within the wheelhouse of USTR. They don’t consult me on their briefs for it. They don’t -- nothing. Um, so that’s an extremely clear case where, even if I wanted to be in more than a listening mode, there was literally nothing I could do.”

After the interview, Secretary Ross, through his counsel, submitted the following statement in writing to our office regarding the information on Boeing discussed at the interview:

The Department's Ethics Law and Programs Division (ELPD) pre-cleared my participation in the March 30, 2017 discussion of general conditions facing the civil aircraft manufacturing industry, if I remained in a passive, or "listen only" mode. I followed that advice during the meeting and I took no action afterwards on any topic discussed. About 30 days later, on May 1, [REDACTED] sold [REDACTED] Boeing stock. I never owned Boeing stock.

Our review found no evidence that showed Secretary Ross took any action contrary to ELPD's guidance that would have resulted in his personal and substantial participation on the matters specified herein as defined in section 2635.402(b)(4). Therefore, we determined that Secretary Ross's interactions with Boeing did not implicate 18 U.S.C. § 208.

Moreover, because we did not identify evidence that Secretary Ross knowingly participated in particular matters likely to directly and predictably effect the financial interests of either him or anyone in his household, including his [REDACTED], we did not identify evidence of "appearance" issues that would implicate 5 C.F.R. § 2635.502.

B. Basic Obligations of Public Service

We also analyzed Secretary Ross's conduct against the general principles of 5 C.F.R. § 2635.101(b). Section 101(b)(14) of the regulation states

[e]mployees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

I. Oil and Gas Industry Interests

We identified evidence Secretary Ross did not avoid taking actions creating the appearance of violations of law or the ethical standards with respect to his sector financial interests when he participated in negotiations with Chinese officials related to increasing U.S. exports of LNG to China. Namely, the Secretary, prior to divesting his interests in the Oil and Gas Industry Sector (e.g., Chevron), participated in a summit with Chinese officials at the Mar-a-Lago resort in Palm Beach, Florida, on April 6–7, 2017 (the "Summit"), in which he addressed matters related to the oil and gas industry, specifically LNG. Secretary Ross continued to work on the issue with Chinese officials for several months following this Summit. Prior to his confirmation, on January 23, 2017, ELPD developed a list of industries from which Secretary Ross was disqualified, and it included the Energy Industry Sector, to include the Oil and Gas Industry Sector and the following subsectors: methane gas, natural gas production and storage, oil and gas equipment and pipelines, oil and gas exploration and production (on-shore Canada and United States), and oil and gas retail. The document also instructed the Secretary to contact an ethics attorney for advice before presenting for the Secretary's consideration matters that will effect

companies in five foreign countries, noting these countries are areas in which the Secretary has investments. China was the first country on the list.

The preamble to the document stated, “To help ensure that the Secretary is not presented with matters from which he is disqualified, please contact an ethics attorney (identified below) for advice before presenting for the Secretary’s consideration matters that involve any of the industry sectors or geographic areas identified below.” Nonetheless, neither Secretary Ross nor members of his office advised ELPD of his attendance at and participation in this Summit. A few weeks prior to the Summit, Secretary Ross received guidance from ELPD on matters related to his continued ownership of interests in the oil and gas industry sector. On March 16, 2017, ELPD cleared Secretary Ross to meet with the Polish Deputy Prime Minister, but his staff was advised that he “should not advocate for general market access for U.S. companies in the defense and energy sectors because he continues to hold financial interests in those sectors.” Then, on March 31, 2017, only a few days before the Summit and in reference to a scheduled meeting with Exxon Mobil █████ on April 6, 2017, Secretary Ross’s staff was advised that he was “disqualified from matters affecting the oil and gas industry sector because he has financial interests in this sector (Chevron and others).” Secretary Ross’s staff was further advised “He may discuss company-specific issues related to Exxon or broad topics, such as global oil and gas developments or tax reform and trade. However, he may not discuss policy issues specifically affecting the oil and gas sector.” Per evidence reviewed by our office, as previously detailed in subsection V.A.1 of this chapter, increasing U.S. exports of LNG to China was a main topic of discussion at the Summit.

The Summit resulted in the release of the 100-Day Plan on May 10, 2017, and LNG exports to China is included as item number four on the plan.⁴¹⁸ Following the release of the 100-Day Plan, on June 6, 2017, in preparation of a briefing book for Secretary Ross in connection with a U.S. – China Business Council board meeting, an ELPD attorney advised that Secretary Ross could generally discuss bi-lateral trade relations with China; however, the ELPD attorney noted, “[I]f the discussions become specific to industry sectors, the Secretary should not signal Administration policy and should not agree to take any action or make recommendations concerning any industry sector in which he continues to have financial interests.” The ELPD attorney added, “The only topic in the attached briefing paper that raises concerns is LNG exports to China—the Secretary should only be in a listening mode on that topic because of his continuing financial interests in the oil and gas sector.”

Secretary Ross’s potentially problematic participation continued into the second phase of negotiations, the U.S. – China Comprehensive Economic Dialogue (CED), which occurred on July 19, 2017. CED attendees included Secretary Ross, Treasury Secretary Steven Mnuchin, and Chinese officials. A goal of the CED was to continue carrying out the items set forth in the 100-Day Plan. Email messages reviewed by

⁴¹⁸ Joint Release: Initial Results of the 100-Day Action Plan of the U.S. – China Comprehensive Economic Dialogue, dated May 10, 2017.

our office showed Secretary Ross continued to encourage the Chinese on U.S. exports of LNG during and following the CED. Moreover, as previously detailed, evidence gathered by our office establishes Secretary Ross continued participating in these negotiations while owning assets in the Oil and Gas Industry Sector until October 25, 2017, which is the date he divested the remaining potentially problematic assets.

Secretary Ross's participation persisted even though 18 U.S.C. § 208 prohibits employees and officers from participating personally and substantially on particular matters in which, to their knowledge, they have a financial interest. Even though some mitigating evidence exists regarding whether Secretary Ross's participation had a direct and predictable effect on his financial interests (as previously discussed), the evidence establishes such conduct created an appearance of impropriety. This appearance of impropriety could have potentially been avoided had Secretary Ross given prior notice of the Summit to ELPD, which Secretary Ross acknowledged that he did not do.⁴¹⁹ Additionally, such appearances could also have been avoided had Secretary Ross followed the contemporaneous advice related to his oil and gas interests that ELPD provided prior to and following the Summit.

We interviewed the three ELPD attorneys responsible for advising Secretary Ross and his staff on ethical obligations, and each confirmed they were not contacted to provide advisement on Secretary Ross's participation in the Mar-a-Lago Summit and did not provide any advice related to his participation in the Summit. Moreover, they confirmed they did not become aware of the Secretary's attendance at the Summit until approximately November 2017, when they saw it mentioned in media reports.

In conducting our analysis, we considered contemporaneous guidance provided by ELPD attorneys with respect to meetings in which Secretary Ross planned to participate with those involved in the Energy or Oil and Gas Industry Sectors and applied that guidance to meetings with Chinese officials. ELPD relayed it is probable ELPD would have restricted Secretary Ross's ability to interact with Chinese officials with respect to setting LNG policy or taking other actions related to LNG had they known in advance about the Mar-a-Lago Summit and planned topics of discussion. ELPD attorneys added that they would have advised Secretary Ross not to speak about LNG exports or be in "listening mode" in the meetings with Chinese officials because he owned interests in the oil and gas industry.

In weighing the evidence, we conclude sufficient evidence exists that Secretary Ross's involvement in the LNG negotiations with China created the appearance of violating the legal or ethical standards of 18 U.S.C. § 208, as explicitly prohibited by 5 C.F.R. § 2635.101(b)(14). Moreover, we determined these actions meet the "reasonable person" burden of proof to establish a violation of the code section.

⁴¹⁹ 5 C.F.R. § 2635.402.

2. The Greenbrier Companies, Inc.

We also analyzed whether Secretary Ross avoided taking actions with respect to Greenbrier, a manufacturer of railroad cars, that created the appearance of violating the law or the ethical standards. As previously detailed in subsection V.A.2 of this chapter, we determined Secretary Ross owned 9,032 shares of Greenbrier stock on April 19, 2019, the date he announced the Section 232 investigation (an investigation to determine the effects on national security of steel imports, a possible outcome of which would be the imposition of tariffs on imported steel products), and based on his email communication with Greenbrier's ██████ on the same date, Secretary Ross believed he owned at least some interest in Greenbrier. According to a letter from Greenbrier's ██████ in connection with the Section 232 investigation, Greenbrier "depend[s] on having access to a stable supply of railcar axles and wheels made of steel."⁴²⁰ Moreover, "rail," "railroad manufacturing and equipment (Europe and North America)" and "railway components materials" were included as industry sectors in which Secretary Ross was disqualified as of January 23, 2017 until his holdings were fully divested.

Based on the evidence previously displayed, Secretary Ross knew about his ongoing financial interest in Greenbrier, or at a minimum did not believe he divested his entire interest in Greenbrier, when he announced the Section 232 investigation, as he sent an email message to Greenbrier ██████ that same day stating, "I am being [required] by the Office of Government Ethics to sell my Greenbrier shares I found one certificate but with all the moving about *I don't believe I have found the entire amount.*" Secretary Ross continued interacting with Greenbrier afterwards by executing documents in May 2017 to replace a lost stock certificate for 9,032 shares of Greenbrier stock. ELPD was not alerted of these 9,032 shares until well after the Section 232 investigation was underway. In response to questions about Secretary Ross's knowledge of his ongoing financial interests, his counsel provided a statement that Secretary Ross "did not believe he had a financial interest in Greenbrier at the time he participated in the § 232 investigation."

During our investigation, an ELPD attorney expressed to our office that Secretary Ross's ownership of Greenbrier stock while announcing the Section 232 investigation may have created an "appearance concern." The ELPD attorney further stated that ELPD provided advice to Secretary Ross based upon the understanding that Secretary Ross no longer held a financial interest in Greenbrier, and that, even if ELPD had knowledge that Secretary Ross held Greenbrier stock at the time he announced the Section 232 investigation, the ELPD attorney would have advised Secretary Ross that he could initiate the investigation. The ELPD attorney based this advice on the understanding that Greenbrier was a user of steel, not a manufacturer of steel. Our office agreed that a "user" of steel, such as Greenbrier, was different

⁴²⁰ Letter from Greenbrier to Industrial Studies, BIS, *Notice of Request for Public Comments on the Secretary of Commerce's Initiation of an Investigation to Determine the National Security Effects of Steel Imports*, dated May 30, 2017. Available at <https://www.bis.doc.gov/index.php/232-steel-public-comments/1798-greenbrier-companies-public-comment/file> (accessed August 27, 2020).

than a manufacturer of steel with respect to a conflict of interest situation presented by the Section 232 investigation. And, this distinction led us to conclude that Secretary Ross's ownership of Greenbrier shares did not create a conflict of interest situation with respect to the Section 232 investigation.

Weighing the evidence, we did not find sufficient evidence that Secretary Ross's ownership of stock in the Greenbrier Companies at the time of the Section 232 investigation announcement created an appearance of a violation of the law or ethical standards set forth in 5 C.F.R. § 2635.101(b)(14).

Additionally, regarding Secretary Ross's lunch meeting with Greenbrier's [REDACTED] on May 18, 2018, at the White House, we found that it did not create an appearance of a violation of the law or ethical standards set forth in 5 C.F.R. § 2635.101(b)(14) for the following reasons: (1) the meeting was disclosed to and approved by ELPD as a "quick social/informal get-together" during which government business would not be discussed; (2) we confirmed with an ELPD attorney that even if Secretary Ross held an interest in Greenbrier at the time of the meeting, because the meeting was social and no business was going to be discussed, it would have been approved; and (3) Secretary Ross confirmed the meeting was in fact a social meeting and no business was discussed. We note that the language the DAEO used in the email message in which he approved this meeting indicates he was unaware that Secretary Ross maintained an interest in Greenbrier shares. For instance, he noted Secretary Ross's "financial disclosure report does not list a [board] position with Greenbrier ... however, because he still owns CSX stock he could not discuss railroad-specific issues." Accordingly, it appears this advice was given without full knowledge of Secretary Ross's interest in Greenbrier. Nevertheless, the social nature of the meeting makes it acceptable.

