

Complaint regarding Commerce Secretary Wilbur L. Ross Jr. from the Campaign Legal
Center to the Inspector General for the U.S. Department of Commerce

Aug. 13, 2018

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Part 1 Request for Investigation

POSSIBLE VIOLATIONS OF 18 U.S.C. §§ 208, 1001, 1621 and 5 U.S.C. app. § 104

I. Request for investigation

The Campaign Legal Center (CLC) has completed a review of publicly available records concerning Commerce secretary Wilbur L. Ross Jr., in order to evaluate whether he has complied with applicable legal requirements. This public records review has revealed possible violations of the primary criminal conflict of interest law applicable to executive branch employees, 18 U.S.C. § 208. It has also revealed possible violations of three laws that prohibit certain false statements and omissions, 18 U.S.C. §§ 1001, 1621, and 5 U.S.C. app. §104. CLC prepared the following complaint to notify the Inspector General for the U.S. Department of Commerce of these possible violations of law. We respectfully request that the Inspector General conduct a thorough investigation of the matters addressed in this complaint and advise the public of all findings and conclusions.

II. Overview

In 2017, Ross held both restricted stock and stock in Invesco. It is not clear from his vague and inconsistent filings precisely when he divested the restricted stock, but he held the stock until Dec. 20, 2017. While holding the stock, Ross participated in an investigation to determine whether the United States should impose a tariff on steel imports. Invesco had acquired a major interest in Chinese steel that the steel investigation directly and predictably affected. Ross claims he did not know he still owned Invesco stock after entering government, but his claim seems implausible for reasons we discuss in this complaint.

Ross did not initially disclose that he owned stock in Greenbrier, a steel-dependent rail car manufacturer. Greenbrier's CEO, William Furman, dined with Ross at the White House shortly before filing a public comment with the Commerce Department regarding the steel investigation's effect on Greenbrier. One day after Furman filed this comment, Ross divested some of his Greenbrier stock. Ross sold Greenbrier stock on three occasions in 2017, but he claims the sales occurred after he unexpectedly discovered that he owned additional shares. It seems implausible that Ross would have been unaware of his remaining Greenbrier stock after the first or second discovery. Even if Ross' account of these events is true, however, there appears to be no public record that Ross recused from the steel investigation between each discovery and subsequent divestiture.

During 2017, Ross held 14 interests in Navigator, a shipping company that is a transoceanic and regional carrier of products related to natural gas. Before divesting any of his Navigator interests, Ross participated in both the Trump administration's effort to promote the natural gas trade and the previously discussed steel investigation. While still holding at least some of his Navigator interests, Ross participated in seven trade agreements. Each of these particular matters affected Navigator's financial interests. Ross also appears to have retained some of his Navigator interests to this day.

In Part 6 of this complaint, we highlight concerns regarding other conflicting assets that Ross may have retained. Ross' public filings do not account for his divestiture of 46 assets he was required to divest, including interests in the Bank of Cyprus. In addition, the U.S. Office of Government Ethics recently reprimanded Ross for engaging in a misguided effort at self-help with respect to conflicts of interest arising from his stock holdings. Ross' mishandling of these simple conflicts of interests creates doubt as to whether he properly addressed complex conflicts of interest stemming from his 25 carried interests in private equity funds. Questions have also arisen as to Ross' interests in other shipping companies, but those companies are privately held and do not release the type of information that Navigator releases as a publicly traded company. The Inspector General may be able to obtain the information needed to analyze Ross' interests in these other shipping companies.

Ross also may have made false statements or omissions. Documents that the U.S. Department of Commerce was forced to release in pending litigation demonstrate that Ross' testimony in a recent congressional hearing was untrue. In addition, Ross filed a compliance certification on Nov. 1, 2017, in which he incorrectly stated that he had sold all interests in companies he was required to divest. At that time, Ross still held interests in at least three companies he was required to divest: Air Lease Corporation, Invesco, and Sun Bancorp. In fact, Ross acquired a new interest in Sun Bancorp one day before filing the compliance certification. Thereafter, he missed the deadline for disclosing this additional Sun Bancorp interest, omitting it from two financial disclosure reports he filed before the deadline.

This complaint is not about Ross' compliance with his ethics agreement, which is an administrative matter, nor is it about his initial disclosures as a private citizen before he entered government. The issues addressed in this complaint focus on Ross' possible violations of criminal laws barring conflicts of interest and false statements after he undertook a position of public trust as a cabinet official.

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Part 2 Legal Standard

APPLICABLE STATUTES 18 U.S.C. §§ 208, 1001, 1621,
and 5 U.S.C. app. § 104

I. Summary

The materials we reviewed implicate several criminal laws to which Ross is subject. The primary criminal conflict of interest statute, 18 U.S.C. § 208, prohibits executive branch employees from participating personally and substantially in any particular matters in which they know they have financial interests directly and predictably affected by the particular matters. The false statements statute, 18 U.S.C. § 1001, prohibits any person from knowingly and willfully making a material false statement or concealing a material fact in any matter within the jurisdiction of the executive, legislative, or judicial branch of the federal government. Another statute, 18 U.S.C. § 1621, prohibits, among other things, perjury committed while under oath in a congressional hearing. Finally, the Ethics in Government Act, at 5 U.S.C. app. § 104, prescribes penalties for an executive branch employee who knowingly and willfully fails to file a required financial disclosure report or who knowingly and willfully files a false financial disclosure report.

II. 18 U.S.C. § 208

The primary criminal conflict of interest statute applicable to employees of the federal executive branch is 18 U.S.C. § 208. The law does not prohibit an employee from holding any financial interest, such as stock in a company; rather, the law prohibits an employee from participating in certain matters affecting the employee's financial interest. The law prohibits an employee from *participating personally and substantially* in any *particular matter* if the employee *knows* that the employee, or a person whose interests are imputed to the employee, has a *financial interest directly and predictably affected* by that particular matter.¹

A. "Personal and substantial participation"

Regulations interpreting 18 U.S.C. § 208 explain the concept of personal and substantial participation:

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.²

At Ross’ level as a cabinet secretary, any participation at all on his part will likely be deemed substantial. The question is whether he participated personally in a particular matter. The regulation clarifies that an employee is not deemed to have participated personally merely because a matter occurs within an agency or an agency component that is under the employee’s official responsibility.³ The employee must get involved in the matter to have participated. On the other hand, participation is not limited to making a final decision. The statute expressly includes participation “through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise.”⁴

