

June 22, 2018

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20520-0001

The Honorable David J. Apol
Acting Director
U.S. Office of Government Ethics
1201 New York Avenue, N.W.
Washington, D.C. 20005

Re: Request for Investigation into False Statement and Insider Trading by Secretary of Commerce Wilbur L. Ross

Dear Deputy Attorney General Rosenstein and Acting Director Apol:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Department of Justice (“DOJ”) and the Office of Government Ethics (“OGE”) investigate whether Secretary of Commerce Wilbur L. Ross violated federal law by making a false statement to OGE concerning his divestiture of Invesco, Ltd stock (“Invesco”), and whether he did so knowingly and willfully.¹ In addition, CREW respectfully requests that DOJ and OGE investigate whether Secretary Ross violated the STOCK Act or other insider trading laws and regulations when he engaged in a short sale of Navigator Holdings (“Navigator”) in October 2017, or refer the matter to the U.S. Securities and Exchange Commission for investigation, if you determine it appropriate.

Secretary Ross previously served as Chief Executive Officer (“CEO”) of Invesco,² an investment management firm, giving him a sophisticated understanding of Invesco and its assets, including Navigator. Upon entering government service, he negotiated an unusually generous ethics agreement that permitted him to complete his divestiture obligations in phases, and in a time frame that exceeded OGE’s standard requirements. Yet, despite being granted additional time, Secretary Ross failed to meet the divestiture deadline with respect to his Invesco stock holdings. Furthermore, Secretary Ross appears to have traded on nonpublic information by

¹ In our December 21, 2017 letter to U.S. Department of Commerce Inspector General Peggy Gustafson, enclosed as Exhibit A, CREW requested an investigation into other allegations of ethical improprieties arising from several of Secretary Ross’s financial disclosures and divestment and recusal obligations. We respectfully request that your offices take those allegations into consideration as part of this request, and any other issues that may have arisen as a result of Secretary Ross or his family retaining financial interests in possibly conflicting assets. *See* Steven Mufson, Wilbur Ross owned stock in a company with close ties to Putin associates. Now he’s facing questions about what he did with it., *Washington Post*, June 20, 2018, available at <https://wapo.st/2lojK1x>.

² Wilbur L. Ross Public Financial Disclosure Report, Dec. 19, 2016 (“Ross Public Financial Disclosure Report”), Part I, line 59, available at <http://bit.ly/2I8XlhZ>.

engaging in a short sale of Navigator after learning of a forthcoming negative news story regarding the company. These actions warrant an investigation into whether any of the relevant civil and criminal laws were violated.

**Secretary Ross's Misrepresentations Regarding Divestiture of
his Invesco Stock Holdings**

Federal law prohibits anyone from knowingly and willfully making “any materially false, fictitious, or fraudulent statement or representation” in any matter within the jurisdiction of the executive, legislative, or judicial branch, with violations punishable by up to five years in prison.³ There is substantial evidence that Secretary Ross may have knowingly and willfully made false or fraudulent statements when he certified to OGE that he had completed divestiture of all required assets, then six weeks later sold substantial amounts of Invesco stock.

Upon being nominated, Secretary Ross disclosed substantial assets and negotiated an unusually generous divestment schedule. On December 19, 2016, he filed his Public Financial Disclosure Report (“OGE Form 278e”) reporting assets totaling \$700 million.⁴ In his January 15, 2017, ethics agreement filed with Department of Commerce Alternate Designated Agency Ethics Official David Maggi, Secretary Ross agreed to resign from his CEO position with Invesco and its affiliates, and upon confirmation to divest his assets in Invesco and most of its affiliates to avoid any actual or apparent conflict of interest that may have arisen as a result of his appointment.⁵

While the normal time granted to nominees for completing their divestiture of conflicting assets is 90 days,⁶ Secretary Ross negotiated additional time to divest certain Invesco assets. In this regard, his Ethics Agreement provides:

Before I assume the duties of the position of Secretary, Invesco, Ltd. will vest my unvested restricted stock. I will forfeit any restricted stock that is unvested at the time I assume the duties of the position of Secretary. Invesco will distribute the shares of vested restricted stock (i.e., stock) to me within 180 days of its vesting, and I will divest these shares within 30 days of distribution. **I will divest all of my other financial interests in Invesco**, except for those interests specifically identified in Section 10 below as being retained. **I will complete the divestiture of these other financial interests in Invesco within 90 days of my**

³ 18 U.S.C. § 1001(a)(2).

⁴ Ross Public Financial Disclosure Report.

⁵ Letter from Wilbur L. Ross to Mr. David Maggi, Alternate Designated Agency Ethics Official, Department of Commerce, Jan. 15, 2017 (“Ethics Agreement”), available at <http://bit.ly/2tpopUf>.

⁶ 5 C.F.R. § 2634.802(b). (“The ethics agreement shall specify that the individual must complete the action which he or she has agreed to undertake within a period not to exceed three months from the date of the agreement (or of Senate confirmation, if applicable). Exceptions to the three-month deadline can be made in cases of unusual hardship, as determined by the Office of Government Ethics.”)

confirmation, except as specifically provided otherwise in Section 9 (Assets to be Divested) below and in Attachment A.⁷

Secretary Ross was confirmed by the Senate on February 27, 2017. Thus, his deadline to complete divestiture of his previously held Invesco stock was May 28, 2017, and his deadline to complete divestiture of the distributed shares of vested restricted stock was September 25, 2017.

⁸ Following the expirations of these deadlines, on November 1, 2017, Secretary Ross filed a Certification of Ethics Agreement Compliance (“Ethics Certification”) with OGE in which he represented that he had completed “all of the divestitures indicated in my ethics agreement.”⁹

However, Secretary Ross soon revealed that he had not, in fact, divested all the covered assets. On December 21, 2017, he submitted a Public Financial Disclosure Report: Periodic Transaction Report (“OGE 278-T”) in which he reported the sale of two additional tranches of Invesco stock, which were sold on December 19 and December 20, 2017, for amounts totaling between \$5,000,001 and \$25,000,000 each.¹⁰ These transactions demonstrate that Secretary Ross failed to divest all Invesco stock holdings as of November 1, 2017. Accordingly, the representations he made in his Ethics Certification that he had completely divested his conflicting assets, including the Invesco stock, as of November 1, 2017 were false.

In an accompanying endnote to his Invesco sales transactions, Secretary Ross attempted to explain the circumstances of the delay as due to a lack of knowledge on his part as to what had been sold prior to his appointment:

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 and 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,**

⁷ Ethics Agreement at 2 (emphasis added). Attachment A, Part II, includes a list of 40 entities that were to be divested within 180 days of confirmation.

⁸ The Ethics Agreement included certain exceptions for assets that were to be retained and assets that were to be divested within 180 days because they were illiquid. Neither of these excepted categories appear to apply to Secretary Ross’s Invesco stock holdings that he previously held and that are the subject of the alleged false statement.

⁹ Box 3(a), Certification of Ethics Agreement Compliance, Nov. 1, 2017, available at <http://bit.ly/2tnBuxC>. Interim Ethics Certifications were also filed by Secretary Ross on June 2 and September 5, 2017, available at <http://bit.ly/2tnBuxC>. In his September 5 Ethics Certification, Secretary Ross represented that “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.)”