3. Boeing Co.

Because the facts related to Secretary Ross's meetings with Boeing's [REDACTED] and with Chevron's [REDACTED] are similar, our conclusions related to the issue of whether these meetings created an appearance of a violation of the law or ethical standards set forth in 5 C.F.R. § 2635.101(b)(14) are the same. Accordingly, we found that Secretary Ross's meeting with the Boeing [REDACTED] on March 30, 2017, did not create an appearance of violating the ethics standards of 18 U.S.C. § 208, as prohibited by 5 C.F.R. § 2635.101(b)(14). Secretary Ross's meeting with a [REDACTED] of a company in which his [REDACTED] holds a financial interest, on its face may create an appearance of a violation; however, that potential violation is mitigated by the clearance of the meeting by an ELPD attorney that provided guidelines for Secretary Ross's participation in the meeting and by Secretary Ross's assertion that he followed the guidelines.

Secretary Ross's Short Sale of Navigator Holdings Ltd. Stock

I. Allegations

As previously described, the Inspector General received a letter dated November 13, 2017, from six senators inquiring about Secretary Ross's compliance with his Ethics Agreement's recusal requirements regarding transoceanic shipping, among other things.⁴²¹ This was followed by a letter from eight members of the House of Representatives, dated June 27, 2018, regarding Secretary Ross's short sale of Navigator Holdings Ltd. ("Navigator") shares.⁴²² The letter stated the following:

Secretary Ross also reportedly shorted stock in Navigator Holdings, a shipping company tied to the Russian energy company Sibur,⁴²³ 'positioning himself to make money on the investment when share prices dropped.'⁴²⁴ Secretary Ross's holdings in Navigator, his sale of those holdings, and his lack of transparency with regard to those holdings, are especially troubling given that he is responsible for promoting the interests of U.S. companies and for implementing sanctions against Russia.⁴²⁵

The Representatives requested that the Inspector General "review whether Secretary Ross violated conflict of interest and other ethics rules, whether he has any ongoing conflicts of interest, and whether he has any additional holdings he has not reported or divested in compliance with his ethics agreement."⁴²⁶

We also received notice of insider trading allegations related to Secretary Ross's short sale of Navigator shares that were listed in a letter, dated June 27, 2018, from Senator Elizabeth Warren, Senator Richard Blumenthal, and then-Representative Elijah Cummings to SEC Chairman Jay Clayton.⁴²⁷ In addition to citing the June 18, 2018, *Forbes* article mentioned in the letter from the House of Representatives cited above, this letter also cited an article from *The New York Times* (NYT) dated November 5, 2017, that detailed Secretary Ross's

⁴²¹ U.S. Senators to Peggy E. Gustafson, November 13, 2017. *Letter from U.S. Senate to the Inspector General of the U.S. Department of Commerce.*

⁴²² U.S. Representatives to Peggy E. Gustafson, June 27, 2018. *Letter from U.S. House of Representatives to the Inspector General of the U.S. Department of Commerce.*

⁴²³ Citing Mike McIntire, "Commerce Secretary Shorted Stock as Negative Coverage Loomed," *The New York Times*, June 19, 2018.

⁴²⁴ Citing Dan Alexander, "Lies, China and Putin: Solving the Mystery of Wilbur Ross' Missing Fortune," *Forbes*, June 18, 2018.

⁴²⁵ U.S. Representatives to Peggy E. Gustafson, June 27, 2018. *Letter from U.S. House of Representatives to the Inspector General of the U.S. Department of Commerce*, at p. 1–2.

⁴²⁶ *Id.* at p. 3.

⁴²⁷ Senator Elizabeth Warren, Senator Richard Blumenthal, and then-Representative Elijah Cummings to Jay Clayton, June 27, 2018. *Congressional Letter to Chairman Clayton of the Securities and Exchange Commission*. Available at https://www.warren.senate.gov/imo/media/doc/2018-6-27_Letter_to_SEC_about_Wilbur_Ross_and_Navigator_Holdings.pdf (accessed August 27, 2020).

investments in Navigator and Navigator’s “significant business ties to a Russian oligarch subject to American sanction and Russian President Vladimir V. Putin’s son-in-law.”⁴²⁸ More importantly, the letter noted that 10 days prior to the November 5, 2017, NYT article, NYT reportedly contacted Secretary Ross with information on the planned article and a series of questions.⁴²⁹ The June 27, 2018, letter from the House of Representatives also cited this June 19, 2018, NYT article, but it did not mention NYT’s contact with Secretary Ross prior to the November 5, 2017, article. The June 27, 2018, letter from Senator Warren, Senator Blumenthal, and then-Representative Cummings noted Secretary Ross filed an OGE Form 278-T that showed “[o]n October 31, 2017, three business days after NYT contacted him and five days before the publication of the story, Secretary Ross opened a short position against Navigator holdings.”⁴³⁰ The letter further noted, “The company’s stock declined by about 4% following the publication of the story, and Mr. Ross then sold the short position, ‘valued between \$100,000 and \$250,000.’”⁴³¹ The Senators stated, “These trades raise questions about several different insider trading laws.”⁴³² In addition, the Senators concluded the following:

We have no way of knowing precisely why Mr. Ross shorted Navigator Holdings’ stock immediately after he likely learned about – but did not disclose – a pending news story that caused the company’s stock price to drop significantly. But this chain of events raises questions about whether the Secretary potentially made investment decisions based on material, non-public information, and whether that material, non-public information was potentially derived from his position as Commerce Secretary.⁴³³

This letter requested that the SEC “open an investigation into whether Secretary of Commerce Wilbur Ross violated insider trading or any other securities laws as a result of his investment activities related to Navigator Holdings Ltd.”⁴³⁴

⁴²⁸ Mike McIntire, Sasha Chavkin, and Martha M. Hamilton, “Commerce Secretary’s Offshore Ties to Putin ‘Cronies,’” *The New York Times*, November 5, 2017.

⁴²⁹ (1) Senator Elizabeth Warren, Senator Richard Blumenthal, and then-Representative Elijah Cummings to Jay Clayton, June 27, 2018. *Congressional Letter to Chairman Clayton of the Securities and Exchange Commission*, at p. 1; (2) Mike McIntire, “Commerce Secretary Shorted Stock as Negative Coverage Loomed,” *The New York Times*, June 19, 2018.

⁴³⁰ Senator Elizabeth Warren, Senator Richard Blumenthal, and then-Representative Elijah Cummings to Jay Clayton, June 27, 2018. *Congressional Letter to Chairman Clayton of the Securities and Exchange Commission*, at p. 1, citing OGE, “Executive Branch Personnel Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T).” Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/7C998256034FCC3F852582B0006DEA0B/\\$FILE/Wilber-L-Ross-11.07.17-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/7C998256034FCC3F852582B0006DEA0B/$FILE/Wilber-L-Ross-11.07.17-278T.pdf) (accessed August 27, 2020).

⁴³¹ *Ibid.*, citing Mike McIntire, “Commerce Secretary Shorted Stock as Negative Coverage Loomed,” *The New York Times*, June 19, 2018.

⁴³² *Id.* at p. 2.

⁴³³ *Ibid.*

⁴³⁴ *Id.* at p. 1. Note: The Project on Government Oversight (POGO), in a letter to SEC, Division of Enforcement Co-Directors Stephanie Avakian and Steven Peikin, dated June 21, 2018, made a similar request for an investigation of Secretary Ross’s potential insider trading activities related to his knowledge of the planned *New York Times*

II. Applicable Law

Title 17 C.F.R. § 240.10b5-1 (*trading “on the basis of” material nonpublic information in insider trading cases*) prohibits

the purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information.⁴³⁵

Based on his position as an executive branch employee, Secretary Ross is also subject to Public Law 112-105 § 9, the Stop Trading on Congressional Knowledge Act of 2012 (the “STOCK Act”). Section 9(a)(1) of the STOCK Act states, “... no executive branch employee may use nonpublic information derived from such person’s position as an executive branch employee or gained from the performance of such person’s official responsibilities as a means for making a private profit.”⁴³⁶

In addition, 5 C.F.R. § 2635.702 (*Use of public office for private gain*) prohibits an employee of the U.S. Government from using his or her public office for his or her own private gain. It also prohibits the employer from using his or her public office

... for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations.⁴³⁷

Moreover, 5 C.F.R. § 2635.101(b) (*Basic obligation of public service*), provides the general principles “that apply to every employee and may form the basis for the standards contained in this part.” The section adds that, “[w]here a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.” Subsection (14) states the following:

Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

article and short sale of Navigator stock. Available at <https://www.pogo.org/letter/2018/06/pogo-files-sec-complaint-on-possible-insider-trading/> (accessed August 27, 2020).

⁴³⁵ Available at <https://www.govinfo.gov/content/pkg/CFR-2013-title17-vol3/pdf/CFR-2013-title17-vol3-sec240-10b5-1.pdf> (accessed August 27, 2020).

⁴³⁶ Available at <https://www.congress.gov/112/plaws/publ105/PLAW-112publ105.pdf> (accessed August 27, 2020).

⁴³⁷ 5 C.F.R. § 2635.702.

III. Investigative Methodology

As a preliminary matter, and prior to undertaking an investigation into these allegations, we coordinated with SEC officials. We contacted SEC because SEC was a direct addressee of a letter requesting an investigation of the insider trading allegations and because the SEC has jurisdiction with respect to such matters. When we determined SEC did not intend to pursue the allegations, we initiated an investigation into the insider trading allegations.

Our office issued Inspector General subpoenas to 14 broker-dealers identified as having the highest trading activity in shares of Navigator from October 23, 2017, through November 8, 2017, and/or identified as having a prior business relationship with Secretary Ross. The subpoenas demanded information from these 14 broker-dealers related to their trades in Navigator for the period October 1, 2017, through November 30, 2017 (“blue sheet data”). Throughout the investigation of these allegations, we worked closely with FINRA and relied on FINRA’s expertise in acquiring and analyzing the trading or blue sheet data. We reviewed and analyzed more than 70,000 lines of blue sheet data provided in response to the subpoenas.

We also acquired and reviewed internal Department documents and email communications covering correspondence between and among Secretary Ross and his staff, members of the Department’s OGC, members of the media, and related broker-dealers. Additionally, we reviewed documents filed with OGE and Secretary Ross’s personal financial records related to his holding and sale of Navigator shares. Finally, during an interview with Secretary Ross, we questioned Secretary Ross directly about his holdings of Navigator and his sale of Navigator shares.

IV. Factual Background

A. *Navigator’s Business*

Navigator’s quarterly report on SEC Form 6-K, for the quarter ended September 30, 2019, describes its business in the following manner: “We are the owner and operator of the world’s largest fleet of handysize liquefied gas carriers. We provide international and regional seaborne transportation services of petrochemical gas, or ‘LPG’, and ammonia for energy companies, industrial users and commodity traders.”⁴³⁸

B. *Secretary Ross’s Initial Disclosure of His Investments in Navigator*

As previously detailed, Secretary Ross submitted his Nominee OGE Form 278e on December 19, 2016.⁴³⁹ In his Nominee OGE Form 278e, Secretary Ross listed

⁴³⁸ Navigator Holdings Ltd., SEC Form 6-K, for the quarter ended September 30, 2019. Available at <https://www.navigatorgas.com/wp-content/uploads/2019/11/6K-Q3-2019-Bannerless.pdf> (accessed August 27, 2020).