B. “Particular matter”

The term “particular matter” means a matter that focuses on the interests of either (a) identified parties or (b) a discrete and identifiable class of persons.⁵ An example of a discrete and identifiable class of persons is an industry, such as the steel industry or the natural gas industry.⁶ An example of a party is Invesco Ltd. or Navigator Holdings Ltd.⁷ The term “particular matter” can include policy matters and trade agreements that are focused on the interest of identified parties, like Navigator Holdings Ltd., or a discrete and identifiable class of persons, like the natural gas industry.⁸

The regulations interpreting 18 U.S.C. § 208 do not directly discuss trade agreements. However, regulations interpreting another statutory provision, 18 U.S.C. § 207, of the same chapter of the United States Code (title 18, chapter 11), address trade agreements in connection with the term “particular matter involving specific parties.”⁹ These regulations establish that, though the countries involved in the trade agreement are technically parties to the agreement, the question as to whether a trade agreement qualifies as a particular matter involving specific parties turns on the nature of the substantive focus of the trade agreement.¹⁰

As with all particular matters, the question is whether the trade agreement focuses on the interests of either identified parties (other than the countries involved) or a discrete and identifiable class of persons.¹¹ If, for example, a trade agreement between 50 countries broadly covered multiple sectors of their economies, the trade agreement would not be a particular matter.¹² If, however, a trade agreement between two countries focused on a discrete and identifiable class of persons (such as an industry) or identified parties (such as specific companies), the trade agreement would be a particular matter.¹³ If the trade agreement is a particular matter, the prohibition under the primary criminal conflict of interest law, 18 U.S.C. § 208, applies to an employee’s personal and substantial participation in the trade agreement.¹⁴

C. “Financial interest directly and predictably affected”

Regulations similarly address the concept of a financial interest directly and predictably affected by a particular matter. The phrase “direct and predictable” does not appear in the statute, but the executive branch has taken the position that an employee has a financial interest in a particular matter only if the particular matter will affect that financial interest directly and predictably.¹⁵ The regulations provide that:

(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 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 part.

(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.¹⁶

The law applies if the *particular matter* directly and predictably affects the employee’s financial interests, even if the employee’s own actions do not affect them.¹⁷ The phrase “direct and predictable effect” extends to the effect of any part of the particular matter, even a part in which the employee did not participate: The plain language of the statute makes clear that the prohibition applies when the employee has a financial interest in the *particular matter* itself.¹⁸

With regard to stock ownership, the employee’s “financial interest” is viewed as coextensive with the company’s financial interests. Therefore, a direct and predictable effect determination turns on whether the company’s financial interests are affected and not on whether the stock price is affected.¹⁹ The U.S. Office of Government Ethics has explained:

Because shares of stock represent an ownership interest in a company, a particular matter that has a direct and predictable effect on the issuing company’s financial interests is treated as having a direct and predictable effect on the financial interests of the shareholders. Therefore, an employee who holds stock in a company is prohibited from participating personally and substantially in any particular matter that the employee knows would have a direct and predictable effect on the issuing company.”²⁰

An employee has a financial interest if there is a realistic, as opposed to speculative, potential for gain or loss.²¹ In *United States v. Gorman*, the U.S. Court of Appeals for the 6th Circuit explained that “[G]ain or loss need not be probable for the prohibition against official action to apply” and that “All that is required is that there be a real, as opposed to a speculative, possibility of benefit or detriment.”²² Because the prohibition applies if there is the potential for either benefit or detriment, it is important to recognize that the law effectively applies an absolute value standard; i.e., the chance to gain \$1 is viewed the same as the chance to lose \$1. The applicable regulation also provides that “It is not necessary ... that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.”²³

Thus, an employee can violate the conflict of interest law not only by participating in a particular matter that benefits the employee’s financial interests but also by participating in one that harms the employee’s financial interests. This application of the law may seem counterintuitive at first, but there are logical reasons for it. For example, an employee might seek to participate in a particular matter that harms the employee’s financial interests with the aim of steering the government’s deliberations in a way that mitigates the harm. Alternatively, an employee who is a sophisticated investor might be acting strategically to achieve a long-term gain from a short-term loss.

D. “Knowledge”

Finally, the statute applies only if the employee has knowledge of a financial interest in the particular matter.²⁴ The question of knowledge is a factual one. Where an employee has disclosed an asset in a financial disclosure report, however, it will obviously be difficult for the employee to assert a lack of knowledge of the asset.

III. 18 U.S.C. §§ 1001, 1621, and 5 U.S.C. app. § 104

A criminal statute, 18 U.S.C. § 1001, prohibits knowingly and willfully making a material false statement or concealing a material fact in connection with “any matter within the jurisdiction” of the executive, legislative, or judicial branch of the federal government. For a charge of concealment, the individual must have had a legal duty not to conceal the information,²⁵ as in the case of information the employee is required to disclose in a financial disclosure report.²⁶ Section 1001 provides, in pertinent part:

- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
 - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.²⁷

Within the legislative branch, section 1001 is limited to administrative matters and “any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.”²⁸ This prohibition applies to covered congressional testimony regardless of whether a witness is under oath.²⁹

The perjury statute at 18 U.S.C. § 1621, which contains similar requirements to section 1001, applies to congressional testimony only if it is given under oath.³⁰ The Supreme Court has explained that “A witness testifying under oath or affirmation violates this statute if she gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory.”³¹

The Congressional Research Service has explained that, as to both statutes, the test for materiality is often described as requiring a finding that the statement has “a natural tendency to influence, or be capable of influencing the decisionmaking body to which it is addressed”; there is no need to show “the decisionmaker was in fact diverted or influenced.”³²

Finally, with respect to an executive branch employee like Ross, the Ethics in Government Act also establishes penalties for failing to file a required financial disclosure report or for filing a false financial disclosure report.³³ That statute provides, as follows:

(2)(A) It shall be unlawful for any person to knowingly and willfully—

(i) falsify any information that such person is required to report under section 102; and

(ii) fail to file or report any information that such person is required to report under section 102.

(B) Any person who—

(i) violates subparagraph (A)(i) shall be fined under title 18, United States Code, imprisoned for not more than 1 year, or both; and

(ii) violates subparagraph (A)(ii) shall be fined under title 18, United States Code.³⁴

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Part 3 Invesco Ltd.

POSSIBLE VIOLATION OF 18 U.S.C. § 208

I. Summary

Ross participated personally and substantially in a particular matter directly and predictably affecting the financial interests of Invesco Ltd. (Invesco) while he owned shares of the company's stock. The particular matter was Ross' own investigation to determine whether the United States should impose a tariff on steel imports. At the time of this investigation, Invesco had a major interest in Chinese steel.