¹⁰ OGE 278-T, Dec. 21, 2017, available at <http://bit.ly/2tqAk4g>.

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.¹¹

This explanation merits investigation and appears to lack credibility given Secretary Ross's status as a sophisticated CEO and investor, his detailed knowledge about his investment portfolio, and the extraordinary amount of time he was given to comply with his divestiture commitments.

Potential Violation of 18 U.S.C. § 1001

Federal law prohibits anyone from knowingly and willfully making "any materially false, fictitious, or fraudulent statement or representation" in any matter within the jurisdiction of the executive branch.¹² The purpose of 18 U.S.C. § 1001 is to prohibit deceptive practices aimed at frustrating or impeding the legitimate functions of government departments or agencies.¹³ By certifying that he completed his divestitures when he had not, in fact, done so, Secretary Ross acted to deceive the public and OGE into believing that he had faithfully fulfilled his ethics commitments to take all necessary steps to resolve actual and apparent conflicts of interest. Because his misrepresentation pertains to compliance with the financial conflicts of interest statute, 18 U.S.C. § 208, his failure to sell all his Invesco stock in a timely manner is material and renders his ethics certification statement false and misleading. His misrepresentation also undermines the OGE's mission of promoting the public trust by ensuring Secretary Ross is in compliance with the financial conflicts of interest statute and his ethical commitments made in connection with the Senate confirmation process.

There is substantial evidence that Secretary Ross may have acted knowingly and willfully when he falsely certified that he had completely divested his conflicting assets. As the former CEO of a major investment firm, Secretary Ross is an experienced corporate executive with sophisticated knowledge of the company's assets and operations. Thus, he was well placed to fully understand the steps necessary to complete his divestiture responsibilities and to reasonably foresee any circumstances that would hinder his ability to meet his divestment deadline. That he engaged in detailed negotiations with OGE and Department of Commerce ethics officials to conduct his divestiture in a drawn-out, phased approach further evidences that he understood the importance of the divestiture process, making it more likely that he acted knowingly and willfully when he falsely certified that he had completed the process.

Potential Violation of STOCK Act and Securities Law by Shorting Sale of Navigator

The STOCK Act, Pub. L. 112-105 § 9(a), prohibits executive branch employees from using "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

¹¹ *Id.* (emphasis added.).

¹² 18 U.S.C. § 1001.

¹³ United States Attorneys' Manual, Sec. 9-42.001; Criminal Resource Manual, Sec. 904, *available at* <https://bit.ly/2MMFvEz>.

for making a private profit.”¹⁴ In addition, securities laws prohibit executing trades based on inside information,¹⁵ such as information obtained by virtue of one’s government position.¹⁶ There is credible evidence that Secretary Ross may have improperly used nonpublic information for personal gain when he engaged in a short sale transaction of Navigator stock after being alerted to an upcoming negative news story about the company by a reporter who sought comment from Secretary Ross in his official capacity.

According to *Forbes*, Secretary Ross opened a short sale position against Navigator stock on October 31, 2017, after having apparently divested his Navigator stock holdings a few days earlier on October 25.¹⁷ The short sale transaction, valued at between \$100,000 and \$250,000, appears to have been made after Secretary Ross learned of a “potentially negative story” about to run in the *New York Times* about his dealings with Navigator and its ties to a Kremlin-linked company connected to Vladimir Putin’s closest allies.¹⁸ On October 26, 2017, the *New York Times* contacted Secretary Ross and informed him that the upcoming “story focuses mostly on your involvement with Navigator Holdings and its dealings with Sibur, the Russian energy company,”¹⁹ and included “10 questions about Navigator, Ross’s dealings with the firm and its ties to Russia.”²⁰

As the former CEO of Invesco, Secretary Ross also may have possessed other nonpublic information regarding Navigator given that Invesco held a significant position in Navigator.²¹ He served on the Navigator Board of Directors until November 2014,²² and his Invesco replacement on the Board, and current Chief of Staff at Commerce, served on the Navigator Board until July 17, 2017.²³

Secretary Ross apparently profited from the short sale transaction: Navigator’s stock price “slid about 4 percent before Mr. Ross closed his position on Nov. 16, eleven days after the

¹⁴ See 5 C.F.R. § 2635.703.

¹⁵ 17 C.F.R. § 240.10b-5.

¹⁶ See OGE Summary of *United States v. Cheng Yi Liang*, , OGE 2012 Conflict of Interest Prosecution Survey, at 10, available at <https://bit.ly/2MaPXEN> (defendant was a chemist with the Food and Drug Administration who pleaded guilty to one count of securities fraud and one count of making a false statement on his annual confidential disclosure reports and was sentenced to five years in prison. He previously had been ordered to forfeit the \$3.7 million he gained due to his insider trading scheme.)

¹⁷ Dan Alexander, *Lies, China and Putin: Solving the Mystery of Wilbur Ross’ Missing Fortune*, *Forbes*, June 18, 2018, available at <http://bit.ly/2tfLKZr>.

¹⁸ Mike McIntire, *Commerce Secretary Shorted Stock as Negative Coverage Loomed*, *New York Times*, June 19, 2018, available at <https://nyti.ms/2yv1l2w>.

¹⁹ *Id.*

²⁰ Mike McIntire (@mmcintire), Twitter (June 19, 2018, 2:02 PM), <http://bit.ly/2tf3S5A> (posting a copy of the letter Mr. McIntire sent to Secretary Ross).

²¹ See Nasdaq website, available at <https://www.nasdaq.com/symbol/nvgs/institutional-holdings> (reporting that Invesco subsidiary Invesco Private Capital owns 21.863 million shares of Navigator as of Mar. 31, 2018).

²² Jon Swaine and Luke Harding, *Trump commerce secretary’s business links with Putin family laid out in leaked files*, *Guardian*, Nov. 5, 2017, available at <https://bit.ly/2IURczG>.

²³ Lorraine Woellert, Nancy Cook, and Andrew Restuccia, *Ross aide served on Navigator’s board while working at Commerce*, *Politico*, Nov. 6, 2017, available at <https://politi.co/2znOZ58>.

articles were published by The Times and the International Consortium of Investigative Journalists as part of the ‘Paradise Papers’ project.”²⁴ When asked about this transaction, Secretary Ross explained that “he had been in the process of divesting his holdings in Navigator when he discovered shares he did not know he had in an account set up by the company.” According to Secretary Ross, because the shares were in ‘electronic form’ he could not access them right away.”²⁵ He further added that he “decided to continue selling those shares, but since I did not have physical possession of them in order to make delivery in the required time period, I technically sold them short” but later “delivered them to the broker to close out the transaction.”²⁶ Beyond the evidence of insider trading, this appears to be an admission by Secretary Ross that he continued to hold a financial interest in Navigator notwithstanding the short sale transaction.

However, by engaging in the short sale transaction, Secretary Ross did nothing to alleviate his existing financial interest.²⁷ Although the Navigator stock proved to be controversial once the Paradise Papers story came out on November 5, 2017, Secretary Ross was under no known legal obligation or deadline to divest it.²⁸ Further, he appears to have been under no obligation to cover the short sale with the previously held Navigator shares and could just as easily have purchased new shares from the broker to cover the transaction. All this suggests he engaged in the short sale transaction to profit financially, not to meet a divestiture obligation.