⁴³⁹ Public Financial Disclosure Report (OGE Form 278e), dated December 19, 2016. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/88642A2CA81AA6C2852580AB00618C8C/\\$FILE/Ross%20Wilbur%20L.%20Final%20278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/88642A2CA81AA6C2852580AB00618C8C/$FILE/Ross%20Wilbur%20L.%20Final%20278.pdf) (accessed August 27, 2020).

connections to Navigator in four places.⁴⁴⁰ On Part 1, line 41, Secretary Ross listed he served as “Director/Chairman” of Navigator from January 2012 to November 2014, and he described these dates as “approximate” and “based on a good faith estimate.”⁴⁴¹ Secretary Ross also indicated he held investments in the following entities that held shares of Navigator:

1. WLR Recovery Associates IV DSS AIV, L.P. held WLR Recovery Fund IV DSS AIV, L.P. (Cayman).⁴⁴² WLR Recovery Fund IV DSS AIV, L.P. (Cayman) held a direct interest in Navigator.⁴⁴³ Secretary Ross held interests in WLR Recovery Associates IV DSS AIV, L.P. through an individual investment and through his IRA’s investment in the entity.⁴⁴⁴
2. WLR Recovery Associates V DSS AIV, L.P. held WLR Recovery Fund V DSS AIV, L.P.⁴⁴⁵ WLR Recovery Fund V DSS AIV, L.P. held a direct interest in Navigator.⁴⁴⁶ Secretary Ross held interests in WLR Recovery Associates V DSS AIV, L.P. through his holding of WL Ross Group L.P. and through an individual investment in the entity.⁴⁴⁷
3. WLR Select Associates DSS, L.P. held WLR Select Co-Investment, L.P. (Cayman).⁴⁴⁸ WLR Select Co-Investment, L.P. (Cayman) held a direct interest in Navigator.⁴⁴⁹ Secretary Ross held interests in WLR Select Associates DSS, L.P. through his holding of WL Ross Group L.P. and WLR Select Associates DSS GP, Ltd. (Cayman).⁴⁵⁰

The amount of each investment in Navigator was not provided. These designations signify that in his Nominee Form OGE 278e, Secretary Ross reported that his only

⁴⁴⁰ *Id.* at Part 1, line 41; Part 2, line 10.14.1.3; Part 2, line 10.15.1.3; and Part 2, line 24.1.4.2.

⁴⁴¹ *Id.* at Part 1, line 41 and endnote 1.41.

⁴⁴² Secretary Ross Public Financial Disclosure Report (OGE Form 278e), dated December 19, 2016, at p. 24 and 27; Part 2, lines 14.5.1 and 19.1.

⁴⁴³ *Ibid.*

⁴⁴⁴ *Id.* at (Part 2, lines 19.1 and 14.5.1). Secretary Ross also reported an investment in WLR Recovery Fund IV DSS AIV, L.P. (Cayman) held by WLR Recovery Associates IV DSS AIV, L.P., which was in turn held by WL Ross Group, L.P. at Part 2, line 10.14 of his OGE Form 278e. When our office raised questions to Secretary Ross’s counsel about issues related to the reporting of this asset, Secretary Ross’s counsel informed us the asset reported at Part 2, line 10.14 inadvertently duplicated the entry at Part 2, line 14.5.1.

⁴⁴⁵ Secretary Ross Public Financial Disclosure Report (OGE Form 278e), dated December 19, 2016, at p. 19 and 20; Part 2, lines 10.15.1 and 11.1.

⁴⁴⁶ *Ibid.*

⁴⁴⁷ *Id.* Part 2, lines 10.15.1 and 11.1.

⁴⁴⁸ Secretary Ross Public Financial Disclosure Report (OGE Form 278e), dated December 19, 2016, at p. 20 and 28; Part 2, lines 10.16 and 24.1.4.2.

⁴⁴⁹ *Ibid.*

⁴⁵⁰ *Id.* Part 2, lines 10.16 and 24.1.

holdings of Navigator were through investments in entities that held shares of Navigator.⁴⁵¹

Secretary Ross also held shares of Navigator directly that he did not disclose on his Nominee OGE Form 278e. He stated he discovered some of these shares in May 2017 and then discovered additional shares in October 2017.⁴⁵² The shares Secretary Ross discovered in October 2017 were the shares involved in the short sale.

C. *Secretary Ross's Ethics Agreement's Treatment of Investments in the Transoceanic Shipping Sector*

In Section 9 and Attachment A-II of his Ethics Agreement, Secretary Ross listed WLR Select Associates DSS, L.P. (an entity through which Secretary Ross held Navigator shares) as an entity he will divest within 180 days of his confirmation.⁴⁵³ He also agreed to resign from his position with WLR Select Associates DSS GP, Ltd. and divest his interest in this entity within 180 days of his confirmation.⁴⁵⁴

Section 10 of Secretary Ross's Ethics Agreement lists WLR Recovery Associates IV DSS AIV, L.P. and WLR Recovery Associates V DSS AIV, L.P. (the two other entities through which Secretary Ross held Navigator shares) as assets that he will retain.⁴⁵⁵ In Section 10 Secretary Ross identified the holdings of WLR Recovery Associates IV DSS AIV, L.P. and WLR Recovery Associates V DSS AIV, L.P. and certain other entities as limited to the real estate financing and mortgage lending sector and the transoceanic shipping sector.⁴⁵⁶ Based on descriptions of the assets held by WLR Recovery Associates IV DSS AIV, L.P. and WLR Recovery Associates V DSS AIV, L.P. in the Nominee OGE Form 278e, the holdings of these entities appear to be limited to transoceanic shipping.⁴⁵⁷ Secretary Ross also described WLR Recovery Associates IV DSS AIV, L.P. and WLR Recovery Associates V DSS AIV, L.P. as entities that "are no longer acquiring new

⁴⁵¹ As described later in this report, Secretary Ross provided an explanation of his oversight of his direct holdings of Navigator shares in a memorandum to the DAEO, dated April 27, 2018.

⁴⁵² Memorandum from Secretary Ross to DAEO, dated April 27, 2018.

⁴⁵³ Wilbur L. Ross, Jr., to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C4D33DB26307189E852580C8002C7A72/\\$FILE/Ross,%20Wilbur%20L%20finalAmendedEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C4D33DB26307189E852580C8002C7A72/$FILE/Ross,%20Wilbur%20L%20finalAmendedEA.pdf) (accessed August 25, 2020).

⁴⁵⁴ *Id.* at p. 4–5 and 9. There is a discrepancy between the nomenclature of this asset ("WLR Select Associates DSS GP, Ltd." and "WLR Select Associates DSS GP Ltd. (Cayman)") as referenced in Secretary Ross's Nominee Form OGE 278e and his Ethics Agreement. Based on a review of related documents and consultation with Secretary Ross's counsel during the investigation, our office considers "WLR Select Associates DSS GP, Ltd." and "WLR Select Associates DSS GP Ltd. (Cayman)" to be the same asset.

⁴⁵⁵ *Id.* at p. 6–7.

⁴⁵⁶ *Id.* at p. 6.

⁴⁵⁷ Public Financial Disclosure Report (OGE Form 278e), dated December 19, 2016, at p. 19; Part 2, lines 10.14 and 10.15.

assets, and they will not acquire any new assets during my appointment to my position as Secretary.”⁴⁵⁸ With respect to these assets, Secretary Ross stated the following:

With regard to each of these entities, I 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 the entity, 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).⁴⁵⁹

Accordingly, Secretary Ross’s Ethics Agreement permitted him to maintain investments in entities involved in transoceanic shipping, including interests in entities that held direct investments in Navigator, and Secretary Ross acknowledged there were certain restrictions related to his continued ownership of an interest in WLR Recovery Associates IV DSS AIV, L.P. and WLR Recovery Associates V DSS AIV, L.P.⁴⁶⁰ It should be noted that Secretary Ross’s Ethics Agreement does not specifically mention Navigator.

Regarding Secretary Ross’s retention of assets related to transoceanic shipping, the DAEO explained that he had not seen many shipping issues come before the Department in the 30 years he had been working with the Department. He recalled that shipping was more of an issue in the context of oil spills and the subsequent involvement of the National Oceanic and Atmospheric Administration (NOAA) in doing an assessment of the damage. The DAEO believed that if such a situation occurred and it involved Secretary Ross’s shipping company, Secretary Ross would have to recuse himself. The ELPD attorneys agreed with the DAEO and did not believe many shipping issues would come before Secretary Ross. Furthermore, one ELPD attorney recalled that they consulted chief counsels at several agencies within the Department, particularly NOAA, to determine if there would be a problem if Secretary Ross retained his shipping interests. ELPD did not receive any information during these consultations to suggest there were any major issues within the Department concerning shipping that would create a conflict for Secretary Ross.

D. Timeline of Events

On October 26, 2017, Mike McIntire, an NYT reporter, contacted the Department’s [REDACTED] and Deputy Director for Public Affairs, via email. Mr. McIntire attached a letter to the email, and stated, “Attached, please find a letter for Secretary Ross that explains a story The New York Times is doing, for which we are seeking his comment.”

⁴⁵⁸ Wilbur L. Ross, Jr., to Alternate Designated Agency Ethics Official, January 15, 2017 (as amended January 31, 2017). *Letter from Secretary Ross to the Alternate Designated Agency Ethics Official at the U.S. Department of Commerce*, at p. 6.

⁴⁵⁹ *Ibid.*

⁴⁶⁰ *Ibid.*

McIntire's letter to Secretary Ross was on NYT Company letterhead and stated the following:

I'm a reporter with The New York Times, and I'm getting in touch to let you know about a story we are doing on your investment activities and to ask you some questions. The story focuses mostly on your involvement with Navigator Holdings and its dealings with Sibur, the Russian energy company.

Let me first explain, briefly, that this story is being reported in partnership with the International Consortium of Investigative Journalists, The Guardian and other media organizations, and is part of a larger project that examines the use of offshore investment vehicles in the Cayman Islands, Bermuda and other jurisdictions ...

As for Navigator, it is our understanding from a review of public information and private offshore records that you have retained an investment in the company, which has a significant business relationship with Sibur. Sibur's leading shareholders are Leonid Mikhelson, whose company Novatek is subject to U.S. sanctions, and Gennady Timchenko, who was personally sanctioned by the U.S. Another significant shareholder in Sibur is Kirill Shamalov, Russian President Vladimir Putin's son-in-law.

Given these connections, it seems fair to ask whether your continued investment in Navigator poses a potential conflict with your role as commerce secretary, especially in the areas of trade and economic sanctions involving Russia ...

Mr. McIntire followed with 16 questions, many of which were directly related to Navigator, Secretary Ross's investments in Navigator, and Secretary Ross's involvement with Navigator.

In addition, on October 26, 2017, Mr. McIntire contacted the [REDACTED] again via email. In his email, Mr. McIntire noted he was contacting the [REDACTED] separately from the letter previously emailed to Secretary Ross, for the purpose of offering [REDACTED] [REDACTED] own chance to comment on the same basic issues as those involved in the letter to Secretary Ross.

The volume of trading in Navigator shares reached 330,700 on October 26, 2017. This is an increase of 242 percent over the number of shares traded on October 25, 2017 (96,500 shares). The price of Navigator shares on October 26, 2017, opened at \$10.85 and closed at \$10.35.⁴⁶¹

At some point soon after Mr. McIntire's letter to Secretary Ross, Secretary Ross contacted Navigator's [REDACTED] to inform [REDACTED] of the planned NYT article. (The details of this contact will be explained further in the "Analysis/Findings – Conflicts of Interest Analysis" section of this chapter.)

⁴⁶¹ NASDAQ Historical Prices and Data. Available at <https://www.nasdaq.com/market-activity/stocks/nvgs/historical> (accessed August 27, 2020).

On Monday, October 30, 2017, Mr. McIntire informed the [REDACTED] that he needed a response to his questions by “midweek.”

On October 31, 2017, Secretary Ross initiated a short sale of 14,093 Navigator shares at an average price of \$10.166884 (trade date: October 31, 2017, settlement date November 2, 2017).