In his Dec. 19, 2016, nominee financial disclosure report, Ross disclosed his ownership of two financial interests in Invesco and indicated that each was separately worth \$5,000,001 to \$25,000,000. One of these interests was stock that he had earned as an employee of the company. The other interest was unvested restricted stock, which Invesco had not delivered to Ross because it had not yet vested. In a Jan. 15, 2017, ethics agreement, Ross committed that he would divest both of these assets. The agreement established different procedures for the divestiture of each asset.

Divesting the stock was uncomplicated because Invesco's stock is publicly traded on the New York Stock Exchange (NYSE). Therefore, the ethics agreement required simply that Ross divest his stock by May 28, 2017. Ross committed to recuse from particular matters directly and predictably affecting Invesco until he completed the divestiture.

Divesting the unvested restricted stock was somewhat more complicated. Ross lacked the right to sell this asset before its vesting. Unlike the stock, the unvested restricted stock was not in his possession yet. Invesco agreed to accelerate the vesting of this unvested restricted stock before Ross entered government. Ross pledged in his ethics agreement to forfeit his unvested restricted stock if Invesco failed to complete the accelerated vesting before he entered government. If, however, Invesco completed the accelerated vesting before he entered government, the ethics agreement provided for Invesco to deliver the newly vested shares to him within 180 days of his Senate confirmation for the position of secretary. Ross committed that he would then sell these shares within 30 days of receipt. As with his stock holding, Ross committed to recuse from particular matters directly and predictably affecting Invesco until he completed the divestiture.

Ross' official filings contain contradictory information as to the divestiture of these two assets. On Nov. 1, 2017, Ross filed a compliance certification in which he claimed to have divested all of the assets he was required to divest. On Dec. 21, 2017, however, Ross filed a

periodic transaction report in which he admitted that he had retained his Invesco stock until Dec. 20, 2017.

Some of the information that Ross provided in the Dec. 21, 2017, periodic transaction report is vague. In that report, Ross discloses two sales of assets he identifies only as “Invesco” on December 19 and 20, valuing each transaction as worth \$5,000,001 to \$25,000,000. Ross does not indicate whether either of these sales included the unvested restricted stock that he had disclosed in his nominee financial disclosure report. In an endnote, Ross indicates that Invesco opted to make a cash payment for his unvested restricted stock. The endnote suggests Invesco may have made the payment before he entered government.

Though Ross is somewhat vague about the divestiture of his unvested restricted stock, he is clear in admitting that he held Invesco stock until Dec. 20, 2017. The timing of this tardy divestiture of Invesco stock is significant because Ross did not recuse from particular matters directly and predictably affecting Invesco prior to Dec. 20, 2017. Instead, Ross began participating personally and substantially in the steel investigation in April 2017.

The steel investigation directly and predictably affected Invesco’s interests. A little over a month after Ross entered government, one of Invesco’s wholly owned subsidiaries, WL Ross & Co. LLC, closed a deal for a multibillion-dollar investment in Chinese steel. Ross ran WL Ross & Co. LLC until he entered government in February 2017. Given the size of this investment, planning and negotiations for the deal would have begun long before Ross left the company to assume his current position as Commerce secretary.

Ross’ defense appears to be that, prior to December 2017, he had believed someone sold his Invesco stock before he entered government. This claim seems implausible. Ross vaguely states only that he thought an unidentified party sold his stock before he entered government. Ross’ language seems to imply that the unidentified party was Invesco, but Ross was in possession of the stock and would have known that Invesco could not sell it.

The Inspector General could easily ascertain whether Ross had a basis for believing his stock was sold before he entered government. Ross was aware that the sale did not occur before the Senate confirmed him, inasmuch as he expressly conditioned his pledge to sell the stock upon his successful confirmation. Ross was also aware that the sale did not occur after he entered government, inasmuch as he did not file a periodic transaction report to disclose the sale (as executive branch employees are required to do, and as Ross did for assets he sold after entering government). If Ross’ claim is true, therefore, he had to have believed the sale occurred between his confirmation and his swearing into office. However, that window was extremely narrow: The Senate confirmed Ross after the NYSE had closed trading on Feb. 27, 2017; the NYSE opened trading at 9:30 the next morning; and Ross was sworn into office at 10:14 that morning. For someone other than Ross to have undertaken the sale in this 44-minute window of time, Ross would have had to make arrangements in advance. If that were true, Ross would be able to produce documentation or a witness to show that he made such arrangements in advance. If Ross did not make such arrangements, he had no basis for believing his stock was sold before he entered government, as he claims he did. One news organization has reported that Ross made a seven-figure profit by delaying the sale of his Invesco stock.

The Inspector General should evaluate whether Ross violated 18 U.S.C. § 208 by participating personally and substantially in the steel investigation while he held Invesco stock.

II. “Personal and substantial participation” in the steel investigation

The Senate confirmed Ross on Feb. 27, 2017.³⁵ On Feb. 28, 2017, Vice president Pence swore Ross into office as Commerce secretary.³⁶ Shortly thereafter, on Apr. 19, 2017, Ross initiated an investigation to determine whether the United States should impose a tariff on steel imports.³⁷ That same day, Ross personally signed a letter notifying secretary of Defense James Mattis of this steel investigation.³⁸ The next day, President Trump signed a presidential memorandum directing Ross to complete the investigation expeditiously and submit a report on his findings.³⁹

On Apr. 21, 2017, Ross personally signed a formal request for public comments and notice of a public hearing on his investigation.⁴⁰ On May 24, 2017, Ross presided over the public hearing.⁴¹ At the beginning of the hearing, he explained how he planned to approach the investigation:

This begins with an evaluation of the current state of the U.S. steel industry, as well as current imports of steel products and raw materials. The purpose of the investigation is to determine if the steel being imported into this country impairs our national economic and military security. If we determine that steel imports are indeed a threat to our security, the Department will recommend responsible action to the president. Today we will hear remarks of several American steel producers, as well as numerous industry experts familiar with steel trade and manufacturing. We hope the public will provide us both with factual input, as well as suggestions for potential remedies.