As an executive branch official, Secretary Ross is subject to the STOCK Act and other laws that ban insider trading. Multiple news accounts provide credible evidence that Secretary Ross may have violated the STOCK Act and other laws banning insider trading when he engaged in a short sale transaction against Navigator after learning of a soon-to-be-published negative news story involving that company.

Conclusion

Secretary Ross’s actions reflect an apparently knowing and repeated disregard for his ethics obligations, including the obligation to meet his promise of full divestiture of all Invesco stock and to accurately report the status of his divestitures, and securities fraud laws that prohibit trading on insider information. The seriousness of his actions warrants an immediate and thorough investigation of the evidence that Secretary Ross knowingly and willfully

²⁴ McIntire, *New York Times*, June 19, 2018.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Secretary Ross appears to have engaged in similar short sale transactions involving Sun Bancorp, Inc., opening a position on October 31, 2017, and closing it on December 12, 2017. To the extent that the Sun Bancorp transactions raise similar issues we respectfully request that these transactions be similarly investigated.

²⁸ Mike McIntire, Sasha Chavkin and Martha M. Hamilton, *Commerce Secretary’s Offshore Ties to Putin ‘Cronies,’* *New York Times*, Nov. 5, 2017, available at <https://www.nytimes.com/2017/11/05/world/wilbur-ross-russia.html>.

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misrepresented the status of his divestiture on his November 1, 2017 ethics certification and engaged in unlawful conduct by shorting Navigator stock after learning of an imminent negative news story.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in Washington



Norm Eisen
Chair
Citizens for Responsibility and Ethics in Washington

Encl.

cc: Peggy E. Gustafson, Inspector General, Department of Commerce

Exhibit A

CREW | citizens for responsibility and ethics in washington

December 21, 2017

Peggy E. Gustafson
Inspector General
U.S. Department of Commerce
1401 Constitution Ave., N.W.
Washington, DC 20230

Re: Request for Investigation into Secretary Wilbur L. Ross's Financial Disclosure and Divestment and Recusal Obligations

Dear Ms. Gustafson:

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that the Office of Inspector General ("OIG") investigate whether Secretary of Commerce Wilbur L. Ross: (1) properly reported all required financial holdings and transactions on his public financial disclosure report; (2) fully divested from conflicting assets in accordance with the terms of his ethics agreement; and (3) appropriately recused himself from certain trade matters.

First, Secretary Ross's public financial disclosure report reveals discrepancies between the total value of his reported assets and information he previously disclosed publicly about the extent of his wealth. Although he told *Forbes* he had assets worth more than \$3 billion, Secretary Ross's financial disclosure report shows assets of only about \$700 million. This discrepancy alone raises a question of whether he accurately disclosed all of his reportable assets and income, as the Ethics in Government Act requires.

Secretary Ross's disclosure report also reveals apparent omissions and irregularities in his reporting of problematic assets, including the Bank of Cyprus, Diamond S Shipping, and Navigator Holdings Ltd. Secretary Ross has yet to fully account for the extent and value of his shares in the Bank of Cyprus, and he failed to file periodic transaction reports for the sale of his Bank of Cyprus shares and approximately 40 other assets. With respect to Diamond S Shipping, he appears to have misreported the value of his holdings, and despite his reported intent to divest he has yet to report a sales transaction for these assets. Secretary Ross also apparently failed to report values for Navigator Holdings Ltd., which operates the world's largest fleet of handy-size (which are between small and mid-size) liquefied gas carriers, and for the underlying assets held by WLR Conduit MM, which is involved primarily in shipping and liquefied natural gas exploration.

Second, in an ethics agreement he entered to avoid any actual or apparent conflict of interest, Secretary Ross represented that he would divest of all his holdings in the Bank of Cyprus. Despite the agreement, Secretary Ross delayed divesting one part of his Bank of Cyprus stock past the time permitted, and it is not clear if he has properly divested from a second part of his holdings in the bank.

Third, Secretary Ross appears to have violated conflict of interest rules by participating in meetings and policy deliberations involving United States and China trade matters related to assets he held or holds. These include a meeting in mid-July of top U.S. and Chinese business leaders at Commerce Department headquarters that included Secretary Ross's Diamond S Shipping business partner, and his participation in negotiating a trade deal that included a plan to increase natural gas exports from the U.S. to China that could enhance the value of Secretary Ross's natural gas exploration holdings and his shipping interests in Navigator Holdings Ltd.

Taken as a whole, Secretary Ross's conduct suggests a pattern and practice of ignoring, if not flouting, his legal and ethical obligations to disclose his interests and avoid conflicts of interest and raises concerns about whether he was deliberately trying to obfuscate the value of his extensive assets.

Potential Violations

Failure to Accurately Report the Value of His Assets on Public Financial Disclosure Report

The Ethics in Government Act of 1978 requires senior officials such as Secretary Ross to report and disclose detailed financial information about private financial interests, assets, and business associations of the official and his or her spouse and dependent children. These include the requirement to report the value of any assets that exceed \$1,000 or for which the official received income in excess of \$200 during the reporting period,¹ as well the holdings of a trust from which the official, his or her spouse, or dependent child receives income or in which the official has a beneficial interest.² The failure to accurately report the true value of assets, if done intentionally, can subject the official to a civil penalty.³

Secretary Ross filed his Public Financial Disclosure Report ("OGE Form 278e") on December 19, 2016, reporting assets totaling nearly \$700 million.⁴ By contrast, Secretary Ross told *Forbes* in 2015 his assets were valued at \$3.4 billion, and his assistant told the magazine in 2016 his assets were worth \$3.7 billion.⁵ Based in part on those representations, in both years *Forbes* included Secretary Ross on its list of American billionaires, estimating his worth at \$2.9

¹ 5 U.S.C. app. § 102(a).

² 5 U.S.C. app. § 102(f).

³ 5 U.S.C. app. § 104(a)(1).

⁴ Wilbur L. Ross Public Financial Disclosure Report, Dec. 19, 2016 ("Ross Public Financial Disclosure Report"), 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); Dan Alexander, *The Case of Wilbur Ross' Phantom \$2 Billion*, *Forbes*, Nov. 7, 2017, available at <https://www.forbes.com/sites/danalexander/2017/11/07/the-case-of-wilbur-ross-phantom-2-billion/#38f4edfc7515>.

⁵ Dan Alexander, *The Mystery of Wilbur Ross' Missing Billions*, *Forbes*, Oct. 16, 2017, available at <https://www.forbes.com/sites/danalexander/2017/10/16/the-mystery-of-wilbur-ross-missing-billions/#723d3ff01c90>; Alexander, *Forbes*, Nov. 7, 2017.

billion.⁶ Secretary Ross also suggested to *Forbes* in October 2017 he had transferred more than \$2 billion worth of assets into a trust in late 2016, indicating he had owned assets far above the value disclosed on his OGE Form 278e.⁷ The glaring discrepancy between Secretary Ross's reported assets and the value of his assets reported by *Forbes* suggests Secretary Ross may have failed to properly disclose around \$2 billion in assets on his OGE Form 278e, an amount that unquestionably meets the reporting threshold.