On October 31, 2017, the price of Navigator shares opened at \$10.25 and closed at \$10.15.⁴⁶² The volume of trading was 170,796 shares.⁴⁶³

On November 1, 2017, draft responses to Mr. McIntire were circulated via email among the [REDACTED], and the then-Regulatory Reform Officer, and each provided input on the draft. The [REDACTED] submitted a final version to the DAEO for review, and he provided a final draft, pending the DAEO’s review, to Secretary Ross and [REDACTED]. The DAEO replied and recommended a slight revision. The [REDACTED] provided a response to Mr. McIntire that answered some of Mr. McIntire’s questions about Navigator and related topics. The [REDACTED]’s response included the following:

Secretary Ross was not on the board of Navigator in March 2011 when the ships in question were acquired. Nor was he on the board of Navigator in February of the following year when the charter agreement for those ships was signed with Sibur. Sibur was not under sanctions at the time the contract was signed and is still not subject to sanctions.

No funds managed by WL Ross & Co. ever owned a majority of Navigator shares. Secretary Ross joined the Navigator Board as a Director on March 30, 2012, left in 2014, and never met the three individuals mentioned in your second question.⁴⁶⁴

Secretary Ross recuses himself from any matters focused on transoceanic shipping vessels, but has been generally supportive of the Administration’s sanctions of Russian and Venezuelan entities. Secretary Ross has never had to seek, nor received, any ethics exemption, and he works closely with Commerce Department ethics officials to ensure the highest ethical standards.⁴⁶⁵

This response was included in a string of emails that followed from Mr. McIntire’s communication to the [REDACTED] in which he offered [REDACTED] the opportunity for a separate response to the same basic issues he raised in the letter to

⁴⁶² NASDAQ Historical Prices and Data. Available at <https://www.nasdaq.com/market-activity/stocks/nvgs/historical> (accessed August 27, 2020).

⁴⁶³ *Ibid.*

⁴⁶⁴ In his questions to Secretary Ross, Mr. McIntire asked, “Have you ever met Gennady Timchenko, Leonid Mikhelson or Kirill Shamalov, and if so, what were the circumstances?”

⁴⁶⁵ *Ibid.*

Secretary Ross. Our office did not locate and is not aware of a separate response from [REDACTED].⁴⁶⁶

On November 2, 2017, Mr. McIntire responded to the response that the [REDACTED] provided and stated, “One thing that wasn’t addressed in his response was the issue of his current investment stake in Navigator. Can Secretary Ross provide any greater clarity on its value, and why he chose not to divest it along with other holdings upon taking office?”⁴⁶⁷ Our office did not locate and is not aware of a response to this additional email from Mr. McIntire.

On November 3, 2017, the price of Navigator shares opened at \$10.00 and closed at \$10.10.⁴⁶⁸ The volume of trading was 158,348 shares.⁴⁶⁹

On Sunday, November 5, 2017, NYT published the article, “Commerce Secretary’s Offshore Ties to Putin ‘Cronies’” by Mike McIntire, Sasha Chavkin, and Martha M. Hamilton.⁴⁷⁰

On November 6, 2017, the first trading day following publication of the article, the price of Navigator shares opened at \$9.65 and closed at \$10.50.⁴⁷¹ The volume of trading was 618,170 shares.⁴⁷² The trading volume on November 6, 2017 represents a 312 percent increase over the trading volume of the last trading day prior to the publication of the aforementioned NYT article.

⁴⁶⁶ [REDACTED] served on Navigator’s Board of Directors from November 2014 to July 2017.

⁴⁶⁷ Mr. McIntire’s letter to Secretary Ross, dated October 26, 2017, included the following question: “When you joined the cabinet, you divested from 80 companies and partnerships but you retained an interest in nine, including those that are invested in Navigator. Why did you retain a financial stake in Navigator rather than divesting your shares?”

⁴⁶⁸ NASDAQ Historical Prices and Data. Available at <https://www.nasdaq.com/market-activity/stocks/nvgs/historical> (accessed August 27, 2020).

⁴⁶⁹ *Ibid.*

⁴⁷⁰ Mike McIntire, Sasha Chavkin, and Martha M. Hamilton, “Commerce Secretary’s Offshore Ties to Putin ‘Cronies,’” *The New York Times*, November 5, 2017. <https://www.nytimes.com/2017/11/05/world/wilbur-ross-russia.html> (accessed August 28, 2020).

⁴⁷¹ NASDAQ Historical Prices and Data. Available at <https://www.nasdaq.com/market-activity/stocks/nvgs/historical> (accessed August 27, 2020).

⁴⁷² *Ibid.*

On November 7, 2017, Secretary Ross filed a Periodic Transaction Report (OGE Form 278-T) in which he disclosed that he opened a short position in Navigator on October 31, 2017.⁴⁷³ He listed the amount as \$100,001–\$250,000.⁴⁷⁴

On November 10, 2017, Sasha Chavkin, a reporter for the International Consortium of Investigative Journalists (“ICIJ”), sent an email to the [REDACTED] and stated, “I’m a reporter with ICIJ, and I worked with Mike McIntire and the rest of our team on the Paradise Papers stories. I had a few questions for an upcoming story, which I’ve included below. My deadline for a response is the end of Monday, Nov. 13.” In particular, Mr. Chavkin asked the [REDACTED] to confirm whether Secretary Ross plans “to keep a stake in Navigator, and if not, when he plans to divest it?” Mr. Chavkin also asked the following:

Secretary Ross and his [REDACTED] (at the time a [REDACTED] [REDACTED]) participated this spring in the negotiation of a trade agreement with China that increased US exports of liquid natural gas (LNG). At the time, both held a stake in Navigator Holdings, and [REDACTED] sat on Navigator’s board. Did the Commerce Department ethics office review their participation in this agreement? If so, on what grounds was the decision made to allow them to participate?

On November 13, 2017, the [REDACTED] responded to Mr. Chavkin via email. Regarding Secretary Ross’s investments in Navigator, the [REDACTED] stated, “He has divested most of his interest in Navigator Holdings and will be completely divested in the near future.” Regarding the negotiation of a trade agreement with China, the [REDACTED] responded, “LNG export policy is not set by the Department of Commerce. The Government of China volunteered an interest in long term LNG contracts, and Secretary Ross simply reported the U.S. Government’s position as stated in #4 of the May 11th press release.”

Also on November 13, 2017, as previously noted, we received a letter from six Senators requesting an investigation of Secretary Ross.⁴⁷⁵ This letter mentioned that “Secretary Ross’s ethics agreement allows him to retain certain assets related to ... ‘transoceanic shipping’ – like Diamond S Shipping and Navigator Holdings – but retained within off-shore holding companies.”⁴⁷⁶ The letter asked our office, among other things, to verify Secretary Ross’s compliance with his Ethics Agreement.⁴⁷⁷

⁴⁷³ Periodic Transaction Report (OGE Form 278-T), dated October 31, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/7C998256034FCC3F852582B0006DEA0B/\\$FILE/Wilber-L-Ross-11.07.17-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/7C998256034FCC3F852582B0006DEA0B/$FILE/Wilber-L-Ross-11.07.17-278T.pdf) (accessed August 27, 2020). This OGE Form 278-T shows that it was electronically signed by Secretary Ross on November 7, 2017, and revised on December 20, 2017, and December 21, 2017. It was signed by the DAEO as “Agency Ethics Official” on January 18, 2018. It was further signed by Christopher Dale as U.S. OGE certifying official on June 18, 2018.

⁴⁷⁴ *Ibid.*

⁴⁷⁵ U.S. Senators to Peggy E. Gustafson, November 13, 2017. *Letter from U.S. Senate to the Inspector General of the U.S. Department of Commerce.*

⁴⁷⁶ *Id.* at p. 3.

⁴⁷⁷ *Ibid.*

On November 14, 2017, ICIJ published the article “Senators Call for Investigation as Ross Confirms Plan to Sell Stake in Russia-Linked Company” by Sasha Chavkin.⁴⁷⁸

On November 14, 2017, Secretary Ross received 14,093 shares of Navigator in his brokerage account from American Stock Transfer & Trust (trade date: November 13, 2017, settlement date: November 14, 2017). The market value of the transaction was \$140,225.35. The brokerage account statement noted that the listed “market value” was representative of the prior trading day’s market value.

On November 16, 2017, 14,093 Navigator shares were transferred from Secretary Ross’s brokerage account to close the short position (trade date: November 16, 2017, settlement date: November 16, 2017). The market value of the transaction was \$137,406.75. The brokerage account statement noted that the listed “market value” was representative of the prior trading day’s market value.

On November 16, 2017, the price of Navigator shares opened at \$9.90 and closed at \$9.75.⁴⁷⁹ The volume of trading was 153,810 shares.⁴⁸⁰

On December 21, 2017, Secretary Ross filed a Periodic Transaction Report (OGE Form 278-T) in which he disclosed that on November 16, 2017, he closed the short position in Navigator that he opened on October 31, 2017.⁴⁸¹ He listed the amount as \$100,001–\$250,000.⁴⁸² Because this document was certified by OGE on June 18, 2018, this OGE Form 278-T was likely not available to the public through OGE’s website until that date.

On April 27, 2018, Secretary Ross provided a memorandum to the DAEO with the subject line “Summary of Asset Dispositions.”⁴⁸³ In the memorandum, Secretary Ross described certain divestments including his short sale of Navigator shares.⁴⁸⁴ In describing how he came to directly own shares of Navigator, Secretary Ross stated that while he was a Director of Navigator during 2012–2014, “Navigator awarded shares to

⁴⁷⁸ Sasha Chavkin, “Senators Call for Investigation as Ross Confirms Plan to Sell Stake in Russia-Linked Company,” ICIJ, November 14, 2017. Available at <https://www.icij.org/investigations/paradise-papers/senators-call-for-investigation-as-ross-confirms-plan-to-sell-stake-in-russia-linked-company/> (accessed August 27, 2020).

⁴⁷⁹ NASDAQ Historical Prices and Data. Available at <https://www.nasdaq.com/market-activity/stocks/nvgs/historical> (accessed August 27, 2020).

⁴⁸⁰ *Ibid.*

⁴⁸¹ Periodic Transaction Report (OGE Form 278-T), dated December 21, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/F65307D0E7C6CA00852582B0006DEA10/\\$FILE/Wilber-L-Ross-12.21.17-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/F65307D0E7C6CA00852582B0006DEA10/$FILE/Wilber-L-Ross-12.21.17-278T.pdf) (accessed August 27, 2020). This OGE Form 278-T shows that it was electronically signed by Secretary Ross on December 21, 2017, and revised on January 12, 2018, January 17, 2018, and June 15, 2018. It was signed by the DAEO as “Agency Ethics Official” on January 18, 2018. It was further signed by [REDACTED] as U.S. OGE certifying official on June 18, 2018. This OGE Form 278-T also discloses Secretary Ross’s divestiture of a number of other assets including investments in Sun Bancorp, Inc., The Greenbrier Companies, Inc., and Invesco Ltd., along with the transfer of general and limited partnership interests in multiple investment funds to a trust and independent third parties, respectively.

⁴⁸² *Ibid.*

⁴⁸³ Memorandum from Secretary Ross to DAEO, dated April 27, 2018.

⁴⁸⁴ *Id.* at p. 2–3.

me as part of the company's compensation plan for directors. The company's transfer agent maintained a record of my ownership in book entry form. I did not keep a personal record of the holding and did not recall it when I prepared my OGE Form 278."⁴⁸⁵ Secretary Ross noted that he first discovered part of his direct holdings of Navigator shares in May 2017 when he undertook to sell interests in certain transoceanic shipping funds.⁴⁸⁶ He sold those shares and reported them in the Periodic Transaction Report (OGE Form 278-T), dated June 1, 2017, as previously mentioned in the second chapter of this report at subsection IV.C.2.⁴⁸⁷ Regarding the short sale of Navigator shares in October 2017, Secretary Ross stated the following:

In October, as I was finalizing the sale of the funds that held Navigator, I learned that I owned additional Navigator shares from my tenure as a director. I immediately instituted the process of having those shares transferred from the company's books to a personal account. To eliminate the value of any interest in Navigator pending delivery of the shares to me, I executed a short sale of Navigator stock on October 31, 2017, and then closed that position on November 16, 2017.⁴⁸⁸

On June 18, 2018, Mr. McIntire contacted the [REDACTED] regarding a story NYT was planning on Secretary Ross's short sale of Navigator shares. Mr. McIntire requested a statement and documentation from the [REDACTED] regarding the transaction, and he informed the [REDACTED] he would hold off on the story until June 19, 2018, to "clear up some things."