Key questions need to be answered. Most importantly, does the problem rise to the level of crisis sufficient to warrant action beyond existing countervailing duty, anti-dumping cases? If the president does decide to take action, should it cover all steel from everywhere? What do we do in terms of the 20-plus percent of steel imports from our NAFTA partners? Should all products be covered? Is some sort of tariff rate quota appropriate or a more broadly based tariff? Are there products or countries that should be excluded? Is there some innovative solution? If we go the tariff route, should it be broadly applied or a tariff schedule for groups of products?⁴²

During the hearing, several participants alluded to the effect of Ross’ investigation on industries and companies that are dependent on steel, including the rail industry.⁴³ Written public comments submitted by steel-dependent companies were more explicit in expressing concern about the effect on their business interests.⁴⁴

In June 2017, Reuters reported that Ross told participants in a German economic conference that measures to protect American national security as to steel “might have to be ‘broad-scale’ but would be aimed at provoking a collective solution to deal with global steel excess capacity.”⁴⁵ Ross initially promised the release of the report on his investigation by the end of June 2017,⁴⁶ but the Trump administration decided to delay the report until after the July 2017 G20 summit.⁴⁷ According to Reuters, some members of the White House staff also had concerns about the investigation’s effect on steel-dependent companies: “Ross had originally hoped to release the steel report at the end of June but the timing has slipped amid disagreements among White House aides over the merits of restricting imports that could hurt steel consuming industries.”⁴⁸

In July 2017, Ross personally negotiated a deal with China to reduce its production of steel voluntarily, but President Trump rejected the deal as not being tough enough.⁴⁹ The Washington Post reported that the deal “was the culmination of a 100-day, high-level negotiation launched by Trump and Chinese President Xi Jinping during their summit in Mar-a-Lago in April, and steered by Ross and his senior aide Wendy Teramoto.”⁵⁰ The Washington Post also reported that Ross had similarly negotiated deals for voluntary reductions in steel capacity with other trade partners but that President Trump also rejected those agreements.⁵¹

On Jun. 26, 2017, Ross participated in a White House meeting with the president and approximately 20 other senior administration appointees.⁵² A source cited by Axios reported that Ross pushed a plan for “tariffs on China and other big exporters of steel.”⁵³ The source indicated that, with backing from three other senior advisers, Ross prevailed in winning the president’s support over a room full of skeptics.⁵⁴ A witness described Ross and his backers as “hell-bent on imposing tariffs — potentially in the 20% range — on steel, and likely other imports.”⁵⁵

On Jul. 27, 2017, Ross told members of the House Ways and Means Committee that he would defer to President Trump’s wish to delay the release of his steel investigation report further.⁵⁶ In a September 2017 interview with Bloomberg television, Ross explained that the administration had decided to postpone a decision on a steel tariff until after legislative work on a pending tax bill was completed.⁵⁷ During the interview, he mentioned that he was preparing for a trip to China in the near future to discuss the possible steel tariff.⁵⁸

Ross issued a report of investigation on Jan. 11, 2018, in which he recommended that the United States impose either a tariff or a quota.⁵⁹ The submission of this report to the president triggered a process for the president to decide what action to take on Ross’ recommendation.⁶⁰ Thereafter, President Trump accepted Ross’ recommendation and imposed a tariff on steel imports, granting Ross the authority to exempt individual companies from the tariff.⁶¹ Other countries promptly retaliated by instituting similar measures against American exports.⁶²

III. “Particular matter” – the steel investigation was a particular matter

As explained in Part 2 above, the term “particular matter” means a matter that is focused on the interests of identified parties or a discrete and identifiable class of persons.⁶³ Ross’ investigation was a particular matter because it focused on the interests of a discrete and identifiable class of persons, the steel industry.⁶⁴ Therefore, the investigation was a particular matter. Accordingly, Ross was covered by the criminal conflict of interest law, 18 U.S.C. § 208, as to his personal and substantial participation in the steel investigation.⁶⁵

IV. “Financial interest directly and predictably affected” – Invesco

Ross held Invesco stock until Dec. 20, 2017, months after he began his personal and substantial participation in the steel investigation and months after the May 28, 2017, deadline for divesting the stock.⁶⁶ A wholly owned subsidiary of Invesco held interests in the Chinese steel industry that were directly and predictably affected by the steel investigation.

A. Ross owned Invesco stock until Dec. 20, 2017

Until he entered government service, Ross was the Chairman and Chief Strategy Officer of WL Ross & Co. LLC (WLR).⁶⁷ WLR is a wholly owned subsidiary of Invesco.⁶⁸ Through his employment with WLR, Ross received both Invesco stock and unvested restricted stock in Invesco.⁶⁹ Ross disclosed both of these Invesco assets in his Dec. 19, 2016, nominee financial disclosure report:

1.4	Invesco Ltd. stock		N/A	\$5,000,001 - \$25,000,000	Dividends	\$100,001 - \$1,000,000
<hr/>						
#	DESCRIPTION		EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1.5	Invesco Ltd. restricted stock (unvested)	See Endnote	N/A	\$5,000,001 - \$25,000,000		None (or less than \$201)
2.	1.5	Pursuant to written Invesco policy and procedures, and subject to a cap based on his existing holdings, upon Mr. Ross’ 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.				

Source: Ross Nominee Financial Disclosure Report, Part 2 and endnotes section⁷⁰

Ross indicated that the value of each of these assets was separately worth between \$5,000,001 and \$25,000,000.⁷¹ Ross committed that he would divest both assets.⁷² Due to the different nature of the two assets, his ethics agreement established different procedures for divesting them:

Asset	Procedure
Invesco Ltd. stock	“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 confirmation, except as specifically provided otherwise in Section 9 (Assets To Be Divested) below and in Attachment A.”
Asset	Procedure
Invesco Ltd. restricted stock (unvested)	“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.”

As indicated in the table above, the procedure for divesting Ross’ Invesco stock was simple. Ross already possessed this vested stock, so he was not dependent on Invesco to take any action before he could sell it.⁷³ In addition, Invesco’s stock is a publicly traded security on the NYSE, which means Ross could simply call his broker and order the sale of the stock.⁷⁴ Accordingly, Ross indicated simply that he would divest this stock within 90 days of confirmation.⁷⁵ The language of the ethics agreement made clear that Ross would be personally responsible for selling the stock: “I will divest.”⁷⁶ Ross committed to recuse from particular matters directly and predictably affecting Invesco until he completed this divestiture.⁷⁷

Divesting the unvested restricted stock was somewhat more complicated. Ross lacked the right to sell this asset before its vesting.⁷⁸ Unlike the stock, the unvested restricted stock was not in his possession yet.⁷⁹ Invesco agreed to accelerate the vesting of this unvested restricted stock before Ross entered government.⁸⁰ Possibly due to a statutory prohibition on certain payments from sources other than the government,⁸¹ Ross pledged to forfeit this asset if Invesco failed to complete the accelerated vesting before he entered government.⁸² If, however, Invesco completed the accelerated vesting before he entered government, the ethics agreement provided for Invesco to deliver the newly vested shares to him within 180 days of his Senate confirmation for the position of secretary.⁸³ Ross committed that he would then sell these shares within 30 days of receipt.⁸⁴ As with his stock holding, Ross committed in his ethics agreement that he would recuse from particular matters directly and predictably affecting Invesco until he completed this divestiture.⁸⁵

