



February 7, 2019

Hon. Peggy E. Gustafson
Inspector General
Attn: Complaint Intake Unit,
Mail Stop 7886
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Inspector General Gustafson:

The Campaign Legal Center (CLC) writes to supplement our prior complaint submitted to your office on August 13, 2018. We ask that you investigate Secretary of Commerce Wilbur Ross Jr. for additional apparent false statements about supposed divestitures of his stock holdings. These allegations arise from Secretary Ross's failure to divest BankUnited stock which he claimed to have divested on government forms that he signed under penalty of perjury.¹ As a result of Secretary Ross's false filings, the public was not on notice for any conflicts arising from his BankUnited holding, so we also ask that you investigate whether Secretary Ross engaged in any conduct implicating the conflict of interest statute, 18 U.S.C § 208.

When Secretary Ross was nominated to his position, he signed an ethics agreement detailing "steps [he] will take to avoid any actual or apparent conflict of interest" if confirmed.² In the agreement, he included BankUnited, Inc. among a list of financial interests he would divest within 90 days of confirmation.³ He acknowledged that the conflict of interest statute would bar him from participating "personally and substantially in any particular matter that to [his] knowledge has a direct and predictable effect on the financial interests" of BankUnited until he divested his stock in the company. At the time, Secretary Ross held stock in BankUnited worth up to \$15,000.⁴

¹ Carrie Levine, *Wilbur Ross Said He Divested a Stock Holding – But He Didn't*, CTR. FOR PUB. INTEGRITY (Dec. 19, 2018), <https://bit.ly/2rLA9jF>.

² Letter from Wilbur Ross, Jr., Sec'y of Dep't of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official 1-2 (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement).

³ *Id.* at 8.

⁴ U.S. OFFICE OF GOV'T ETHICS, *Executive Branch Personnel, Public Financial Disclosure Report (OGE Form 278e)* (Dec. 19, 2016), <https://bit.ly/2iy3hJa> (nominee financial disclosure report of Wilbur L. Ross Jr., Part 2, Line 4).

Secretary Ross claimed that he sold at least some portion of his BankUnited stock on May 31, 2017, two days after he was required to divest his 90-day interests, according to a late periodic transaction report that was filed in September of 2017.⁵ Shortly after this stated sale, Secretary Ross signed a certification of ethics agreement compliance dated June 2, 2017.⁶ Secretary Ross noted on this form that some of his promised 90-day divestitures, including BankUnited, had “unanticipated delay[s],” but that as of the date of signature, all 90-day divestitures had been completed.⁷

Secretary Ross was required to review his financial holdings again in order to file his annual financial disclosure report in August of 2018. In this annual report, he listed the value of his BankUnited holdings as “none,” and in a footnote to the BankUnited entry, Secretary Ross stated that the “shares were divested in 2017.”⁸

Despite Secretary Ross’s three separate assurances that he sold his BankUnited stock in early 2017, he filed a transaction report on October 31, 2018, reversing course.⁹ This report lists a sale of BankUnited stock occurring on October 1, 2018, 16 months after his first report claiming divestiture of this batch of stock.¹⁰ In a footnote, Secretary Ross attempts to absolve himself of responsibility for the error, claiming he had “a mistaken belief that [BankUnited’s stock transfer agent] executed my sell order on that date [May 31, 2017].”¹¹ But we have no way of verifying this claim.

If the prior false filings were done knowingly, that would constitute a violation of the criminal false statements statute, 18 U.S.C. § 1001. An investigation is needed to determine if that occurred.

At a minimum, this conduct demonstrates Secretary Ross’s reckless disregard for the truthfulness of his financial disclosure reports. Secretary Ross is a sophisticated investor, with a 55-year career in investment banking and private equity.¹² Much of that

⁵ U.S. OFFICE OF GOV’T ETHICS, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Sept. 11, 2017), <https://bit.ly/2Mywxd3> (report of Wilbur L. Ross Jr.). Because employees are only required to report financial interests in a dollar amount range, we do not know the exact amount of stock Secretary Ross sold on this date. However, in his June 2017 Certification of Ethics Agreement Compliance, Secretary Ross represented that he sold all his BankUnited stock. *See infra* note 6. Ross was supposed to file his periodic transaction report (a) 45 days after the transaction or (b) 30 days after notification of the transaction. 5 U.S.C. app. 4 § 103(I).

⁶ U.S. OFFICE OF GOV’T ETHICS, *Certification of Ethics Agreement Compliance* (of Wilbur L. Ross, Jr.), at 3 [page 9 of the combined document] (box 11) (June 2, 2017), <https://bit.ly/2tuwXJS>.

⁷ *Id.*

⁸ U.S. OFFICE OF GOV’T ETHICS, *Executive Branch Personnel, Public Financial Disclosure Report: Annual Report (OGE Form 278)*, at 8, 58 (Aug. 13, 2018), <https://bit.ly/2H4XIEd> (report of Wilbur L. Ross Jr.).