As noted, when *Forbes* asked Secretary Ross about this inconsistency, he claimed the additional \$2 billion was transferred to a family trust.⁸ This claim, however, appears to be contradicted by a statement the Commerce Department released in response to an inquiry from *Forbes* that "there was no major asset transfer to a trust in the period between the election and Secretary Ross's confirmation."⁹

Most recently, Secretary Ross sent a letter to the Office of Government Ethics ("OGE") attempting to "clarify some matters" and contending that the "estimate of my wealth as reported in the press is not accurate; the accurate information is provided in my nominee public financial disclosure report."¹⁰ He also stated that "there was no trust created" during the period between the election and his appointment as Commerce Secretary, and further claimed he was "in the process of creating a trust as a mechanism to divest" his assets. Secretary Ross characterized any statement he had made to the contrary to the press as a "mistake or misunderstanding."¹¹

These conflicting reports raise serious questions regarding the true extent of Secretary Ross's wealth, the extent to which he has fully and accurately disclosed his reportable assets and income, when and if there was a *bona fide* transfer of assets to a trust, how he or his family members might benefit from such a trust, and whether all possible conflicts of interest have been fully and properly addressed.¹²

⁶ Chase Peterson-Withorn, *The Full List of Every American Billionaire 2016*, *Forbes*, Mar. 1, 2016, available at <https://www.forbes.com/sites/chasewithorn/2016/03/01/the-full-list-of-every-american-billionaire-2016/#7e425b137acb>; Chase Peterson-Withorn, *2015 Forbes 400: Full List Of America's Richest People*, *Forbes* Sept. 29, 2015, available at <https://www.forbes.com/sites/chasewithorn/2015/09/29/2015-forbes-400-full-list-of-americas-richest-people/3/#3bf7bf94183a>.

⁷ Alexander, *Forbes*, Oct. 16, 2017.

⁸ *Id.*

⁹ Alexander, *Forbes*, Nov. 7, 2017.

¹⁰ Letter from Secretary Wilbur L. Ross to David J. Apol, OGE Acting Director and General Counsel, Nov. 16, 2017, available at [https://www.oge.gov/web/oge.nsf/Congressional%20Correspondence/DFB4180B6057C445852581DE0073D59C/\\$FILE/Follow-up%20letter%20to%20Senators%20Blumenthal,%20Cantwell,%20Udall,%20Baldwin,%20Hassan,%20and%20Duckworth.pdf?open](https://www.oge.gov/web/oge.nsf/Congressional%20Correspondence/DFB4180B6057C445852581DE0073D59C/$FILE/Follow-up%20letter%20to%20Senators%20Blumenthal,%20Cantwell,%20Udall,%20Baldwin,%20Hassan,%20and%20Duckworth.pdf?open).

¹¹ *Id.* In this regard, if Secretary Ross in fact made the \$2 billion transfer as claimed, it would be important to know if he consulted OGE and ethics officials at the Commerce Department to confirm that the trust met the requisite criteria for purposes of extinguishing his financial interests.

¹² See Letter from Senators Richard Blumenthal, Margaret Hassan, Cory Booker, Maria Cantwell, Tammy Baldwin, and Tammy Duckworth to Commerce Department Inspector General Peggy E. Gustafson, Nov. 13, 2017 (requesting an investigation by the Inspector General into similar issues raised as a result of written responses then-nominee

Secretary Ross may be subject to a civil penalty if he intentionally failed to accurately report the true value of his assets. Further, if upon investigation your office has reasonable cause to believe there was a willful omission from Secretary Ross's financial disclosure report, it may be cause for referral to the Attorney General.¹³

Failure to Comply with Disclosure Requirements – Bank of Cyprus

As discussed above, the Ethics in Government Act requires officials to file detailed financial disclosure statements that include the identity and value of all assets and income-producing property with a value of over \$1,000, even if such assets are held in trusts for the benefit of the filer or his or her spouse or dependent children, subject to certain identified exceptions.¹⁴ Secretary Ross appears to have failed to disclose the full extent of his shares in the Bank of Cyprus.

Even before taking office, Secretary Ross's affiliation with, and reported holdings in, the Bank of Cyprus raised serious concerns. In 2014, the year Secretary Ross first invested in the Bank of Cyprus, the State Department considered Cyprus an area of "primary concern" for money laundering.¹⁵ In 2015, while Secretary Ross was vice-chair of the bank, its Russia-based businesses were sold to a Russian banker and consultant, Artem Avetisyan.¹⁶ Mr. Avetisyan "had ties" to both Russian President Vladimir Putin and Russia's largest bank, Sberbank, which at the time was under sanctions from both the U.S. and the European Union.¹⁷

During Secretary Ross's Senate confirmation process, several senators pressed him about ties between the Bank of Cyprus and Vladimir Strzhalkovsky, another Putin confidant and a former KGB agent, and the possibility of loans made by the bank to the Trump campaign.¹⁸ Senators further questioned him about his relationship with the bank's second largest shareholder, Viktor Vekselberg.¹⁹ Vekselberg reportedly is a close friend of President Putin and "at one time sat on the board of directors of the Russian state-controlled oil giant Rosneft," which is under a "partial sanction" by the Treasury Department.²⁰

Ross provided to the Senate in response to written questions presented during his confirmation process), available at <https://www.blumenthal.senate.gov/imo/media/doc/11.13.17%20Ltr%20to%20Commerce%20IG.pdf>.

¹³ 5 U.S.C. app. § 104(b).

¹⁴ 5 U.S.C. app. §§ 102(a), (f)(1).

¹⁵ Stephanie Kirchgaessner, Trump's commerce secretary oversaw Russia deal while at Bank of Cyprus, *The Guardian*, Mar. 23, 2017 (citing the International Narcotics Control Strategy Report, Volume II, Money Laundering and Financial Crimes, State Department Bureau for International Narcotics and Financial Crimes, Mar. 2014), available at <https://www.theguardian.com/us-news/2017/mar/23/wilbur-ross-russian-deal-bank-of-cyprus-donald-trump-commerce-secretary>.

¹⁶ Kirchgaessner, *Guardian*, Mar. 23, 2017

¹⁷ *Id.*

¹⁸ Kevin G. Hall, Exclusive: Trump commerce pick Wilbur Ross faces new Russia questions, *McClatchy*, Feb. 16, 2017, available at <http://www.mcclatchydc.com/news/politics-government/article133217874.html>.

¹⁹ *Id.*

²⁰ *Id.*

Despite the controversial and toxic nature of these holdings, Secretary Ross's disclosure and divestment of his Bank of Cyprus holdings is extremely confusing. Secretary Ross appears to have disclosed only part of his Bank of Cyprus shares on his initial OGE Form 278e. In his public financial disclosure report filed in December 2016, then-nominee Ross reported an initial tranche of Bank of Cyprus shares ("Initial Tranche").²¹ Contrary to the statutory requirement, however, he assigned no individual value or income for this investment or for many of his other underlying assets. Secretary Ross appears to have eventually divested this Initial Tranche but, as he acknowledged in June 2017, did so belatedly because of what he described as "an unanticipated delay."²²

After he was confirmed, Secretary Ross informed OGE in a certification claiming compliance with his ethics agreement that he held a second tranche of Bank of Cyprus shares through the WL Ross Group LP ("Second Tranche"), which he indicated "is required to be sold within 180 days."²³ Secretary Ross does not appear to have amended his OGE Form 278e to disclose the Second Tranche of shares. His failure to disclose the Second Tranche and to amend his OGE Form 278e appears to have violated his reporting obligations.