Five days after the May 28, 2017, deadline for divesting his Invesco stock, Ross filed his first compliance certification.⁸⁶ In that Jun. 2, 2017, certification, Ross wrote that, “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

Corporation., Bank of Cyprus, and BankUnited but these shares have also now been divested; with regard to Bank of Cyprus, I also hold shares through WL Ross Group LP which is required to be sold within 180 days.”⁸⁷

This statement later proved to be untrue. Ross’ Dec. 21, 2017, periodic transaction report reveals that he continued to hold Invesco stock until Dec. 20, 2017.⁸⁸ Ross also still held shares of Air Lease Corporation, which he claims to have discovered a year later in June 2018.⁸⁹ In addition, none of Ross’ periodic transaction reports reflects any sale of either the Bank of Cyprus or WL Ross Group LP, which raises a question as to whether Ross divested them.⁹⁰

Ross filed a second compliance certification on Sep. 5, 2017. In a note he added to this second certification, Ross addressed the issue of his unvested restricted stock in Invesco:

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.⁹¹

It is impossible to know what Ross meant by the language “after certain transactions are completed.” His ethics agreement made no provision for additional transactions after he entered government.⁹² The Inspector General should ascertain what Ross meant by this language. (If Invesco did not complete the accelerated vesting of Ross’ unvested restricted stock, it may be advisable to evaluate whether 18 U.S.C. § 209 was implicated.)

Ross filed a third compliance certification on Nov. 1, 2017. In this third certification, Ross declared that he had divested all assets he was required to divest, which included his Invesco assets.⁹³ However, on Dec. 21, 2017, Ross filed a periodic transaction report disclosing two sales of assets identified only as “Invesco Ltd.” — each with values between \$5,000,001 and \$25,000,000.⁹⁴ He indicates the sales occurred on Dec. 19, 2017, and Dec. 20, 2017, respectively.⁹⁵

#	DESCRIPTION		TYPE	DATE	NOTIFICATION OVER 30 DAYS AGO	AMOUNT
13	The Greenbrier Companies Inc. (GBX)	See Endnote	Sale	12/14/17	No	\$250,001 - \$500,000
14	Navigator Holdings (NVGS), closed short position	See Endnote		11/16/17	Yes	\$100,001 - \$250,000
15	Invesco Ltd	See Endnote	Sale	12/19/2017	No	\$5,000,001 - \$25,000,000
16	Invesco Ltd		Sale	12/20/2017	No	\$5,000,001 - \$25,000,000

In an endnote, Ross indicates that Invesco opted to make a cash payment for his unvested restricted stock.⁹⁶ He indicates that Invesco placed the money in an escrow account “subject to certain adjustments.”⁹⁷ He does not specify the nature of the adjustments, and his ethics agreement did not address any adjustments.⁹⁸ The endnote suggests, but does not state explicitly, that Invesco made the payment before he entered government.⁹⁹

Ross does not indicate whether either of the sales on December 19 and 20 included the unvested restricted stock he had disclosed in his nominee financial disclosure report.

However, the value ranges for these sales correspond to the value ranges Ross reported in his nominee financial disclosure report for his stock and his unvested restricted stock, respectively.¹⁰⁰ If one of these entries in the body of Ross' periodic transaction report represents the sale of his unvested restricted stock, it would seem to contradict the statements in the endnote of that report and his Sep. 5 compliance certification, which suggested that he divested the unvested restricted stock before entering government. Alternatively, the two sales disclosed in the body of his periodic transaction report may represent partial sales of his Invesco stock and may not include his unvested restricted stock. For this reason, it is not possible to be certain when Ross divested his unvested restricted stock.

Nevertheless, Ross is clear in admitting that he held his Invesco stock until Dec. 20, 2017.¹⁰¹ This means that Ross held Invesco stock throughout most of 2017 while he was participating personally and substantially in the steel investigation.

B. A wholly owned subsidiary of Invesco had financial interests directly and predictably affected by the steel investigation

Invesco is an “independent investment management firm” that manages investment funds and has a number of underlying holdings.¹⁰² In the most recent annual report that Invesco filed with the Securities and Exchange Commission (SEC), Invesco explains that its “cash flow” and “ability to fund operations” are dependent on the earnings of its subsidiaries.¹⁰³ WLR is a wholly owned subsidiary of Invesco.¹⁰⁴

The Wall Street Journal described WLR as best “known for deals that included combining bankrupt steel producers Bethlehem Steel, Acme Steel, Weirton Steel, and LTV Steel to form International Steel Group in 2002.”¹⁰⁵ WLR no longer held International Steel Group in 2017,¹⁰⁶ but the company closed a deal in early April 2017 with China's largest steel maker to launch an investment fund.¹⁰⁷ On Apr. 4, 2017, the Wall Street Journal reported:

[WLR] plans to team with an arm of Shanghai-based China Baosteel Corp. and other investors to acquire steel-industry assets in China with an aim at improving the sector's long-term “commercial viability,” according to an invitation to a signing ceremony reviewed by The Wall Street Journal. The Friday event in Shanghai coincides with Chinese President Xi Jinping's two-day summit in the U.S. with President Donald Trump, who has said the meeting will feature difficult discussions on trade—a sector where steel takes center stage.¹⁰⁸

The Wall Street Journal also noted that WLR had other significant partners in this venture with China Baosteel Corp.:

Also a partner in the venture is U.S.-China Green Fund, a public-private partnership initially advised by former U.S. Treasury Secretary Henry Paulson with the public endorsement of a key economic adviser to Chinese President Xi, Liu He. The

fund was initiated last year with an aim to introduce environmentally friendly U.S. technology to China.

Other partners in the investment venture, called Si Yuan He Steel Industry Development Fund, are an investment company owned by Baosteel's China Baowu Steel Group called Hwabao and Beijing-based shipping and banking conglomerate China Merchants.¹⁰⁹

A week later, one source explained that the object of this venture was to establish a multibillion-dollar investment fund in which WLR would own a 26 percent stake.¹¹⁰ The fund is named the Four Rivers Investment Management Co.¹¹¹ Another source described the establishment of the Four Rivers Investment Management Co. in 2017 as WLR making a “big bet” on the future of Chinese steel:

Wilbur Ross' former investment company is making a big bet on China's steel industry, even as the billionaire works to finish severing ties to the firm and his Commerce Department challenges alleged dumping of Chinese steel.