In addition, on June 18, 2018, *Forbes* published the article, "Lies, China and Putin: Solving the Mystery of Wilbur Ross' Missing Fortune."⁴⁸⁹ The article mentioned Secretary Ross's short sale of Navigator shares.⁴⁹⁰

On June 19, 2018, Secretary Ross issued a statement through the Department to the NYT and certain other reporters regarding his short sale of Navigator shares. The statement denied the allegations of insider trading related to Secretary Ross's short sale of Navigator shares. In the statement, Secretary Ross stated he did not receive any non-public information due to his government position, and he did not receive any non-public information from a government employee. Secretary Ross also contended that the fact that a reporter planned to write a story about him is not market moving information. Secretary Ross stated his ethics agreement did not require him to sell his shares in Navigator, but he chose to divest his shares to avoid any possible conflict of interest. As he stated in the April 27, 2018, memorandum to the DAEO, Secretary Ross

⁴⁸⁵ *Ibid.*

⁴⁸⁶ *Id.* at p. 3.

⁴⁸⁷ *Ibid.*

⁴⁸⁸ *Ibid.*

⁴⁸⁹ Dan Alexander, "Lies, China and Putin: Solving the Mystery of Wilbur Ross' Missing Fortune," *Forbes*, June 18, 2018. Available at <https://www.forbes.com/sites/danalexander/2018/06/18/lies-china-and-putin-solving-the-mystery-of-wilbur-ross-missing-fortune-trump-commerce-secretary-cabinet-conflicts-of-interest/> (accessed August 27, 2020).

⁴⁹⁰ *Ibid.*

explained he learned about additional Navigator shares that were granted to him during his time as a director of Navigator and subsequently held in his name by Navigator's stock transfer agent. He further explained the short sale by stating the New York Stock Exchange required a transfer of shares occur within 2 days of a sale, and in order to complete the divestiture as quickly as possible, he borrowed shares of Navigator equal to the number of shares he sold because the agent holding the shares in his name had not yet transferred the shares to his brokerage account. Secretary Ross stated he then replaced the borrowed shares with shares held in his name when he received them a few weeks later.

Following the statement from Secretary Ross, also on June 19, 2018, NYT published the article, "Commerce Secretary Shorted Stock as Negative Coverage Loomed."⁴⁹¹ The article discussed Secretary Ross's short sale of Navigator shares and his explanation for the short sale.⁴⁹² It also discussed NYT's October 26, 2017, contact with Secretary Ross, his opening of a short position in Navigator 3 business days later, and his closing of the short position on November 16, 2017.⁴⁹³

On June 20, 2018, Secretary Ross testified before the U.S. Senate Committee on Finance regarding "Current and Proposed Tariff Actions Administered by the Department of Commerce."⁴⁹⁴ At the beginning of the hearing and prior to Secretary Ross's testimony, Senator Ron Wyden delivered a statement in which he noted several potential conflicts of interest related to Secretary Ross's financial holdings, and stated, "In the last few days, news reports about Secretary Ross uncovered a short sale of stock in a Kremlin-tied shipping firm."⁴⁹⁵

On June 21, 2018, Senator Wyden and Senator Ben Sasse each delivered letters to Secretary Ross that asked questions regarding his relationship with Navigator and short sale of Navigator shares, and both letters mentioned NYT's treatment of the situation.⁴⁹⁶ In particular, Senator Wyden asked the following questions:

3. Did your knowledge that the Times was working on a story detailing your investment in Navigator Holdings inner circle influence your decision to take a short position in the company? If not, what steps did you take to ensure that your knowledge of the Times' intent to publish such a story would not constitute insider trading? Who else besides

⁴⁹¹ Mike McIntire, "Commerce Secretary Shorted Stock as Negative Coverage Loomed," *The New York Times*, June 19, 2018. <https://www.nytimes.com/2018/06/19/us/politics/wilbur-ross-shorter-stock.html>.

⁴⁹² *Ibid.*

⁴⁹³ *Ibid.*

⁴⁹⁴ Video of the hearing is available at <https://www.finance.senate.gov/hearings/current-and-proposed-tariff-actions-administered-by-the-department-of-commerce> (accessed August 27, 2020).

⁴⁹⁵ Senator Wyden Statement at Finance Committee Hearing on Proposed Tariff Actions by the Department of Commerce (*As Prepared for Delivery*), dated June 20, 2018. Available at <https://www.finance.senate.gov/imo/media/doc/062018%20Wyden%20Statement%20Proposed%20Tariff%20Actions.pdf> (accessed August 27, 2020).

⁴⁹⁶ (1) Letter from Senator Wyden to Secretary Ross, dated June 21, 2018; (2) Letter from Senator Sasse to Secretary Ross, dated June 21, 2018.

yourself was aware of the letter from Mr. McIntire or its contents, i.e. that the Times intended to publish a story on Navigator?

4. Did you profit off of the short position you took in Navigator Holdings days before the New York Times story was published?
5. You previously served on the board of Navigator Holdings and your private equity firm WL Ross Group had long been its largest shareholder. Did you communicate with any executives or board members at Navigator in advance of your decision to take a short position, or afterwards?⁴⁹⁷

Senator Sasse asked for specifics of Secretary Ross's knowledge of his holdings of Navigator stock and the timing of the sale, including the following questions:

4. If you did not profit from this sale, how much would you have lost if had held waited [sic] until November 16th to sell your stock? What if you waited until 24 hours after the New York Times' story on Navigator Holdings came out?
7. If you knew that the New York Times may have a story on Navigator Holdings out soon, why did you sell the stock on October 28th, 2017 instead of waiting for the story to come out and market expectations to reset?⁴⁹⁸

On June 23, 2018, Secretary Ross sent a draft response to Senator Wyden's June 21, 2018, letter via email to [REDACTED] with a copy to the then-Director of the Office of Policy and Strategic Planning and the then-Deputy General Counsel. The first sentence of the email stated, "Proposed response to be released publicly tomorrow." In the draft response, Secretary Ross included information similar to the information in the letters he sent to Senators Wyden and Sasse on June 29, 2018, regarding his short sale of Navigator shares. Secretary Ross also stated, "The questions submitted by the NYT reporter were critical of me, not particularly of Navigator and not all inquiries result in stories, so characterizing the inquiry as inside information is silly." Notably, he wrote, "I did inform the Navigator [REDACTED] of the inquiry and [REDACTED] did not regard it as sufficiently material to announce it. I also told a number of Commerce [sic] staffers including the OGE about the inquiry." This statement seems to be a direct response to question #5 in Senator Wyden's June 21, 2018, letter (i.e., "Did you communicate with any executives or board members at Navigator in advance of your decision to take a short position or afterwards").⁴⁹⁹ However, this statement was not included in the letter that Secretary Ross sent to Senator Wyden on June 29, 2018, and Secretary Ross did not

⁴⁹⁷ Letter from Senator Wyden to Secretary Ross, dated June 21, 2018, at p. 1–2. (Questions are numbered as they appear in the letter.)

⁴⁹⁸ Secretary Ross initiated the short sale on October 31, 2017, not October 28, 2017, as stated in Senator Sasse's letter. See Letter from Senator Sasse to Secretary Ross, dated June 21, 2018, at p. 1. (Questions are numbered as they appear in the letter.)

⁴⁹⁹ Letter from Senator Wyden to Secretary Ross, dated June 21, 2018, at p. 2.

include any information in his June 29, 2018, letter that responded to question #5 from Senator Wyden.⁵⁰⁰

On June 27, 2018, as previously mentioned, Senators Warren and Blumenthal and then-Representative Cummings sent a letter to SEC Chairman Jay Clayton, asking for an investigation into whether Secretary Ross violated insider trading or any other securities laws.⁵⁰¹

On June 29, 2018, Secretary Ross responded to Senators Wyden and Sasse in separate letters that were identical to one another with the exception of one phrase, as noted in the footnote following point I below.⁵⁰² Secretary Ross's letters did not provide direct answers to each question posed by the Senators. Secretary Ross stated the recent media reports about his divestment of shares he previously held in Navigator contained "numerous inaccuracies and wrongful insinuations about that transaction." The letters then stated the following:

Here are the facts:

- 1) I served on the board of Navigator from 2012 – 2014. Under its compensation plan for directors and officers, I received stock awards during my service as a board member. Navigator recorded these stock awards at an agent.⁵⁰³
- 2) The Ethics Agreement into which I entered prior to my appointment as Secretary acknowledged that I could retain certain investments, including transoceanic shipping interests. All of these naturally were subject to the recusal rules.
- 3) In May 2017, I nevertheless divested the interests in Navigator of which I was then aware.
- 4) As I was completing the disposition of other assets in October 2017 as required by my Ethics Agreement, I learned of shares held on Navigator's books that I previously overlooked. I initiated a transfer of those shares to my personal account in order to divest them. I promptly sold the shares against future delivery of the certificates. The position closed as soon as my broker received those shares. I did not engage in profit-seeking short-selling as implied in the media reports; rather, I sold shares that I owned.
- 5) Navigator was only one of several divestments that I made at that time as I continued to review my records and complete dispositions as I committed to do in my Ethics Agreement.

⁵⁰⁰ Letter from Secretary Ross to Senator Wyden, dated June 29, 2018.

⁵⁰¹ Senator Elizabeth Warren, Senator Richard Blumenthal, and then-Representative Elijah Cummings to Jay Clayton, June 27, 2018. *Congressional Letter to Chairman Clayton of the Securities and Exchange Commission*. Available at https://www.warren.senate.gov/imo/media/doc/2018-6-27_Letter_to_SEC_about_Wilbur_Ross_and_Navigator_Holdings1.pdf (accessed August 27, 2020).

⁵⁰² (1) Letter from Secretary Ross to Senator Wyden, dated June 29, 2018; (2) Letter from Secretary Ross to Senator Sasse, dated June 29, 2018.

⁵⁰³ The letter to Senator Sasse also included the statement "I did not receive the shares personally" at the end of this sentence. Other than this statement, the body of the letters to Senators Wyden and Sasse were identical.

The suggestion that a profit motive lay behind my sale of Navigator stock, or that I engaged in “insider trading” in executing that sale, is utterly false. Further, the *New York Times* article to which you refer contained no new information about Navigator’s long-time commercial relationship with Sibur nor about investors in Sibur ...

At all times since becoming Secretary, I have sought to comply scrupulously with federal ethics laws. I continue to rely on the Department’s ethics officials for advice on compliance with those laws, including my recusals and the avoidance of any conflict of interest in my work as Secretary. I am confident that my actions with regard to Navigator were entirely proper.

I trust this information resolves any concerns that you have had based on the erroneous news reporting. Please call me if you have further questions.⁵⁰⁴

On July 12, 2018, David Apol, OGE, then-Acting Director and General Counsel, sent a letter to Secretary Ross, in which he stated, “I am writing to you to express my concern regarding how recent actions on your part may have negatively affected the public trust.”⁵⁰⁵ Mr. Apol further stated, “As you know, various financial disclosure forms and compliance documents that you have submitted to OGE in the past year have contained various omissions and inaccurate statements.”⁵⁰⁶ Mr. Apol did not specifically mention Secretary Ross’s short sale of Navigator.⁵⁰⁷ However, Mr. Apol cautioned Secretary Ross by stating, “your actions, including your continued ownership of assets required to be divested in your Ethics Agreement and your opening of short sale positions, could have placed you in a position to run afoul of the primary criminal conflict of interest law, 18 U.S.C. § 208.”⁵⁰⁸

On July 16, 2018, Senator Wyden sent a letter to then-Attorney General Jeff Sessions to which he attached the July 12, 2018, letter from then-OGE Acting Director Apol, along with his own June 21, 2018, letter to Secretary Ross and Secretary Ross’s responsive letter, dated June 29, 2018.⁵⁰⁹ In the letter to then-Attorney General Sessions, Senator Wyden stated, “[Secretary Ross’s] June 29, 2018 response did not adequately justify the activity in question.”⁵¹⁰ Senator Wyden requested that the DOJ “examine Secretary Ross’s financial transactions and disclosure reports for potential criminal violations of 18 U.S.C. § 208.”⁵¹¹

On February 8, 2019, then-Chairman of the House of Representatives Committee on Oversight and Reform, Elijah E. Cummings, sent Secretary Ross a letter informing him

⁵⁰⁴ (1) Letter from Secretary Ross to Senator Wyden, dated June 29, 2018; (2) Letter from Secretary Ross to Senator Sasse, dated June 29, 2018.