⁹ U.S. OFFICE OF GOV’T ETHICS, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Oct. 31, 2018), <https://bit.ly/2Fpgo9O> (report of Wilbur L. Ross Jr.).

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² OVERSEAS PRIV. INV. CORP., “Who We Are, Wilbur L. Ross, Jr.,” <https://bit.ly/2MOqUZQ>, (last visited Feb. 4, 2019).

career has been spent successfully investing in distressed assets.¹³ Despite this pedigree, Secretary Ross claims his false filings are the result of a mistaken belief that a third party failed to execute his stock sale.¹⁴ This explanation is unpersuasive. Secretary Ross has exhibited a pattern of submitting sworn documents to the government that contain omissions and inaccuracies, some of which have been explained away by Secretary Ross using elaborate and implausible justifications for the inaccuracies.¹⁵ The Acting Director of the Office of Government Ethics (“OGE”) acknowledged this pattern in a letter to Secretary Ross, where he urged the Secretary “to devote the resources necessary to ensure that your [annual] report and all future communications with OGE are complete and accurate.”¹⁶ Shortly after receiving this letter putting him on notice of his reporting obligations, Secretary Ross filed an annual report that falsely asserted he had sold BankUnited stock. Secretary Ross’s failure to ascertain at the time of his annual report filing whether his stock was actually sold seems to demonstrate reckless disregard for the truthfulness of his financial disclosure reports, or at the very least a conscious effort to avoid learning the truth about his holdings.

Because of Secretary Ross’s false filings, the public was not on notice of potential conflicts of interest he might have had with regard to BankUnited for over a year. If your office determines Secretary Ross knew he held the financial interest throughout 2017 and 2018, we ask that your office investigate whether Secretary Ross participated personally and substantially in any particular matter that would have had a direct and predictable effect on his interest in BankUnited, a violation of 18 U.S.C. § 208.

This newest example of Secretary Ross’s filing a false report is especially troubling given the credible evidence of other such conduct. We wrote you on August 13, 2018, to request an investigation of Secretary Ross for possible violations of the criminal conflict of interest law and the laws against false statements and filing false reports.¹⁷ We wrote again on November 1, 2018, to flag an additional potential violation of the conflict of interest law related to Secretary Ross’s meetings with Chevron while he had a financial

¹³ See, e.g., Matthew Goldstein, ‘Vulture’ or ‘Phoenix’? Wilbur Ross, Risk-Taker, Is Eyed for Commerce Post, N.Y. TIMES (Nov. 25, 2016), <https://nyti.ms/2NY7CBo>.

¹⁴ U.S. OFFICE OF GOV’T ETHICS, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Oct. 31, 2018), <https://bit.ly/2Fpgo9O> (report of Wilbur L. Ross Jr.).

¹⁵ As we noted in our complaint filed August 13, 2018, Secretary Ross put forward an implausible explanation for his failure to divest Invesco stock as promised. He characterized this failure to divest as a mistake, too, by saying he “mistakenly believed” that some unnamed third party had sold his shares prior to his appointment, and he did not discover the mistake until December 2017. With regard to this explanation, we noted that in order to demonstrate he lacked knowledge of his Invesco stock he would need to “do more than claim vaguely that he thought an unspecified party had sold shares of the stock that were in his possession.” Campaign Legal Center, COMPLAINT REGARDING COMMERCE SECRETARY WILBUR L. ROSS JR. FROM THE CAMPAIGN LEGAL CENTER TO THE INSPECTOR GENERAL FOR THE U.S. DEPARTMENT OF COMMERCE 23 (Aug. 13, 2018) <https://bit.ly/2MISsPj>.

¹⁶ Letter to the Hon. Wilbur Ross, Sec’y of Commerce, from David J. Apol, Acting Director of the U.S. Office of Gov’t Ethics (July 12, 2018), <https://bit.ly/2Cd46xP>.

¹⁷ *Id.*

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interest in the company.¹⁸ And as previously mentioned, we are not the only ones concerned about this pattern: the former Acting Director of OGE also seems worried that Secretary Ross is abdicating his duty to “protect the public trust and serve as a model of ethical behavior.”¹⁹

Given the evidence outlined above, CLC asks again that you investigate Secretary Ross’s conduct and issue a public report of your findings.

Sincerely,



Delaney N. Marsco
Ethics Counsel

¹⁸ CAMPAIGN LEGAL CENTER, SUPPLEMENTAL COMPLAINT CONCERNING ETHICS VIOLATIONS BY SEC. WILBUR ROSS (Nov. 1, 2018) <https://bit.ly/2MWTJ6w>.

¹⁹ Letter to the Hon. Wilbur Ross, Sec’y of Commerce, *supra* note 16.