[WLR], founded by Ross and later acquired by Invesco Ltd., said Saturday that it will help lead a joint venture to acquire steel assets in China. Along with China Baowu Steel Group and a few other firms, [WLR] is setting up an investment vehicle — Four Rivers Investment Management Co — to find underperforming assets with plans to invest between \$5.8 billion and \$11.6 billion (Dh21.3 billion and Dh42.5 billion) from its Shanghai headquarters.

The announcement came the day after a summit between President Donald Trump and his Chinese counterpart Xi Jinping. After the talks, Ross said the countries agreed to a “100-day plan” to discuss trade. He said the most noteworthy development from the two-day talks was the Chinese delegation's “interest in reducing their net trade balance.”¹¹²

In December 2017, Invesco announced the first major success for its Four Rivers Investment Management Co. Ltd.¹¹³ A press release explained that the joint venture had “completed a comprehensive restructuring and recapitalization of Chongqing Iron & Steel Co. Ltd.,” with the predicted result that “the Company is now well-positioned to meet the demands of the strong and diverse economy in the Chongqing region [of China].” As background, the press release explained that the joint venture was established “to evaluate, invest in and turnaround steel assets in China which represents the world's largest steel consumer and producer with nearly 50% of all production capacity.”¹¹⁴ Another source explained that “Four Rivers Investment Management Company ... has acquired 23.5 per cent stake in Chongqing Iron & Steel Co following the successful restructuring and recapitalization of the beleaguered Chinese steel company.”¹¹⁵

It is not clear whether WLR's Four Rivers Investment Management Co. completed its acquisition of Chongqing Iron & Steel before or after Dec. 20, 2017, but negotiations for this massive deal appear to have begun long before then. In addition, it appears that WLR and its partner, China Baowu Steel Group, had invested significant capital in Four Rivers Investment Management Co. before Ross' divestiture of his Invesco interests on Dec. 20, 2017:

In April, the company [China Baowu Steel Group] set up a steel industry restructuring fund jointly with [WLR], US-China Green Fund and China Merchants Group to help Chinese steelmakers eliminate overcapacity, clean up 'zombie enterprises,' facilitate business reorganization to improve market concentration, push forward mixed-ownership reforms and promote new-generation international production capacity cooperation. The size of the fund was preliminarily set to be CNY40 billion (USD6.1 billion) to CNY80 billion.¹¹⁶

For these reasons, Invesco held significant interests in Chinese steel through its wholly owned subsidiary WLR in 2017. As described above, Ross conducted the steel investigation specifically to determine whether the United States should impose a tariff on steel imports. Therefore, Invesco's financial interests were directly and predictably affected by the steel investigation. As discussed in Part 2 above, the financial interests of a company in which an employee has an ownership interest are treated as the employee's own financial interests for purposes of 18 U.S.C. § 208.¹¹⁷ Therefore, Ross' interests were coextensive with Invesco's interests for purposes of that law.

As also discussed in Part 2 above, a violation of the conflict of interest law does not require a finding that a particular matter *benefited* the employee's financial interest.¹¹⁸ In *United States v. Gorman*, the 6th Circuit explained, "All that is required is that there be a real, as opposed to a speculative, possibility of benefit or detriment."¹¹⁹ For example, the Department of Justice charged former Food and Drug Administration (FDA) Commissioner Lester Crawford with violating 18 U.S.C. § 208 by participating in a particular matter that had the realistic potential for harming two companies whose stock he held, soft drink producer Pepsico and food manufacturer Sysco.

For six months, Crawford chaired FDA's Obesity Working Group (OWG).¹²⁰ The final report proposed enhanced labeling requirements to inform consumers of the caloric and carbohydrate content of food and drink products, and Crawford emphasized in congressional testimony the importance of relabeling serving sizes for soda.¹²¹ Even though the imposition of more burdensome labeling requirements on food and drink manufacturers would likely have had a negative effect on Pepsico and Sysco, the Justice Department charged Crawford and explained: "Pepsico, a leading manufacturer of soft drinks and snack foods, and its shareholders had a financial interest in the OWG's conclusions and recommendations. Sysco, a leading manufacturer of food products, and its shareholders had a financial interest in the OWG's conclusions and recommendations."¹²² The charges did not hinge on the *type* of effect the OWG's recommendations had on the companies. It only mattered that the companies had a financial interest directly and predictably affected, positively or negatively, by its recommendations. Therefore, Crawford pled guilty.¹²³

In the case of Ross' steel investigation, which sought to determine whether the United States should impose a tariff on steel imports, there was a realistic, as opposed to speculative, possibility that the outcome would positively or negatively affect Chinese steel companies. As a sophisticated investor, Ross may have thought his consideration of a steel tariff would advantage WLR's negotiations, or he may have hoped to minimize the impact of a tariff by recommending a favorable procedure for granting exclusions. Alternatively, Ross may have been resigned to the harm his investigation would have on the company. Whatever his motives, however, they are irrelevant to the conflict of interest analysis. What matters for purposes of 18 U.S.C. § 208 is that Ross had a financial interest in a company directly and predictably affected by the steel investigation.

V. "Knowledge" – Ross' knowledge

Ross denies knowing he held his vested Invesco stock after he entered government, but his denial seems implausible. Under the circumstances, Ross appears to have known he held Invesco stock after he entered government. In addition, Ross would surely have known of WLR's acquisition of a major interest in Chinese steel.

Although not necessary to establish a violation of 18 U.S.C. § 208, we also note that Ross knew he needed to recuse from particular matters directly and predictably affecting Invesco until he completed the divestiture of both of his Invesco assets.

A. Ross knew he held Invesco – and, through it, steel interests – until Dec. 20, 2017, and his denial seems implausible

Ross knew he held Invesco stock worth between \$5,000,001 and \$25,000,000 when he filed his Dec. 19, 2016, nominee financial disclosure report and when he signed his Jan. 15, 2017, ethics agreement.¹²⁴ However, Ross claims he thought someone sold his vested Invesco stock before he entered government. In an endnote to his Dec. 21, 2017, periodic transaction report, he wrote:

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.¹²⁵

This explanation seems implausible. Ross' use of the passive voice in this endnote obscures the identity of the party he purportedly believed had sold his stock. The language seems to imply that the unidentified party was Invesco, but Ross was in possession of the stock and knew Invesco could not sell it.¹²⁶ In addition, the public record shows Ross was focused on his divestitures in 2017. In March, he participated in an initial ethics briefing in which he specifically discussed the requirements of his ethics agreement with an agency ethics official.¹²⁷ In June, September, and November, he filed three separate certifications of

ethics agreement compliance in which he addressed his divestitures.¹²⁸ In November, he wrote to the U.S. Office of Government Ethics regarding some of his divestiture efforts.¹²⁹