⁵⁰⁵ Letter from David Apol to Secretary Ross, dated July 12, 2018.

⁵⁰⁶ *Id.* at p. 1.

⁵⁰⁷ *Ibid.*

⁵⁰⁸ *Id.* at p. 2.

⁵⁰⁹ Letter from Senator Wyden to Attorney General Jeff Sessions, dated July 16, 2018.

⁵¹⁰ *Ibid.*

⁵¹¹ *Ibid.*

that the Committee on Oversight and Reform was “reviewing reports that you may have conflicts of interest that could jeopardize the public trust placed in you as Secretary of Commerce.”⁵¹² The letter cited OGE’s July 12, 2018, letter along with the June 18, 2018, *Forbes* article, both previously mentioned in this section.⁵¹³ The letter requested that Secretary Ross produce, by February 22, 2019, documents for the period from January 20, 2017, through the present, dealing with a number of topics, most of which are related to Secretary Ross’s divestiture of assets.⁵¹⁴ In particular, then-Chairman Cummings requested, “All documents to or from you or others in the Office of the Secretary referring or relating to the following entities ... Navigator Holdings.”⁵¹⁵

On March 14, 2019, Secretary Ross testified before the House of Representatives Committee on Oversight and Reform regarding matters related to the U.S. Census Bureau.⁵¹⁶ Prior to this hearing, the Department’s then-Assistant Secretary for Legislative and Intergovernmental Affairs, wrote a letter to then-Chairman Cummings and cited his February 8, 2019, letter to Secretary Ross.⁵¹⁷ In his letter, the then-Assistant Secretary stated, “In the days following our receipt of that letter, it became clear that the Committee intended to expand the scope of the March 14 hearing to ask the Secretary questions about his personal finances and ethics obligations—topics that we did not anticipate nor expect to be covered in such detail and depth based on the frequent and cordial communications between our staffs.”⁵¹⁸ Based in part on that potential expansion of the hearing, the then-Assistant Secretary sought to postpone the hearing.⁵¹⁹ In lieu of postponing the hearing, then-Chairman Cummings agreed to allow Secretary Ross to provide responsive information and documents regarding his financial disclosures after the hearing.⁵²⁰

⁵¹² Then-Chairman Elijah E. Cummings to Wilbur L. Ross, Jr., February 8, 2019. *Letter from the Then-Chairman of the Committee on Oversight and Reform to the Secretary of Commerce*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-08.EEC%20to%20Ross%20re%20Conflicts%20of%20Interest.pdf> (accessed August 26, 2020).

⁵¹³ *Id.* at p. 1–2.

⁵¹⁴ *Id.* at p. 2–3.

⁵¹⁵ *Id.* at p. 3.

⁵¹⁶ Video of the hearing available is at <https://oversight.house.gov/legislation/hearings/commerce-secretary-wilbur-l-ross-jr> (accessed August 27, 2020).

⁵¹⁷ Department of Commerce, Office of Legislative and Intergovernmental Affairs to Then-Chairman Elijah E. Cummings, March 5, 2019. *Letter from the U.S. Department of Commerce Assistant Secretary for Legislative and Intergovernmental Affairs to the Chairman of the Committee on Oversight and Reform*. Available at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.03.05%20Letter%20to%20Chairman%20Cummings_0.pdf (accessed August 25, 2020).

⁵¹⁸ *Id.* at p. 1.

⁵¹⁹ *Id.* at p. 2.

⁵²⁰ Then-Chairman Elijah E. Cummings to Wilbur L. Ross, Jr., March 6, 2019. *Letter from the Then-Chairman of the Committee on Oversight and Government Reform to the Secretary of Commerce*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-06.EEC%20to%20Ross-DOC%20re%20Documents%20and%20Testimony.pdf> (accessed August 26, 2020).

On April 15, 2019, then-Chairman Cummings submitted questions for the official record to Secretary Ross.⁵²¹ Among other topics, these questions included a section regarding Secretary Ross's financial interests. These questions were more general in nature and did not specifically address Secretary Ross's short sale of Navigator. However, then-Chairman Cummings asked whether Secretary Ross followed financial conflict of interest recusal obligations and whether he made any profit from short positions he opened on assets that he agreed to divest.⁵²²

On September 9, 2019, then-Chairman Cummings again wrote to Secretary Ross "regarding the Committee's investigation into your potential conflicts of interest that could jeopardize the public trust placed in you as Secretary of Commerce."⁵²³ Then-Chairman Cummings stated, "Rather than cooperate with this investigation, you have refused for more than eight months to produce many responsive documents, and the documents you have produced raise troubling new questions about your compliance with federal ethics requirements."⁵²⁴ This letter references the February 8, 2019, letter, the March 14, 2019, hearing, and the questions for the record submitted to Secretary Ross on April 15, 2019.⁵²⁵ Then-Chairman Cummings noted that Secretary Ross did not respond to any of the questions from the April 15, 2019, letter and stated, "[t]he Department has made only limited productions of materials that were already largely publicly available or that were heavily redacted."⁵²⁶ Then-Chairman Cummings did not specifically mention Secretary Ross's short sale of Navigator shares in this letter. As of the date of this report, our office is not aware of a response by the Department to this letter.

V. Analysis/Findings

Secretary Ross's initiation of a short sale of his Navigator shares on October 31, 2017, presented three central issues for investigation, some of which were raised in specific requests to our office and other investigative agencies (as previously noted). First, whether Secretary Ross intentionally failed to disclose on his Nominee OGE Form 278e his direct ownership of the Navigator shares he sold in May 2017 and in October 2017. Second, whether NYT's communication with Secretary Ross and his subsequent short sale of Navigator shares created a situation where Secretary Ross potentially engaged in insider

⁵²¹ Then-Chairman Elijah E. Cummings to Wilbur L. Ross, Jr., April 15, 2019. *Letter from the Then-Chairman of the Committee on Oversight and Reform to the Secretary of Commerce*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-04-15.%20EEC%20to%20Secretary%20Ross%20re.%203-14%20Hearing%20QFRs.pdf> (accessed August 26, 2020).

⁵²² *Id.* at p. 4.

⁵²³ Then-Chairman Elijah E. Cummings to Wilbur L. Ross, Jr., September 9, 2019. *Letter from the Then-Chairman of the Committee on Oversight and Reform to the Secretary of Commerce*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-09-09.EEC%20to%20Ross-DOC%20re%20Conflict%20with%20Productions.pdf> (accessed August 26, 2020).

⁵²⁴ *Id.* at p. 1.

⁵²⁵ *Id.* at p. 1–2.

⁵²⁶ *Id.* at p. 2.

trading, in violation of 17 C.F.R. § 240.10b5-1 or the STOCK Act. Third, whether Secretary Ross used his public office for private gain in violation of 5 C.F.R. § 2635.702.

A. Secretary Ross's Failure to Disclose His Direct Holdings of Navigator Shares on His Nominee OGE Form 278e

Secretary Ross did not disclose in his Nominee OGE Form 278e his direct ownership of more than 16,000 shares of Navigator. These shares were awarded to him for his service as a director of Navigator and maintained by a third party stock transfer agent. Secretary Ross was required to disclose his ownership of these Navigator shares on his Nominee OGE Form 278e. In short, although Secretary Ross did not disclose his directly-held Navigator shares, he disclosed his former service as a director of Navigator and the interests in Navigator he held through his investment in other entities on his Nominee Form OGE 278e, and we did not find evidence to support a conclusion that Secretary Ross intentionally failed to disclose his direct holding of Navigator shares.

In the memorandum that Secretary Ross provided to the DAEO on April 27, 2018, he explained that he came to own these directly-held shares while serving as a Director of Navigator during 2012–2014.⁵²⁷ Secretary Ross further explained, “Navigator awarded shares to me as part of the company’s compensation plan for directors. The company’s transfer agent maintained a record of my ownership in book entry form. I did not keep a personal record of the holding and did not recall it when I prepared my OGE Form 278.”⁵²⁸ Secretary Ross informed the DAEO that he learned about his directly-owned Navigator shares at two separate times: first in May 2017 and later in October 2017. Regarding the first tranche of Navigator shares, Secretary Ross stated, “I first discovered part of my direct Navigator holdings in May 2017, when I initially undertook to sell my interests in certain transoceanic shipping funds. I promptly sold those shares, which I reported in a Transaction Report [OGE Form 278-T] filed June 1, 2017.”⁵²⁹

Next, Secretary Ross mentioned the second tranche of Navigator shares that he discovered in October 2017 as follows:

In October, as I was finalizing the sale of the funds that held Navigator, I learned that I owned additional Navigator shares from my tenure as a director. I immediately instituted the process of having those shares transferred from the company’s books to a personal account. To eliminate the value of any interest in Navigator pending delivery of the shares to me, I executed a short sale of Navigator stock on October 31, 2017, and then closed that position on November 16, 2017.⁵³⁰

We received and reviewed documents associated with Secretary Ross’s sales of his directly owned Navigator shares. Regarding the sale in May 2017, the documents show that on May 25, 2017, Secretary Ross initiated a sale of 2,058 shares of Navigator (trade

⁵²⁷ Memorandum from Secretary Ross to DAEO, dated April 27, 2018, at p. 2.

⁵²⁸ *Id.* at p. 2–3.

⁵²⁹ *Id.* at p. 3.

⁵³⁰ *Id.*

date: May 25, 2017, settlement date: May 31, 2017), and received \$16,052.25 in proceeds from this sale. These shares were transferred into Secretary Ross's brokerage account on April 24, 2017 (trade date: April 20, 2017, settlement date: April 24, 2017), from American Stock Transfer & Trust. Secretary Ross disclosed this sale on an OGE Form 278-T, dated June 1, 2017, and the amount (\$15,001–\$50,000) and date (May 31, 2017) he reported for this sale on the OGE Form 278-T was accurate when compared with the information we reviewed in the source documents previously described.⁵³¹

Regarding the sale in October 2017, we reviewed a transaction confirmation and personal brokerage account statements showing that Secretary Ross opened a short position in 14,093 shares of Navigator on October 31, 2017 (trade date: October 31, 2017, settlement date: November 2, 2017). On November 14, 2017, Secretary Ross received 14,093 shares of Navigator in his brokerage account from American Stock Transfer & Trust (trade date: November 13, 2017, settlement date: November 14, 2017). The brokerage account statement noted that this transaction's listed "market value" of \$140,225.35 was representative of the prior trading day's market value. On November 16, 2017, 14,093 Navigator shares were transferred from Secretary Ross's brokerage account to close the short position (trade date: November 16, 2017, settlement date: November 16, 2017).⁵³² The brokerage account statement noted that this transaction's listed "market value" of \$137,406.75 was representative of the prior trading day's market value. It is important to note that the October 2017 transaction was different than the sale of Navigator shares in May 2017. The May 2017 transaction was a standard sale of shares, while the October 2017 transaction was a short sale or "short against the box" transaction. In the May 2017 transaction, Secretary Ross received the Navigator shares from American Stock Transfer & Trust before selling them. In the October 2017 transaction, Secretary Ross opened a short position for the number of Navigator shares he owned before he had actual possession of the shares in a "short against the box." Secretary Ross reported the opening and closing of the October 2017 short sale of directly-held Navigator shares on two separate OGE Form 278-T documents. He filed the first OGE Form 278-T on November 7, 2017, and he described the transaction as "opened short position."⁵³³ Secretary Ross filed the second OGE Form 278-T on December 21, 2017, and he described the transaction as "closed short position."⁵³⁴ The amounts (\$100,001–\$250,000) and dates (October 31, 2017, and November 16, 2017) of the transactions Secretary Ross reported in these OGE Form

⁵³¹ Periodic Transaction Report (OGE Form 278-T), dated June 1, 2017. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CC2CA0AB89E398525814600272FE9/\\$FILE/Wilbur-L-Ross-06.01.2017-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A28CC2CA0AB89E398525814600272FE9/$FILE/Wilbur-L-Ross-06.01.2017-278T.pdf) (accessed August 27, 2020).