As a senior official, Secretary Ross also was required to report the sale of reportable assets within 30 days after receiving notice of the transaction, but not later than 45 days after the sales transaction.²⁴ Notwithstanding this requirement and his previous representations in his ethics agreement certification that he had divested at least some of his Bank of Cyprus stock, Secretary Ross apparently never submitted a periodic transaction report ("OGE Form 278-T") for the sale of any Bank of Cyprus stock, or for approximately 40 other assets listed in his ethics agreement.²⁵ Instead, in an ethics agreement certification he filed with OGE in November 2017, Secretary Ross responded "N/A" to the question of whether he had filed a periodic transaction report for his divestitures.²⁶ Had he filed the required transaction report, Secretary Ross would have been required to include information about the value of the shares sold.

²¹ Ross Public Financial Disclosure Report, part 2, line item 10.7.9.5. Secretary Ross's Bank of Cyprus shares were held in WLR Recovery Fund V, L.P. (part 2, line item 10.7.9), which is a subsidiary holding of WLR Recovery Associates V LLC. (part 2, line item 10.7), which is in turn a subsidiary holding of the WL Ross Group L.P. (part 2, line item 10).

²² Wilbur L. Ross, Certification of Ethics Agreement Compliance, 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/$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf). *See also* Letter from Wilbur L. Ross to Mr. David Maggi, Alternate Designated Agency Ethics Official, U.S. Department of Commerce, Jan. 15, 2017, *available at* [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C4D33DB26307189E852580C8002C7A72/\\$FILE/Ross,%20Wilbur%20L%20finalAmendedEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C4D33DB26307189E852580C8002C7A72/$FILE/Ross,%20Wilbur%20L%20finalAmendedEA.pdf) ("Ross Ethics Agreement").

²³ Certification of Ethics Agreement Compliance, June 2, 2017.

²⁴ 5 U.S.C. § 103(l).

²⁵ Ethics Agreement, Attachment A, part II.

²⁶ Wilbur L. Ross, Certifications of Ethics Agreement Compliance, Sept. 5, 2017 and Nov. 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). In his June 2, September 5 and November 1 certifications, Secretary Ross responded "N/A" to Question 3.b. on whether he filed the requisite periodic transaction report for divested assets.

If Secretary Ross gave these shares away as a gift or turned them over to an irrevocable trust rather than selling them, they would not be subject to the transaction reporting requirements. But he has offered no evidence that this is the case. Moreover, his failure to report the full extent of his Bank of Cyprus holdings in his initial OGE Form 278e and the controversial nature of the investment suggest a pattern of non-compliance with the divestiture and reporting requirements. Accordingly, your office should conduct an investigation to ascertain whether Secretary Ross has fully satisfied all reporting obligations.

Failure to Comply with Divestiture Requirement – Bank of Cyprus

To avoid conflicts of interest, officials may agree to divest of any asset creating an actual or potential conflict. In addition to his apparent failure to disclose reportable assets, Secretary Ross failed to divest his holdings in the Bank of Cyprus as he had agreed to do.

In a letter dated January 15, 2017 to a Commerce Department designated ethics official, then-nominee Ross outlined the steps he would take to avoid any actual or apparent conflict of interest if confirmed as Commerce Secretary (“ethics agreement”).²⁷ In this ethics agreement, Secretary Ross represented that he would divest his holdings in the Bank of Cyprus along with approximately 40 other assets (listed in part I to Attachment A to the ethics agreement) within 90 days of his confirmation, and a separate group of approximately 40 other assets (listed in part II to Attachment A) within 180 days, subject to a possible 60-day extension.²⁸

—As discussed above, Secretary Ross delayed divesting the Initial Tranche of Bank of Cyprus shares, as reflected in his certification of compliance with the ethics agreement filed with OGE in June 2017.²⁹ In the same certification document, Secretary Ross acknowledged for the first time the existence of the Second Tranche of shares, and indicated they would be divested within 180 days. Secretary Ross’s failure to divest of all Bank of Cyprus shares – both the Initial Tranche and the Second Tranche – within 90 days conflicts with the 90-day divestment period required by his ethics agreement.

In a subsequent certification filed with OGE in September 2017, Secretary Ross reported another delay in divesting the Second Tranche, as well as many of the other assets listed on part II to the Attachment A. He attributed the second delay to the “outsourcing of the accounting function of the firm that handles some partnerships in which I have interests.”³⁰ Commerce Department ethics officials apparently granted him a 60-day extension to divest these assets, which the ethics agreement permitted if “substantial progress” had been made towards the full divestiture of the assets.³¹ There are no transaction reports evidencing that Secretary Ross has complied with this extended deadline, also potentially violating his ethics agreement.

²⁷ Ross Ethics Agreement, Jan. 15, 2017.

²⁸ *Id.*

²⁹ Certification of Ethics Agreement Compliance, June 2, 2017.

³⁰ Certification of Ethics Agreement Compliance, Sept. 5, 2017.

³¹ Ross Ethics Agreement, Jan. 15, 2017, section 9.

Accordingly, your office should conduct an investigation to ascertain whether Secretary Ross has completely and totally severed his ties to the Bank of Cyprus by properly selling or gifting his Bank of Cyprus shares to a trust that extinguishes his financial interest. A review also should include the other assets listed on his ethics agreement for which he failed to submit a periodic transaction report, to confirm that they also were properly sold or transferred and to ensure that Secretary Ross has completely severed all ties to those entities.

Failure to Comply with Recusal Obligations – Diamond S Shipping

Government officials are barred from participating in particular matters involving specific parties in which someone with whom they have a covered relationship is or represents a party.³² A federal employee is deemed to have a covered relationship with a person with whom the employee has a business, contractual or other financial relationship other than a routine consumer transaction.³³ Because of this rule, Secretary Ross is required to recuse from participating in particular matters involving specific parties in which any of his business partners are, or represent, a party, if it would cause a reasonable person with knowledge of relevant facts to question his impartiality.³⁴

In his ethics agreement, then-nominee Ross reported that he would retain his interest in DSS Holdings LP,³⁵ which is invested in Diamond S Shipping (“Diamond S”),³⁶ an international shipping line. Diamond S is engaged in the “seaborne transportation of refined petroleum and other products in the international shipping markets.”³⁷ The company owns a fleet of more than 40 transoceanic tanker ships that operate internationally,³⁸ and that frequently dock in Chinese ports.³⁹ Secretary Ross’s former company W.L. Ross & Co. also is a major shareholder in Diamond S.⁴⁰ Moreover, so is the China Investment Corporation (“CIC”),⁴¹ a state-owned government entity that invests in a wide range of overseas business assets.⁴²

³² 5 C.F.R. § 2635.502.