Ross knew he held millions of dollars' worth of Invesco stock as of Jan. 15, 2017, when he signed his ethics agreement and committed that he would divest it. To demonstrate that he lacked knowledge of this stock after entering government, he will need to do more than claim vaguely that he thought an unspecified party had sold shares of the stock that were in his possession. Ross may well have had a reason for delaying the divestiture of this stock: Carrie Levine of the Center for Public Integrity has calculated that the delay yielded him a seven-figure profit.¹³⁰

The Inspector General can easily ascertain whether Ross had a basis for believing someone sold his stock before he entered government. Ross expressly conditioned his pledge to sell the stock upon his successful confirmation, so he was aware that the sale did not occur before the Senate confirmed him.¹³¹ Ross was also aware that the sale did not occur after he entered government, inasmuch as he did not file a periodic transaction report to disclose the sale (as he would have been required to do as an executive branch employee and as he did for assets he sold after entering government).¹³² If Ross' claim is true, therefore, he had to have believed that the sale occurred between his confirmation and his swearing into office. However, that window was extremely narrow: The Senate confirmed Ross after the NYSE had closed trading for the day on Feb. 27, 2017;¹³³ the NYSE opened trading at 9:30 the next morning;¹³⁴ and Ross was sworn into office at 10:14 that morning.¹³⁵ For someone other than Ross to have undertaken the sale of his Invesco stock in this 44-minute window of time, Ross would have had to make arrangements in advance. He also would have had to deliver the stock to that person first. If that happened, Ross will be able to produce documentation or a witness to show the specific steps he took. If Ross did not take any steps to arrange for the divestiture, however, he could not have believed someone sold his stock before he entered government.

B. Any claim that Ross lacked knowledge of an Invesco subsidiary's multibillion-dollar deal for Chinese steel would be implausible

Immediately prior to entering government, Ross served as Chairman and Chief Strategy Officer for Invesco subsidiary WLR.¹³⁶ A little more than a month after Ross entered government, WLR closed a multibillion-dollar deal for an investment in Chinese steel.¹³⁷ Ross surely knew of this deal.

This joint venture with a Chinese steel company provided for the establishment of an investment fund that would restructure the Chinese steel industry.¹³⁸ It was a \$5.8 billion deal, with WLR owning more than a quarter of the investment fund.¹³⁹ It is inconceivable that WLR could have first started planning for this multibillion-dollar deal on Mar. 1, 2017, after Ross left the company, and concluded negotiations by Apr. 4, 2017, when the deal was announced.¹⁴⁰

Such a massive undertaking would not have escaped Ross' notice as Chairman and Chief Strategy Officer. Ross has been called a "legendary investor."¹⁴¹ He is known as a "savvy" businessman¹⁴² and someone who immerses himself in economic research.¹⁴³ One

investment publication dubbed him “best known for restructuring failed companies in the steel industry and other sectors.”¹⁴⁴ His “signature investment”¹⁴⁵ involved the purchase, consolidation, and sale of large distressed steel mills,¹⁴⁶ an effort that helped form the world’s largest steel company, ArcelorMittal.¹⁴⁷ Even after leaving WLR, Ross did not retire but, instead, began leading the trade policy of a nation with a \$19 trillion gross domestic product.¹⁴⁸ Since then, Ross has focused much of his tenure in office on trade with China and on claims of foreign steel dumping.¹⁴⁹ In this context, it would be nothing less than incredible for Ross to claim that he was unaware of Invesco’s acquisition of an interest in Chinese steel through WLR.

C. Though not necessary for a finding that Ross violated 18 U.S.C. § 208, we note he was aware of the law and his duty to recuse as to Invesco

The government put Ross on notice of his duty to recuse from particular matters affecting Invesco in several ways:

- Ross personally signed a letter to his agency’s lead ethics official, David Maggi, which opens with a recitation of the basic recusal obligation:

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).¹⁵⁰

- In the letter, Ross also recounts that Maggi specifically advised him of the broad applicability of the criminal prohibition on participating in covered particular matters. Ross acknowledges that Maggi specifically advised him regarding the scope of “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.¹⁵¹

- A Senator specifically asked Ross about his understanding of his recusal obligations:

Senator CANTWELL. Well, I want to make sure that — I will get this to you, and you can respond in writing, but there will be times in which those interests will be impacted by decisions made by your organization. And if you would take a look at the specific questions and areas where you would recuse yourself in

addition to what you've already done with ethics, I would so appreciate this.

Mr. ROSS. Oh, I intend to be quite scrupulous about recusal and any topic where there is the slightest scintilla of doubt.¹⁵²

- In response to a follow-up question from another Senator after his confirmation hearing, Ross explained how he would handle interim recusals pending completion of his divestitures:

Question 10. In Section 9 of your Ethics Agreement, you commit to divesting yourself of significant assets within 90 days and additional assets within 180 days. How do you intend to handle potential conflicts of interest that may arise during this extended period of retained ownership?

Answer. In the event that a matter involving an asset I still hold should arise, I assure you that I will recuse myself in accordance with the commitments that I made in my ethics agreement. Further, I will at all times rely on the monitoring and judgment of the Department's ethics officials to ensure that I do not participate in any matter about which they advise me that a conflict of interest would arise.¹⁵³

- Ross has confirmed that he received an individualized ethics briefing from the ethics office for the U.S. Department of Commerce upon entering government service.¹⁵⁴ Executive branch-wide regulations required the agency ethics official to counsel Ross “on the basic recusal obligation under 18 U.S.C. 208(a).”¹⁵⁵
- By regulation, Ross was also required to complete new employee ethics training during the first three months of his appointment, and that training was required to cover financial conflicts of interest.¹⁵⁶ Notably, executive branch-wide regulations also required Ross, as secretary of Commerce, to support the agency's efforts to carry out an interactive ethics training program.¹⁵⁷
- Ross filed official forms on three occasions in 2017 in which he attested: “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.”¹⁵⁸
- With regard to Invesco, Ross also received an individualized warning of the duty to recuse. He specifically states in his letter to Maggi:

With respect to each of these Invesco 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 or its holdings until I have divested it, 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).¹⁵⁹

Therefore, though not necessary to establish a violation of law, it is clear that Ross was aware of the conflict of interest prohibition at 18 U.S.C. § 208(a), as well as his duty to recuse from particular matters directly and predictably affecting Invesco's financial interests pending divestiture of his stock and unvested restricted stock..