⁵³² Our office did not receive a corresponding transaction confirmation showing the closure of the short sale.

⁵³³ Periodic Transaction Report (OGE Form 278-T), dated November 7, 2017, at p. 2. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/7C998256034FCC3F852582B0006DEA0B/\\$FILE/Wilbur-L-Ross-11.07.17-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/7C998256034FCC3F852582B0006DEA0B/$FILE/Wilbur-L-Ross-11.07.17-278T.pdf) (accessed August 27, 2020).

⁵³⁴ Periodic Transaction Report (OGE Form 278-T), dated December 21, 2017, at p. 3. Available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/F65307D0E7C6CA00852582B0006DEA10/\\$FILE/Wilbur-L-Ross-12.21.17-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/F65307D0E7C6CA00852582B0006DEA10/$FILE/Wilbur-L-Ross-12.21.17-278T.pdf) (accessed August 27, 2020).

278-T documents were accurate when compared with the information we reviewed in the source documents previously described.⁵³⁵

In total, these transactions reveal that Secretary Ross directly owned more than 16,000 shares of Navigator that he failed to report on his Nominee OGE Form 278e.

As previously noted, Secretary Ross explained in a memorandum to the DAEO, dated April 27, 2018, that he was awarded Navigator shares for his service as a director of Navigator that he did not recall when he prepared his Nominee OGE Form 278e.⁵³⁶ He discovered one tranche of directly-owned Navigator shares in May 2017 and a second tranche in October 2017.⁵³⁷ Based on the dates he stated he discovered these shares, Secretary Ross's discovery of these directly owned Navigator shares occurred after he filed his Nominee OGE Form 278e on December 19, 2016.

To evaluate Secretary Ross's claims that he did not recall he owned these shares, we reviewed records for Secretary Ross's brokerage account into which the Navigator shares were transferred for November 1, 2016, through May 31, 2018. Our review of these records did not reveal any direct holdings of Navigator shares other than those previously mentioned: i.e., (1) 2,058 shares transferred into his brokerage account in April 2017 and (2) 14,093 shares transferred into his brokerage account in November 2017. This supports his claim that he did not have knowledge of these shares. Furthermore, Secretary Ross's disclosure on his Nominee OGE Form 278e of his service as a Director of Navigator and interests in assets that held investments in Navigator show he publicly reported connections to the company.

During our interview of Secretary Ross, we asked whether he was trying to hide his ownership of his directly held Navigator shares by not disclosing them on his Nominee OGE Form 278e. Secretary Ross responded, "Well, no, I just didn't remember that I had them. Why would I disclose all those others and try to hide a few?" When asked how he discovered his ownership of the Navigator shares he sold in May 2017 and October 2017, Secretary Ross said he did not recall and thought that topic was covered in the "correspondence." The "correspondence" to which Secretary Ross referred is the memorandum he provided to the DAEO on April 27, 2018 (Secretary Ross's counsel provided this document to our office) in which he explains his sale of the Navigator shares. We also asked Secretary Ross whether he sought advice on how to divest the shares he discovered in October 2017, and Secretary Ross responded, "No. They were not required divestitures."

We spoke with the DAEO on several occasions regarding his involvement with Secretary Ross as the DAEO and, in particular, regarding Secretary Ross's divestitures. During an interview in December 2017 (after Secretary Ross had sold his directly held Navigator shares, but before he provided the memorandum explaining these sales to the DAEO in the April 27, 2018, memorandum), the DAEO confirmed to our office that

⁵³⁵ *Ibid.*

⁵³⁶ Memorandum from Secretary Ross to DAEO, dated April 27, 2018, at p. 2-3.

⁵³⁷ *Ibid.*

Secretary Ross did not disclose his interest in Navigator in his Ethics Agreement, but he noted that Secretary Ross listed the limited partnerships that held an interest in Navigator. In addition, the DAEO explained Secretary Ross “under-reported” his interest in Navigator on his Nominee OGE Form 278e. The DAEO stated, “Even though [Secretary Ross] reported holding Navigator, he didn’t really report all of the places he had Navigator.” The DAEO also confirmed that Secretary Ross was not required to sell his interest in Navigator because Navigator is a shipping company. The DAEO told Secretary Ross he could keep his shipping interests, and OGE agreed that he could keep his shipping interests. The DAEO acknowledged that he did not know Secretary Ross directly held shares of Navigator until Secretary Ross sold those shares. The DAEO noted Secretary Ross told him the shares were not disclosed initially because he forgot he had them, and the DAEO informed our office that this was “likely.”

Our office considered, in general, shares awarded to individuals based on their service as a director of a company, and we found that when a third party financial institution holds shares for a shareholder, which is what occurred with respect to Secretary Ross’s directly-held Navigator shares, it was not uncommon for there to be mistakes in awarding the shares. We also found the distribution of such shares upon vesting can take weeks and the process for obtaining the shares and transferring them to the shareholder’s brokerage account where they can be sold often involves a number of steps.

Secretary Ross was required to and should have disclosed his direct ownership of Navigator shares on his Nominee OGE Form 278e; however, we did not find evidence to support a conclusion that Secretary Ross intentionally failed to disclose these assets. In summary, Secretary Ross included a number of references to Navigator in his Nominee OGE Form 278e, was not required to divest his interest in transoceanic shipping funds that included investments in Navigator, and sold his directly owned shares of Navigator shortly after he stated he discovered them. In addition, Secretary Ross also reported each sale of the directly owned Navigator shares on an OGE Form 278-T and provided an explanation of the situation to the Department’s DAEO. Furthermore, based on the number of assets Secretary Ross had to disclose and the low value of his direct investment in Navigator in comparison to the value of other assets, we did not conclude that Secretary Ross intended to exclude these assets from his Nominee OGE Form 278e.

B. Secretary Ross’s Short Sale of Navigator Shares and Insider Trading Allegations

Our initial assessment of these allegations included a review of the trading activity on the day NYT contacted Secretary Ross (October 26, 2017) and the first trading day after NYT published the article about which Secretary Ross was contacted (November 6, 2017). As previously detailed in the “*timeline of events*” section, there was a spike in the trading volume of Navigator shares on each of these days that was significantly higher than the trading volume of the few days before and after each date, and this could signify potential abnormal activity. We consulted with FINRA regarding these

allegations and relied on FINRA's expertise in acquiring and analyzing the trading data and assessing the facts as related to a potential insider trading violation.

As previously explained, we issued Inspector General subpoenas to 14 broker-dealers for "blue sheet" data that included details on each broker-dealer's trading activity in Navigator shares from October 1, 2017, through November 30, 2017. The data provided to our office by the broker-dealers revealed that a majority of the trading activity during this time period was what is considered to be market-making or similar activity in which a broker-dealer buys and sells shares for its own account. We did not identify many instances of trading by individuals in singular trades of a significant volume. Given the minimal change in the price of Navigator shares and low price of the shares overall, only trades involving a large volume of shares would result in meaningful profit or avoidance of loss. We located Secretary Ross's sale of Navigator shares within the data we received, and the amount of shares in this data matched the amount he reported on his Periodic Transaction Report (OGE Form 278-T).

Of note is that we were informed that neither FINRA nor the SEC had a record of gathering blue sheet data for trades in Navigator shares for this general time period. Blue sheet data is gathered by FINRA and/or the SEC when abnormal trading activity is detected, and it is generally the first step taken by each organization when moving forward with any kind of action. This signifies that neither FINRA nor the SEC found anything of note in the trading activity of Navigator shares for this general time period that warranted additional investigation.

Secretary Ross's private counsel explained Secretary Ross's short sale of Navigator shares as a variation of a short sale known as a "short against the box."⁵³⁸ In a typical "short against the box" transaction, an investor owns shares of a company but cannot take immediate possession of the shares. As a result, the investor borrows shares from a broker to initiate the "short against the box" transaction and sells those shares. The investor then closes the "short against the box" transaction by providing his/her own shares to the broker upon receiving the shares originally owned. According to Secretary Ross's counsel, this type of transaction neutralizes the seller's interest in the underlying security because any gains, losses, or dividends are exactly offset and the investor bears no market risk of being forced to purchase shares at a higher price to cover the short sale, thereby losing money, nor is there a possibility of profiting from a lower price.

Our office determined that a short against the box would eliminate any profit or loss on the shares an investor owns but cannot access and that such a transaction would amount to a constructive sale of the shares. With the exception of voting rights that the investor maintains through ownership of the shares that the investor is unable to access, our office found that an investor could be considered to lack a conflict of interest related to a financial interest in the company if that investor executes a short against the box of shares the investor owns. With respect to the voting rights, Secretary Ross executed a short sale of 14,093 shares of Navigator, and Navigator's annual report for

⁵³⁸ Secretary Ross also executed a "short against the box" transaction with shares of Greenbrier that he wanted to sell immediately but of which he was not able to gain immediate possession.

the year ended December 31, 2017, reported 55,529,762 outstanding shares of common stock.⁵³⁹ Based on this information, Secretary Ross's shares and related voting rights would be considered *de minimis*.

In his interview with our office, Secretary Ross explained that for his short against the box of Navigator shares, similar to other instances in which he executed short sales in connection with his divestitures, once he made the decision to sell the Navigator shares, and, if he did not have possession of the shares, he conducted a short sale so he could "close out [his] net economic interest and not violate the stock exchange delivery rules." Secretary Ross further explained that he saw a short sale or short against the box as a way to divest his interests as soon as possible. He stated there was no profit motive in the transactions and that it effectively terminates the economic interest in the shares.

Regarding the conveyance of information regarding the planned NYT article, although there are questions as to whether this information is "material" or "non-public," we also considered the possibility that Secretary Ross communicated this information to a third party and that third party then traded shares of Navigator based on the information. As previously noted, our review of the blue sheet data did not identify many instances of trading by individuals in singular trades of a significant volume. We cross-referenced the results of our review with known associates and affiliates of Secretary Ross, and we did not find any information warranting additional investigation of the situation. We found one individual or company account that met the threshold to be considered a potential recipient of information from Secretary Ross. We asked Secretary Ross whether he knew or was familiar with the name associated with the account, and Secretary Ross stated "those names don't ring a bell with me."

To meet the elements of a violation of 17 C.F.R. § 240.10b5-1, the purchase or sale of a security must be on the basis of "material non-public information about that security or issuer, in a breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information." The information in this case that presumably caused Secretary Ross to initiate a short against the box of his Navigator shares was the information that NYT was planning to write an article related to Secretary Ross's connections to Navigator and Navigator's connections to Sibur. Mr. McIntire did not cite any inside sources at Navigator when explaining the information in his story. In this case, Mr. McIntire could be considered the "source" of the information, and Secretary Ross owes no "duty of trust or confidence" to Mr. McIntire nor to the issuer of the shares (Navigator), so there is no need to get to the analysis of whether the "information" in this case is "material non-public" information. However, the information that NYT is planning an article about a company that does not include information about that company that is not revealed in other public sources does not fit the traditional notion of non-public information as it relates to insider

⁵³⁹ Navigator Annual Report on Form 20-F for the period ended December 31, 2017. Available at <https://www.navigatorgas.com/wp-content/uploads/2018/03/Form-20-F-FINAL-Without-Banner-without-exhibit-21.02.pdf> (accessed August 27, 2020).

trading. Based on these factors, we did not find Secretary Ross to be in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.⁵⁴⁰

Section 9 of the STOCK Act similarly includes a qualification that the information used by an executive branch employee as a means for making a private profit is “nonpublic.”⁵⁴¹ The nonpublic information must also be “derived from such person’s position as an executive branch employee or gained from the performance of such person’s official responsibilities.”⁵⁴² While it could be argued that NYT may not have contacted Secretary Ross if not for his position as Secretary of Commerce, the information at issue, namely that NYT was planning to write a story about Navigator, was not “derived from such person’s position as an executive branch employee or gained from the performance of such person’s official responsibilities.”⁵⁴³ Secretary Ross did not come into possession of this information through his review of submissions Navigator made to the Department or through reviewing other non-public information about Navigator in the Department’s possession. Accordingly, we found that Secretary Ross’s initiation of a short against the box transaction of Navigator shares as previously detailed did not violate Section 9 of the STOCK Act.⁵⁴⁴

C. *Conflicts of Interest Analysis*

An important event to consider when analyzing any conflicts of interest violations that Secretary Ross may have committed is his communication with then-Navigator ██████████ ██████████, at some point soon after Secretary Ross learned NYT was planning to write the article that was eventually published on November 6, 2017. The facts we found regarding that contact are detailed in this section of our report.