³³ 5 C.F.R. § 2635.502(b)(1).

³⁴ 5 C.F.R. § 2635.502(a).

³⁵ Ross Ethics Agreement, Jan. 15, 2017, section 7.

³⁶ Diamond S Shipping website, available at <http://diamondsshipping.com/about-diamond-s/default.aspx>.

³⁷ Diamond S Shipping website, available at <http://www.diamondsshipping.com/>.

³⁸ *Id.* at <http://diamondsshipping.com/fleet/default.aspx>; Diamond S Crude Shipping website available at <http://www.dsscruide.com/>.

³⁹ Carrie Levine and Chris Zubak-Skees, *Wilbur Ross will shepherd Trump’s trade policy. Should he also own a shipping firm?* Center for Public Integrity, Mar. 23, 2017, available at <https://www.publicintegrity.org/2017/03/23/14509/wilbur-ross-will-shepherd-trump-s-trade-policy-should-he-also-own-shipping-firm>.

⁴⁰ Diamond S Shipping website, available at <http://www.diamondsshipping.com/>.

⁴¹ James Fontanella-Khan, Shawn Donnan and Robert Wright, *Trump’s commerce pick faces questions over China ties*, *Financial Times*, Feb. 13, 2017, available at <https://www.ft.com/content/f6800962-f201-11e6-8758-6876151821a6>.

⁴² China Investment Corporation website, available at <https://goo.gl/9YNj7p>; CIC Portfolio page available at <http://www.china-inv.cn/wps/portal/0xPL>; CIC Articles of Association page available at <http://www.china-inv.cn/wps/portal/!ut/>.

In July 2017, Secretary Ross hosted a meeting of top U.S. and Chinese business leaders at Commerce Department headquarters. Discussion topics reportedly included “customs hurdles facing Chinese companies that sell goods to the United States and the exportation of American natural gas products to China.”⁴³ CIC President Tu Guangshao also participated in the meeting, according to CNBC.⁴⁴ The meeting participants were “expected to produce a list of suggestions” for the two governments to consider.⁴⁵ The following day representatives of the two governments were expected to meet separately for an economic policy discussion.⁴⁶

By participating in the July meeting on U.S.-China trade issues with U.S. and Chinese business leaders Secretary Ross appears to have violated 5 C.F.R. § 2635.502. In a meeting such as this one, in which Secretary Ross participated with his Diamond S business partner CIC and approximately 20 other persons to identify and resolve trade issues between the two countries, the meeting and related policy discussions reasonably are viewed as a particular matter involving specific parties.⁴⁷ Under these circumstances, Secretary Ross’s participation in a meeting with his business partner would cause a reasonable person to question his impartiality in the matter. Accordingly, he should not have been permitted to participate in the meeting or related policy discussions in the absence of an authorization from an agency ethics official.⁴⁸ Given the apparent conflict of interest involving Secretary Ross’s Diamond S holdings, your office should investigate whether Secretary Ross’s participation in the July 2017 trade meeting with his Chinese business partner and any related policy discussions violated 5 C.F.R. § 2635.502.⁴⁹

⁴³ Kate Kelly, *U.S. and Chinese Executives to Meet on Nations’ Economic Relations*, *New York Times*, July 17, 2017, available at <https://www.nytimes.com/2017/07/17/business/dealbook/us-and-chinese-executives-to-meet-on-nations-economic-relations.html>; Joint Statement for the Inaugural U.S. - China Economic Business Leaders Summit, July 19, 2017, available at <http://www.businesswire.com/news/home/20170719006123/en/Joint-Statement-Inaugural-U.S.-China-Business-Leaders-Summit>.

⁴⁴ Blackstone’s Stephen Schwarzman and Alibaba’s Jack Ma host US-China Business Leaders Summit, *CNBC*, July 18, 2017, available at <https://www.cnbc.com/2017/07/18/watch-alibabas-jack-ma-speaks-at-us-china-business-summit.html>.

⁴⁵ Kelly, *New York Times*, July 17, 2017.

⁴⁶ *Id.*

⁴⁷ See 5 C.F.R. § 2640.102(l) (defining a particular matter involving specific parties as “any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties. The term typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties.”)

⁴⁸ Under 5 C.F.R. § 2635.502(d), an ethics official may authorize an employee’s participation in a particular matter involving specific parties if he determines that the government’s interest in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the agency’s programs and operations based on certain factors to be considered.

⁴⁹ Further, to the extent that Diamond S is involved in exporting any U.S. goods to China via its fleet of transoceanic tankers, Secretary Ross may have violated 18 U.S.C. § 208, the criminal conflict of interest statute. Your office should be aware of this potential additional violation in conducting your investigation.

Failure to Comply with Disclosure Requirements – Diamond S Shipping

In addition to his seeming failure to recuse, Secretary Ross also appears to have misreported the value of his Diamond S holdings in violation of his disclosure obligations. In his public financial disclosure report, Secretary Ross listed Diamond S as an underlying asset for multiple limited partnerships, but failed to assign it a specific category of value, contrary to the statutory requirement to report assets by range of value.⁵⁰ Moreover, Secretary Ross assigned inconsistent values to the entities holding Diamond S. For example, in some cases Secretary Ross assigned the holding company for Diamond S a value of between \$1 million and \$5 million,⁵¹ and in other cases reported that the value of the entity holding Diamond S shares is “not readily ascertainable.”⁵²

These discrepancies raise questions about whether Secretary Ross has properly disclosed the value of his assets. In addition, according to press reports, Secretary Ross recently divested or intends to divest his Diamond S holdings.⁵³ To date, however, he has not apparently filed a periodic transaction report to disclose the sale of his Diamond S holdings. This failure, coupled with Secretary Ross’s apparent conflict of interest involving his Diamond S holdings, warrants an investigation to determine whether Secretary Ross has properly disclosed the value of his holdings in Diamond S and properly reported relevant sales transactions.

Failure to Comply with Recusal Obligations – Natural Gas Exploration and Shipping Interests

The criminal conflict of interest statute, 18 U.S.C. § 208, prohibits an executive branch employee from participating personally and substantially in any particular government matter that will have a direct and predictable effect on his financial interest or any financial interest imputed to him. The purpose of the statute is to prevent an employee from allowing personal interests to affect his or her official actions, and to protect governmental processes from actual or apparent conflicts of interests.⁵⁴ Any person who violates 18 U.S.C. § 208 may be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received for the prohibited conduct, whichever is greater.⁵⁵

A “particular matter” under the statute encompasses only matters that involve deliberation, decision or action that is focused upon the interests of specific persons, or a discrete

⁵⁰ See Ross Public Financial Disclosure Report, part 2, line items 10.7.9.8; 10.14.1.1; 10.14.1.2; 10.14.1.4; 10.15.1.4; and 24.1.4.4. Although it is not easily ascertainable, please note that the assets reported on line items 10.16; 11.1; 19.1; 19.1.1; and 24.1 also appear to hold interests in Diamond S. The Ethics in Government Act requires the value of most assets to be reported by range of value. See 5 U.S.C. app. § 102(a)(3) and (d)(1).

