ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

UNITED STATES SENATE
WASHINGTON, DC 20510-2105
P: 202-224-4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617-565-3170

1550 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413-788-2690

www.warren.senate.gov

October 15, 2020

The Honorable Walter Joseph "Jay" Clayton, III.
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

The Honorable Heath P. Tarbert
Chairman and Chief Executive
U.S. Commodities Futures Trading Commission
1155 21st St. NW
Washington, DC 20581

Dear Chairman Clayton and Chairman Tarbert:

I write regarding an October 14, 2020, report in *The New York Times* that in February 2020, as President Trump and his administration publicly assured the American public that the coronavirus disease 2019 (coronavirus) was "very much under control" and that the "stock market [is] starting to look very good to me," his top advisers were privately providing much more dire reports to Republican donors and other members of the conservative Hoover Institution's board of directors, with "nearly every official … rais[ing] the virus 'as a point of concern, totally unprovoked.'"[1] According to *The New York Times*, this private briefing "was the first significant sign of skepticism among Trump administration officials about their ability to contain the virus," and indicated to investors that they should "[s]hort everything … betting on the idea that the stock prices of companies would soon fall."[2] Two investors indicated "that aspects of the readout from Washington informed their trading that week, in one case adding to existing short positions in a way that amplified … profits."[3]

If this report is accurate, it represents an appalling abdication of duty by President Trump and top officials in his administration, revealing that while publicly claiming to be optimistic about the coronavirus and its impact on the economy, they were privately informing donors and conservative allies that conditions were much more dire using information that was likely nonpublic. It also indicates that numerous investors may have used this early and inside information about the looming, tragic economic and public health consequences of the pandemic to extract profits for themselves.

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[1] New York Times,, "As Virus Spread Early On, Reports of Trump Administration Briefings Fueled Sell-off," Kate Kelly and Mark Mazzetti, October 14, 2020, https://www.nytimes.com/2020/10/14/us/politics/coronavirus-trump-investors.html.
[2] *Id.*
[3] *Id.*

This incident – in which "[t]he president's aides appeared to be giving wealthy party donors an early warning of a potentially impactful contagion at a time when Mr. Trump was publicly insisting that the threat was nonexistent"[4] - appears to be a textbook case of insider trading, and I am writing to request that you open an investigation of this matter, including a review of the material nonpublic information provided to investors and any trading that occurred as a result of this exchange of material nonpublic information, as expeditiously as possible.

This incident is egregious and shocking, and it is just the latest example of unusual trading activity involving Trump administration officials and agency decisions affecting individuals, companies, or the stock market. I have previously written to you regarding potential insider trading related to the Trump administration's unusual decision to award Kodak an over $750 million loan for pharmaceutical production,[5] suspicious trading related to defense industry stocks or commodities in advance of the administration's attacks in Iran,[6] Navient Corporation stock trades in advance of Department of Education announcements,[7] and suspicious activity by Department of Commerce Secretary Wilbur Ross.[8] This series of examples of questionable trading activity related to Trump administration actions has become a pattern that deserves intense scrutiny from the Securities and Exchange Commission (SEC) and the Commodities Futures Trading Commission (CFTC).

Federal law bars individuals from "purchasing or selling a security while in possession of material nonpublic information"[9] – in this case, high-level administration officials' dire views of the economic risks from the coronavirus that were in stark contrast to the public statements of the President and other top officials. Violation of these laws may subject individuals to civil penalties "three times the amount of the profit gained or loss avoided" and criminal penalties up to $5,000,000 and 20 years imprisonment.[10] Similarly, insider trading of swaps, futures, or commodities markets may violate CFTC's insider trading rules promulgated under *the Dodd-Frank Wall Street Reform and Consumer Protection Act* .[11]

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[4] New York Times,, "As Virus Spread Early On, Reports of Trump Administration Briefings Fueled Sell-off," Kate Kelly and Mark Mazzetti, October 14, 2020, https://www.nytimes.com/2020/10/14/us/politics/coronavirus-trump-investors.html.

[5] Letter to the Honorable Jay Clayton from Sen. Elizabeth Warren, August 3, 2020, https://www.warren.senate.gov/imo/media/doc/2020.08.03%20Letter%20to%20SEC%20re%20Kodak%20stock%20trades.pdf.

[6] Letter to the Honorable Jay Clayton and the Honorable Heath Tarbert, from Sen. Elizabeth Warren, January 13, 2020, https://assets.documentcloud.org/documents/6641867/Sen-Warrenletter.pdf;

[7] Letter to the Honorable Jay Clayton from Sen. Elizabeth Warren, October 23, 2017, https://www.warren.senate.gov/files/documents/2017_10_23_Letter_to_Navient.pdf

[8] Letter to the Honorable Jay Clayton from Sen. Elizabeth Warren, June 27, 2018, https://www.warren.senate.gov/imo/media/doc/2018-6-27_Letter_to_SEC_about_Wilbur_Ross_and_Navigator_Holdings1.pdf.

[9] Insider Trading Sanctions Act of 1984, Public Law 98-376.

[10] 15 U.S.C. 78u-l(aX2); 15 U.S.C. 78ff.

[11] Dodd Frank Wall Street Reform and Customer Protection Act, Pub. L. No. 111-2031, § 753 (2010); CFTC, 17 CFR § 180.1 - Prohibition on the employment, or attempted employment, of manipulative and deceptive devices (2011).

Given my concerns about this betrayal of the public by Trump administration officials and about pandemic-related profiteering by well-connected Republican donors and investors, I ask that you investigate this matter as soon as possible, including determining:

1. Which administration officials provided material nonpublic information about the economic and public health risks from the coronavirus to investors, Hoover Institution board directors, and other insiders?

2. How did this information differ in content from the information that the President and other administration officials were providing to the public?

3. Which individuals received this information and to whom did they provide it?

4. Were any trades of securities, swaps, futures, or commodities made by individuals who had access to this nonpublic information, and if so, did these trades represent a violation of insider trading law?

Thank you for your prompt attention to this matter. Please feel free to contact me or my staff if you have any further questions.

Sincerely,

Elizabeth Warren

Elizabeth Warren
United States Senator