Secretary Ross’s Communication with the Navigator ██████████

As previously described, Secretary Ross sent a draft response to the letter Senator Wyden sent to Secretary Ross on June 21, 2018, via email to ██████████ with a copy to the then-Director of the Office of Policy and Strategic Planning and the then-Deputy General Counsel on June 23, 2018. In the draft response, Secretary Ross included information similar to the information in the letters he sent to Senators Wyden and Sasse on June 29, 2018, regarding his short sale of Navigator shares. Secretary Ross stated, “The questions submitted by the NYT reporter were critical of me, not particularly of Navigator and not all inquiries result in stories, so characterizing the inquiry as inside information is silly.” Notably, in the draft response, Secretary Ross also stated, “I did inform the Navigator ██████████ of the [NYT]

⁵⁴⁰ 15 U.S.C. § 78j; 17 C.F.R. § 240.10b5-1.

⁵⁴¹ Public Law 112-105 § 9(a)(1).

⁵⁴² *Ibid.*

⁵⁴³ Available at <https://www.congress.gov/112/plaws/publ105/PLAW-112publ105.pdf> (accessed August 27, 2020).

⁵⁴⁴ Because Secretary Ross failed to satisfy the element of Section 9(a)(1) of the STOCK Act related to the notion that nonpublic information must be “derived from such person’s position as an executive branch employee or gained from the performance of such person’s official responsibilities,” an analysis of whether the information is nonpublic is not necessary.

inquiry and he did not regard it as sufficiently material to announce it. I also told a number of Commerxce [sic] staffers including the OGE about the inquiry.” This statement seems to be a direct response to question #5 in Senator Wyden’s June 21, 2018, letter (i.e., “Did you communicate with any executives or board members at Navigator in advance of your decision to take a short position or afterwards”).⁵⁴⁵ However, this statement was not included in the letter that Secretary Ross sent to Senator Wyden on June 29, 2018, and Secretary Ross did not include any information in his June 29, 2018, letter that responded to question #5 from Senator Wyden.

During an interview with our office, Secretary Ross’s attention was directed to the statement regarding his contact with the Navigator ██████ in the draft response previously mentioned. In response, Secretary Ross stated, “Well, that could very well be. It wouldn’t be surprising to make a courtesy call to the company that they were about to be the subject of the news article. But I don’t have, as we sit here today, a clear recollection of whether that happened or not.” Secretary Ross confirmed that the “Navigator ██████” at the time was ██████ and the “inquiry” was the NYT inquiry about Navigator. We asked Secretary Ross why his statement about his contact with the Navigator ██████ was not included in the response provided to Secretary Wyden. Secretary Ross answered, “I have no idea. Responses to congressional inquiries go through a whole, big process over here, and I have no idea why it was deleted. It might have just been an oversight.” Secretary Ross also stated he did not recall who decided to take the statement out. Secretary Ross was also shown a copy of his June 29, 2018, letter to Senator Wyden and he stated, “It seems to me the purpose of the letter was to deal with the substance of what Wyden was talking about; namely, this insider trading, Kremlin, and all that. I’m not aware that he followed up in response to my letter. So, apparently, this did deal with whatever he had in his mind.” Regarding the statement about his contact with the Navigator ██████ not appearing in the June 29, 2018, letter to Senator Wyden, Secretary Ross further stated the following:

[A]s you can see, I was not trying to hide anything about it ... in general, if you look at the letters we get from congressional people and the responses, we try to be as brief as we can and deal with the substance. And the substance of his thing was two things, insider trading and Russian. It wasn’t this other business. So, I don’t know why in the drafting it got deleted, but I don’t know that it makes a lot of difference.

When asked whether the statement regarding contact with the Navigator ██████ was not included in the June 29, 2018, letter to Senator Wyden because it had the potential to impact the insider trading allegation, Secretary Ross responded

Well, how can an outsider ... reporting that an outside newspaper is possibly going to do an article -- you know, we get a lot of inquiries, people saying they’re going to do articles. ... Half the time they never do the article. This is simply a courtesy call to let the, a public company

⁵⁴⁵ Letter from Senator Wyden to Secretary Ross, dated June 21, 2018, at p. 2.

know that there was a reporter doing an article about them. That's all that was.

Regarding his call to the Navigator █████, Secretary Ross further stated, "I just wanted to make the courtesy call. This guy's a public company █████. █████ ought to know that The Times is thinking about doing an article."

Secretary Ross denied there was an effort by him or anyone else to try to hide information from Congress with respect to not revealing his contact with the Navigator █████. Secretary Ross added, "Especially why would one try to hide that? There's no smoking -- where's the smoking gun in that? That's the █████ agreeing that there's, that there's not material."

Secretary Ross was also asked if he had any concerns that, given his position as Secretary, his conversation with the Navigator █████ regarding NYT's potential article was inappropriate. Secretary Ross responded, "No. Why would it be inappropriate?"

D. Analysis of a Potential Violation of 5 C.F.R. § 2635.702

The activities prohibited by 5 C.F.R. § 2635.702 (*Use of public office for private gain*) are more general than those prohibited by 17 C.F.R. § 240.10b5-1 and § 9 of the STOCK Act. As with the analysis of those two statutes, Secretary Ross's short sale of Navigator shares and the facts surrounding that sale do not appear to fit the typical situations prohibited by 5 C.F.R. § 2635.702. Secretary Ross's actions do not fit within the specific prohibitions of this section ((a) inducement or coercion of benefits; (b) appearance of governmental sanction; (c) endorsements; or (d) performance of duties affecting a private interest). However, the regulation states, "The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general standard, but are not intended to be exclusive or to limit the application of this section."⁵⁴⁶ Given the general nature of this regulation, the evaluation of Secretary Ross's actions under its elements is more difficult. Nevertheless, when considering Secretary Ross's explanation that he sold the shares using a "short against the box" transaction, that the price of Navigator shares increased on the day NYT published the article, and that the NYT article could have motivated Secretary Ross to sell his Navigator shares to eliminate any appearance of a conflict of interest, it is not clear that his actions violate 5 C.F.R. § 2635.702.

As previously detailed, 5 C.F.R. § 2635.702 states, "An employee shall not use his public office ... for the gain of ... persons with whom the employee is affiliated in a nongovernmental capacity, including ... persons with whom the employee has ... business relations." Secretary Ross had an affiliation with Navigator by way of his stock ownership in the company—an ownership he maintained until November 16, 2017. For purposes of a section 702 analysis, it is inconsequential that such an affiliation was not prohibited by the Secretary's Ethics Agreement, which allowed him to retain financial interests in the transoceanic shipping sector. Moreover, Secretary Ross contacted then-

⁵⁴⁶ 5 C.F.R. § 2635.702.

Navigator ██████████ to alert ██████ that NYT was planning an article discussing Secretary Ross's holdings of Navigator shares during his tenure as Secretary of Commerce.

Our office notes that we did not identify evidence Secretary Ross used his government position to induce or coerce benefits from Navigator or used his public office in a manner that could imply governmental sanctions of a particular activity, as prohibited by sections 2635.702(a) and (b), respectively. Nonetheless, we identified evidence supporting a finding he used his office for private gain, namely to benefit the value of his Navigator holdings. Public scrutiny by the media on apparent improprieties relating to a public official's ownership interests of a company is the type of activity that could potentially impact share prices.

We also identified mitigating evidence, including Secretary Ross's statement that the information he provided the Navigator ██████ was not "material." Although materiality need not be established to substantiate a section 702 violation, this is important for determining Secretary Ross's view regarding whether he thought the information would impact his financial interests. Additionally, although it could be argued that the market moved based on the spike in volume of the trading of Navigator shares following the article's subsequent November 5, 2017, publication, the stock price did not move commensurate with what one could consider negative press on the company. Navigator's share price opened at \$9.65 on November 6, 2017 (the date NYT published the article), and closed at \$10.50. It closed at \$10.10 on November 7, 2017, and did not close below \$10.10 until November 14, 2017, when it closed at \$9.95. Additionally, we identified no evidence Secretary Ross, his friends, relatives, or affiliates used the information provided by Secretary Ross regarding the planned NYT article for financial gain. We also did not locate any evidence that the Navigator ██████ sold shares of Navigator based on ██████ contact with Secretary Ross. A review of Navigator share ownership reported on SEC Forms 20-F for the year ended December 31, 2016, and the year ended December 31, 2017, revealed that the Navigator ██████ share ownership increased from 1,994,915 shares to 2,036,938 shares during 2017.⁵⁴⁷

Moreover, it is inconclusive Secretary Ross was using information gained by virtue of his public office, or the position itself, for private gain. While it is arguable NYT may not have contacted Secretary Ross if not for his position as Secretary of Commerce, there is insufficient evidence to establish the information at issue was either derived from Secretary Ross's position as an executive branch employee or gained from the performance of his official responsibilities. Although these are not specific elements that need to be established for a section 702 violation, this information can be instructive for establishing a violation based on the regulation's broad scope. Secretary Ross did not come into possession of this information through his review of submissions Navigator

⁵⁴⁷ (1) Navigator Annual Report on Form 20-F for the period ended December 31, 2016, at p. 81. Available at <https://www.navigatorgas.com/wp-content/uploads/2015/12/20-F-2016.pdf> (accessed August 27, 2020); and (2) Navigator Annual Report on Form 20-F for the period ended December 31, 2017, at p. 82. Available at <https://www.navigatorgas.com/wp-content/uploads/2018/03/Form-20-F-FINAL-Wihout-Banner-without-exhibit-21.02.pdf> (accessed August 27, 2020).

made to the Department or through reviewing other non-public information about Navigator in the Department's possession, but rather by a newspaper reporter in preparation for an article. Weighing the evidence, we determined Secretary Ross's communication to the Navigator [REDACTED] regarding the impending article about Secretary Ross's involvement with Navigator Holdings and its dealings with Sibur did not violate 5 C.F.R. § 2635.702.

Analysis of a Potential Violation of 5 C.F.R. § 2635.101

As a public servant, Secretary Ross is responsible for avoiding actions that have the appearance of violating the general principles of his basic obligation of public service per 5 C.F.R. § 2635.101(b). The regulation mandates that employees apply the principles set forth in the Standards of Ethical Conduct, including section 702. Specifically, section 101(b)(14) states

[e]mployees shall endeavor to avoid any actions creating the appearance that they are violating ... the ethical standards set forth in this part. Whether particular circumstances create an appearance that ... these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Although Secretary Ross's actions in this instance did not violate his Ethics Agreement, which allows him to retain interests in the transoceanic shipping sector, the evidence establishes Secretary Ross did not endeavor to avoid actions creating the appearance that he violated the standards of ethical conduct. Specifically, the Secretary, shortly after discovering he retained shares of Navigator stock due to an oversight, contacted the [REDACTED] of Navigator (for which the Secretary previously served as Director/Chairman) to alert the [REDACTED] of the planned NYT article. Although we did not find sufficient evidence these actions benefited Secretary Ross, his family, his affiliates, or Navigator, the Secretary's actions created the appearance of a section 702 violation. Moreover, we determined these actions meet the "reasonable person" burden of proof to establish a violation of section 101(b)(14).