⁵¹ Ross Public Financial Disclosure Report, part 2, line item 19.1.

⁵² *Id.* at line item 10.14.

⁵³ *Reuters*, [US Commerce chief Wilbur Ross divesting shipping interests, official says](https://www.cnbc.com/2017/11/08/us-commerce-chief-wilbur-ross-divesting-shipping-interests-official-says.html), Nov. 8, 2017, available at <https://www.cnbc.com/2017/11/08/us-commerce-chief-wilbur-ross-divesting-shipping-interests-official-says.html>.

⁵⁴ 5 C.F.R. § 2640.101.

⁵⁵ 18 U.S.C. § 216(b).

and identifiable class of persons.⁵⁶ Particular matters involve a wide range of government actions; they are not limited to adversarial proceedings or formal legal relationships, and can include policy matters and government contracts.⁵⁷ 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.⁵⁸ Under 5 C.F.R. § 2635.502, officials facing a conflict of interest have a duty to recuse that is triggered when a relationship “would cause a reasonable person with knowledge of the relevant facts to question [the official’s] impartiality in the matter.”⁵⁹

During his confirmation process, then-nominee Ross pledged in his ethics agreement to divest from potentially problematic holdings, including several investments in natural gas exploration.⁶⁰ Secretary Ross, however, appears to have negotiated a plan to increase natural gas exports from the U.S. to China in April and May 2017,⁶¹ before he had divested from holdings in natural gas exploration and while he held shipping assets that would benefit from the deal.

In his public financial disclosure report, Secretary Ross reported his interest in WLR Conduit MM LLC, which appears to be invested primarily in both shipping and liquefied natural gas (“LNG”) exploration.⁶² Secretary Ross reported owning interests in a number of companies through WLR Conduit MM, such as WPX Energy,⁶³ QEP Resources,⁶⁴ Laredo Petroleum,⁶⁵ Energen Corp.,⁶⁶ Northern Oil and Gas,⁶⁷ Rex Energy,⁶⁸ and Comstock Resources,⁶⁹ that all

⁵⁶ 5 C.F.R. § 2635.402(b)(3) and § 2640.103(a)(1).

⁵⁷ *Id.*; OGE Legal Advisory 06 x 9, Memorandum from Robert I. Cusick, OGE Director, to Designated Agency Ethics Officials Regarding “Particular Matter Involving Specific Parties,” “Particular Matter,” and “Matter”, Oct. 4, 2006, available at [https://oge.gov/web/oge.nsf/0/624E14B0D710694B85257E96005FBE7E/\\$FILE/06x9_.pdf](https://oge.gov/web/oge.nsf/0/624E14B0D710694B85257E96005FBE7E/$FILE/06x9_.pdf).

⁵⁸ 5 C.F.R. § 2635.402(b)(1) and § 2640.103(a)(3).

⁵⁹ 5 C.F.R. § 2635.502(a).

⁶⁰ Ross Ethics Agreement, Jan. 15, 2017, Attachment A, part II.

⁶¹ Commerce Secretary Ross Calls the New U.S.-China Trade Deal a “Herculean Accomplishment”, *Associated Press*, May 12, 2017, available at <http://fortune.com/2017/05/12/china-us-poultry-trade-deal/>.

⁶² Ross Public Financial Disclosure Report, part 2, line items 10.6.1.1 - 10.6.1.13

⁶³ *Id.* line item 10.6.1.12. See WPX Energy website, available at <http://www.wpxenergy.com/about/our-expertise.aspx>.

⁶⁴ Ross Public Financial Disclosure Report, part 2, line item 10.6.1.9. See QEP Resources website, available at <http://www.qepres.com/>.

⁶⁵ Ross Public Financial Disclosure Report, part 2, line item 10.6.1.6. See Laredo Petroleum Inc. website, available at <http://www.laredopetro.com/>.

⁶⁶ Ross Public Financial Disclosure Report, part 2, line item 10.6.1.5. See Energen website, available at <http://ir.energen.com/phoenix.zhtml?c=94826&p=irol-IRHome>.

⁶⁷ Ross Public Financial Disclosure Report, part 2, line item 10.6.1.7. See Northern Oil and Gas Inc., *Marketwatch*, available at <https://www.marketwatch.com/investing/stock/nog>.

⁶⁸ Ross Public Financial Disclosure Report, part 2, line item 10.6.1.11. See Rex Energy website, available at <http://www.rexenergycorp.com>.

⁶⁹ Ross Public Financial Disclosure Report, part 2, line item 10.6.1.4. See Comstock Resources website, available at <http://crkfrisco.com/about.html>.

appear to be involved in natural gas exploration in the United States.⁷⁰ It is not fully clear when Secretary Ross divested from these interests. He did not file periodic transaction reports for any of them. Secretary Ross did tell OGE in September 2017 that Commerce Department ethics officials had granted him a 60-day extension to divest these and other assets, but he did not report them having been divested until November 2017.⁷¹ Accordingly, it does not appear he had divested from them until after he negotiated the U.S.-China deal.

Secretary Ross also appears to have been invested in Navigator Holdings Ltd. (“Navigator”),⁷² which operates the world’s largest fleet of “handysize” (meaning between small and mid-size)⁷³ liquefied gas carriers,⁷⁴ when he participated in trade matters involving exportation of liquefied natural gas to China. In May 2017, Secretary Ross sold \$15,000-\$50,000 of Navigator stock,⁷⁵ but apparently still owned additional shares in the company. According to a March 2017 SEC filing,⁷⁶ as of the end of 2016, WLR Group owned millions of shares of Navigator through entities in which Secretary Ross has reported holding interests on his OGE Form 278e, including WLR Recovery Fund IV DSS AIV LP and, WLR Recovery Fund V DSS AIV LP.⁷⁷

Following President Trump’s April meeting at Mar-a-Lago with China’s President Xi Jinping,⁷⁸ Secretary Ross helped negotiate a trade deal that was announced in May as part of the U.S.-China Comprehensive Economic Dialogue.⁷⁹ The agreement included a plan to increase natural gas exports from the United States to China,⁸⁰ which could positively impact his natural

⁷⁰ Through WLR Conduit MM, Secretary Ross also reported ownership of a company called WLR/TRF Shipping S.a.r.l. that owns 25 subsidiaries, that in turn own transoceanic tanker ships. If any of these tankers ship liquefied natural gas from the U.S. it could raise additional conflict of interest concerns similar to that discussed below involving Navigator Holdings Ltd.

⁷¹ Certifications of Ethics Agreement Compliance, Sept. 5, 2017 and Nov. 1, 2017.

⁷² Ross Public Financial Disclosure Report, part 2, line items 10.14.1.3; 10.15.1.3 and 24.1.4.2. *See* Navigator Gas website, available at <https://www.navigatorgas.com/about/>.

⁷³ Navigator Gas website, available at <https://www.navigatorgas.com/seaborne-gas-transportation/our-fleet/>.

⁷⁴ SEC Filing for Navigator Holdings, Form 6-K Report for Foreign Private Issuer, Mar. 31, 2017, available at <https://www.navigatorgas.com/wp-content/uploads/2015/12/Navigator-Holdings-2017-Q1-6K-Earnings-Release.pdf>.

