

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



July 13, 2018

The Honorable Raja Krishnamoorthi  
United States House of Representatives  
515 Cannon House Office Building  
Washington, DC 20515

Dear Congressman Krishnamoorthi:

This responds to your letter dated June 21, 2018, regarding Secretary of Commerce Wilbur Ross and allegations of trading on insider information.

Your letter asks whether the Office of Government Ethics (OGE) “approved the short sale” of certain stocks by Secretary Ross. OGE does not approve nor disapprove of securities transactions made by executive branch officials. Although certain transactions of securities must be reported by public final disclosure filers, and ethics officials review those reports for conflicts of interest, OGE’s certification of such a report is not an approval of the underlying transaction.

Your letter also asks whether it would be a breach of his ethical obligations to the American people if the Secretary did trade on insider information. Although we agree that public officials must be held to high standards of behavior, the U.S. Securities and Exchange Commission (SEC), not OGE, has jurisdiction over insider trading. In fact, we are aware that several members of Congress have requested 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.<sup>1</sup>

Also, for your information, please see the enclosed July 12, 2018 letter I recently sent to Secretary Ross.

I trust this letter addresses the issues raised in your letter. If you have further inquiries please contact OGE’s Chief of Staff, Shelley K. Finlayson at 202-482-9314.

Sincerely,

A handwritten signature in blue ink that reads "David J. Apol".

David J. Apol  
Acting Director and General Counsel

Enclosure

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<sup>1</sup> See Letter from Senator Warren, Senator Blumenthal and Congressman Cummings to SEC Chairman Clayton (June 27, 2018), available at <https://warren.senate.gov/download/letter-to-sec-on-ross>.





July 12, 2018

The Honorable Wilbur Ross  
Secretary of Commerce  
U.S. Department of Commerce  
1401 Constitution Ave NW  
Washington, DC 20230

Dear Mr. Ross:

As the supervising ethics office for the Executive branch, the U.S. Office of Government Ethics (OGE) leads an ethics program designed to prevent conflicts of interest on the part of Executive branch employees. 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."<sup>1</sup> 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.

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. For example, you represented in your Certification of Ethics Agreement Compliance, signed November 1, 2017, that you had completed divestitures indicated in your Ethics Agreement, dated January 15, 2017. However, you later submitted a transaction report on December 21, 2017 that included two sales of Invesco Ltd stock which took place on December 19 and 20, 2017,<sup>2</sup> well after the date of your compliance document and the date by which you agreed to divest this asset. You also opened new short positions on various holdings that you committed to divesting in your Ethics Agreement, in contravention of that agreement. Our understanding is that you neglected to seek advice from the Designated Agency Ethics Official (DAEO) of your Department or other ethics staff prior to opening these short positions, which appear to have been an ineffective attempt to remedy your actual or apparent failure to timely divest assets per your Ethics Agreement.<sup>3</sup> A variety of sources have raised concerns about your actions.<sup>4</sup>

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<sup>1</sup> 5 C.F.R. § 2638.107.

<sup>2</sup> See 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).

<sup>3</sup> See, e.g., Endnote to line 12 of OGE Form 278-T certified by OGE on June 18, 2018 ("I sold my few shares of Sun Bancorp, Inc. on March 24, 2017. Through an oversight, I did not include the sale in Transaction Reports that I filed in April covering other divestments and later mistakenly thought that the shares had not been sold. To remedy this, I



You have advised both OGE and your DAEO that the various omissions and inaccuracies on your part were inadvertent,<sup>5</sup> 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 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.

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. You will soon be filing your Annual OGE Form 278. I urge you to devote the resources necessary to ensure that your report and all future communications with OGE are complete and accurate. I also urge you to seek advice from your Department's DAEO or other ethics staff before engaging in any self-help to try to remedy any ethics-related situations that may arise in the future.

The success of our Government depends on maintaining the trust of the people we serve. The American public needs to have confidence that Government officials take their ethical commitments seriously, and exercise the required care to ensure complete compliance with those commitments. Please ensure that your future efforts safeguard that confidence.

Sincerely,



David J. Apol  
Acting Director and General Counsel

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executed a short sale of Sun Bancorp shares, then closed the short position when I understood it was not necessary because my holdings in Sun Bancorp shares had been sold.”).

<sup>4</sup> See, e.g., Steven Mufson, *Wilbur Ross Admits to Another Tardy Stock Sale*, WASH. POST (July 9, 2018), [https://www.washingtonpost.com/business/economy/wilbur-ross-admits-to-another-tardy-stock-sale/2018/07/09/1ecd6734-8388-11e8-9e80-403a221946a7\\_story.html?utm\\_term=.4c172dba1577](https://www.washingtonpost.com/business/economy/wilbur-ross-admits-to-another-tardy-stock-sale/2018/07/09/1ecd6734-8388-11e8-9e80-403a221946a7_story.html?utm_term=.4c172dba1577); Lori Ann LaRocco & Dan Mangan, *Wilbur Ross Says He Shorted Two More Stocks During His Time As Commerce Secretary*, CNBC (July 3, 2018), <https://www.cnbc.com/2018/07/02/wilbur-ross-shorter-two-additional-shares-as-commerce-secretary.html>; Dan Alexander, *Senators Scold Wilbur Ross Over Ethics Issues Following Forbes Report*, FORBES (June 20, 2018), <https://www.forbes.com/sites/danalexander/2018/06/20/senators-scold-wilbur-ross-over-ethics-issues-following-forbes-report/#71c3fdd64104>.

<sup>5</sup> See, e.g., Endnote to line 1 of OGE Form 278-T certified by OGE on July 3, 2018 (“I have 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.”).