⁷⁵ Ross Periodic Transaction Report, 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).

⁷⁶ SEC Filing for Navigator Holdings, Form 20-F, Annual Report for the year ending Dec. 31, 2016, available at <https://www.sec.gov/Archives/edgar/data/1581804/000119312517065882/d314750d20f.htm>.

⁷⁷ Ross Public Financial Disclosure Report, part 2, line items 10.14.1.3; 10.15.1.3; and 24.1.4.2.

⁷⁸ *Associated Press*, May 12, 2017.

⁷⁹ Toluse Olorunnipa and Dan Murtaugh, U.S. Inks China Trade Deal Promoting Financial Services, Beef, *Bloomberg*, May 11, 2017, available at <https://www.bloomberg.com/news/articles/2017-05-12/u-s-reaches-deal-to-allow-exports-of-natural-gas-beef-to-china>.

⁸⁰ Joint Release: Initial Results of the 100-Day Action Plan of the U.S.-China Comprehensive Economic Dialogue, May 11, 2017, available at <https://www.commerce.gov/news/press-releases/2017/05/joint-release-initial-results-100-day-action-plan-us-china-comprehensive> (“The United States welcomes China, as well as any of our trading partners, to receive imports of LNG from the United States. The United States treats China no less favorably than

gas exploration holdings. The deal also may affect his shipping interests in Navigator. According to NBC News, the “growth of LNG facilities would increase the production and trade of LPG, which is a core part of [Navigator’s] shipping business.”⁸¹ And in a December 2016 SEC filing, Navigator reported that the “expansion of existing LNG facilities and the construction of new LNG production facilities around the world have added to LPG production and trade volumes.”⁸²

Secretary Ross’s extensive natural gas exploration holdings and shipping interests may have been directly and predictably affected by the trade deal, which expands the amount of U.S. liquefied natural gas that can be exported to China. If so, his participation in that matter may have had a direct and predictable effect on his financial interests in violation of 18 U.S.C. § 208.

Failure to Comply with Disclosure Obligations – Natural Gas Exploration and Shipping Interests

Secretary Ross also failed to report individual values for each of the underlying assets held by WLR Conduit MM. Instead, he appears to have included their value in his line item entries for WLR Conduit MM.⁸³ From the information he reported for WLR Conduit MM, however, it is unclear whether the reported amounts reflect the full value of his investments in WLR Conduit MM and its underlying assets, some of which present apparent conflicts of interest for the reason stated above.

Secretary Ross also failed to report individual values for his Navigator holdings, instead reporting Navigator on multiple line item entries as an underlying asset of various holding companies.⁸⁴ The convoluted manner in which he reported his holdings in this asset makes its

other non-FTA trade partners with regard to LNG export authorizations. Companies from China may proceed at any time to negotiate all types of contractual arrangement with U.S. LNG exporters, including long-term contracts, subject to the commercial considerations of the parties. As of April 25, 2017, the U.S. Department of Energy had authorized 19.2 billion cubic feet per day of natural gas exports to non-FTA countries.”). *See Associated Press*, May 12, 2017.

⁸¹ Suzy Khimm, *Trump’s Chinese Gas Deal Raises Ethics Issues for Wilbur Ross*, *NBC News*, Nov. 8, 2017, available at <https://www.nbcnews.com/politics/white-house/trump-s-chinese-gas-deal-raises-ethics-issues-wilbur-ross-n818861>.

⁸² SEC Filing for Navigator Holdings, Form 20-F, Annual Report for the year ending Dec. 31, 2016, available at <https://www.sec.gov/Archives/edgar/data/1581804/000119312517065882/d314750d20f.htm>; see Khimm, *NBC News*, Nov. 8, 2017.

⁸³ Secretary Ross reported a capital account for his WLR Conduit MM holding on line item 10.6, with a reported value of between \$500,001 and \$1 million. In a separate line item entry, at 10.6.4, Secretary Ross reported carried interest for the underlying assets of WLR Conduit MM, with a value of between \$500,001 and \$1 million. In part 3, line item 14, he reports having “different” carried interest “arrangements” for the “various underlying assets” of WLR Conduit MM, and then provides details for these arrangements for certain underlying assets, including Shellpoint, Subsequent Platform Company, and “energy bonds.” But he does not report a carried interest arrangement for the natural gas exploration interests or the other underlying assets leaving open the question as to whether they have been properly accounted for in the value reported for WLR Conduit MM.

⁸⁴ Navigator is listed on line items 10.14.1.3, 10.15.1.3, and 24.1.4.2 as an underlying asset for multiple holding companies. Navigator is also reported by reference as an underlying asset of line item 19.1. An endnote to line item 19.1.1 states that the underlying assets for line item 19.1.1 were previously disclosed at 10.14.1. Similarly,

value virtually indecipherable and renders his disclosure almost meaningless.⁸⁵ It also raises concerns about whether he was deliberately trying to obfuscate the value of his interest in Navigator and possibly other assets. Given the apparent conflicts of interest and confusion about the true value of these investments, your office should determine whether Secretary Ross has properly disclosed the value of his holdings in Navigator and the underlying holdings of WLR Conduit MM, and properly reported all relevant sales transactions.

Conclusion

The ethics laws were enacted to identify potential conflicts of interest and to prevent employees from engaging in matters in which they may have an actual or apparent conflict of interest. As shown above, Secretary Ross appears to have acted in a manner inconsistent with these goals, and his actions may have violated ethics disclosure laws and federal conflicts of interest laws and regulations. Accordingly, CREW respectfully requests that your office investigate whether Secretary Ross properly reported all his financial holdings and transactions, fully divested from conflicting assets in accordance with the terms of his ethics agreement, and appropriately recused himself from trade meetings and policy matters that may have affected his financial interests or would cause a reasonable person to question the integrity of the Commerce Department's decision-making process.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics
in Washington

Navigator is reported as an underlying asset by reference in an endnote to line item 11.1, which states that the underlying assets for line item 11.1 were previously disclosed at line item 10.15 and that its value and income is reflected in 10.15.

⁸⁵ As an underlying asset of line item 10.14, Navigator's value would normally be included in the total value amount reported for that holding company if its value is not individually reported. However, an endnote for line item 10.14 indicates that its value is included in line item 19.1, which has a reported value of \$1 million to \$5 million. The carried interest for that limited partnership is reported as a separate entry on line item 19.2 with a reported value of \$1 million to \$5 million. As an underlying asset of line item 10.15, Navigator's value would be included in the total amount reported for that item, which in this case is reported as between \$1 million and \$5 million, if its value is not individually reported. The endnote indicates that the value of line item 10.15 reflects the combined value and income of 10.15 and 11.1. There is also a separate line item entry at 11.1.1 for the carried interest for this limited partnership, which is reported as "currently zero." As an underlying asset of line item 24.1, Navigator's value would normally be included in that total amount reported for that line item unless its value is individually reported. However, an endnote for that entry indicates that its value and income are reflected in 10.16. The value reported for line item 10.16 is \$50,001 to \$100,000. The endnote for line item 10.16 indicates that the underlying assets for 10.16 are disclosed below at 24.1 and the value and income reflect the value and income of 10.16 and 24.1.