VI. Conclusion

Invesco had a major interest in Chinese steel, and Ross led an investigation to determine whether the United States should impose a tariff on steel imports. For the reasons discussed above, Ross' claim that he thought someone had sold his Invesco stock seems implausible. His claim is unsupported by any detail — not even an indication as to the identity of any party who would have been in a position to sell the stock, which was in Ross' possession. As things stand, the only publicly available records are: (a) Ross' nominee financial disclosure report, in which he revealed his knowledge that he owned Invesco stock; (b) Ross' ethics agreement in which he committed to sell his Invesco stock by May 28, 2017; (c) Ross' Dec. 21, 2017, periodic transaction report, in which he admitted that he failed to sell his Invesco stock until Dec. 20, 2017; and (d) the record of Ross' leadership of the steel investigation, which began in April 2017 and affected Invesco's financial interests. If Ross had made arrangements for the sale of his stock before he entered government, he would be able to produce either a record of those arrangements or a witness. The Inspector General should request that Ross produce any such record or witness. If Ross is unable to do so, the Inspector General should evaluate whether Ross violated 18 U.S.C. § 208 by continuing to own Invesco while leading an investigation to determine whether the United States should impose a tariff on steel imports.

4

Part 4

The Greenbrier Companies

POSSIBLE VIOLATION OF 18 U.S.C. § 208

I. Summary

Ross participated personally and substantially in a particular matter directly and predictably affecting the financial interests of The Greenbrier Companies (Greenbrier) while he owned shares of the company's stock. The particular matter was the steel investigation that we discussed in Part 3 above. The purpose of the steel investigation was to determine whether the United States should impose a tariff on steel imports. Greenbrier is a steel-dependent manufacturer of rail cars, and the company contacted the U.S. Department of Commerce to express concern about steel investigation's effect on its financial interests.

On Apr. 21, 2017, Ross issued a formal notice soliciting public comments and announcing a hearing on his steel investigation. On May 18, 2017, Ross took Greenbrier CEO William Furman to dine at the White House. On May 24, 2017, Ross presided over the public hearing on the investigation. On May 30, 2017, Furman filed a public comment expressing concern that the investigation would affect Greenbrier and asking that an exception be made for his Japanese steel supplier. On May 31, 2017, Ross divested some of his Greenbrier stock.

Ross did not initially disclose his ownership of Greenbrier stock when he entered government, but he does not deny that he owned this stock when he entered government. Three of his periodic transaction reports reveal that he divested his previously undisclosed Greenbrier stock on three dates: Mar. 31, 2017; May 31, 2017; and Dec. 14, 2017.

In the periodic transaction reports reflecting Ross' first two sales of Greenbrier stock, he did not explain how he came to hold Greenbrier stock. In a third periodic transaction report dated Dec. 21, 2017, Ross offered the following explanation:

Shares in Greenbrier I earned as a director of the company for the period 2009-2012 were recorded in electronic book entry form by a transfer agent but I did not otherwise have a record of these shares in a personal account. When I prepared my nominee report these holdings 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.

This endnote seems to claim that Ross did not know he owned Greenbrier stock until December. That explanation is implausible because Ross sold Greenbrier stock in March and May, and he contemporaneously filed periodic transaction reports for those sales. Perhaps Ross intended for his endnote to signify that he discovered his ownership of Greenbrier stock on three separate occasions in 2017 and sold the stock after each discovery. In that case, it seems implausible that Ross would not have demanded a full accounting from Greenbrier after the first or second time he discovered the company still held shares belonging to him.

Even if Greenbrier truly surprised Ross three times in 2017, there is a problem with his participation in the steel investigation. In order to comply with 18 U.S.C. § 208, Ross needed to recuse from the steel investigation each time he discovered that he owned shares of Greenbrier stock until he divested them. However, there does not appear to be any public record of Ross having recused from the steel investigation in 2017.

Beyond the lack of a record showing Ross recused, there is reason to believe he did not recuse. Ross opened a short position in Greenbrier in 2017, ostensibly to resolve his conflict of interest with his Greenbrier stock — an action that shows he knew the stock posed a conflict of interest. If Ross erroneously believed that opening a short position was a valid substitute for divestiture, he would not have believed he needed to recuse from the steel investigation. Of course, opening a short position does not resolve a conflict of interest, and the acting director of the U.S. Office of Government Ethics reprimanded Ross for opening short positions.

Ross appears to have concealed his Greenbrier short sale from ethics officials. Although he filed periodic transaction reports to disclose other short sales, Ross has not filed a periodic transaction to disclose his Greenbrier short sale. Because Ross has never disclosed this short sale in a periodic transaction report, we do not know when he opened or closed it, but the Inspector General could easily obtain this information.

The Inspector General should conduct an investigation to determine whether Ross' participation in the steel investigation violated 18 U.S.C. § 208 as to his ownership of Greenbrier stock. In his own account of his purported discoveries of Greenbrier shares, Ross references communications with the company. If true, the Inspector General will be able to obtain records of these communications showing the timing of each instance when Ross discovered he owned Greenbrier stock. In that case, the Inspector General should ascertain whether Ross recused from the steel investigation pending divestiture after each discovery that he owned Greenbrier stock and, separately, while he held an undisclosed open short position in Greenbrier.

II. “Personal and substantial participation” in the steel investigation

In Part 3 above, we discussed Ross' participation in an investigation of the steel industry to determine whether the United States should impose a tariff on steel imports. The investigation began in April 2017 and concluded in January 2018.¹⁶⁰ In his report of investigation, Ross recommended the imposition of a tariff on steel imports, which President Trump subsequently imposed.¹⁶¹ Pursuant to a presidential memorandum, Ross had authority to grant exceptions to the tariff.¹⁶²

On Apr. 26, 2017, Ross issued a Federal Register notice soliciting public comments and formally announcing a public hearing on the steel investigation.¹⁶³ On May 24, 2017, Ross personally presided over the public hearing.¹⁶⁴ During the hearing, several participants alluded to the effect of Ross' investigation on industries and companies that are dependent on steel, including the rail industry.¹⁶⁵ Written public comments submitted by steel-dependent companies were more explicit in expressing concern about the effect on their business interests.¹⁶⁶ According to Reuters, some members of the White House staff also had concerns about the investigation's effect on steel-dependent companies: "Ross had originally hoped to release the steel [investigation] report at the end of June but the timing has slipped amid disagreements among White House aides over the merits of restricting imports that could hurt steel consuming industries."¹⁶⁷

Shortly after Ross presided over the May 24, 2017, hearing on his steel investigation, Greenbrier's Chairman and CEO, William A. Furman, wrote to the Commerce Department.¹⁶⁸ Furman's May 30, 2017, letter is styled as a response to Ross' solicitation of public comments on the steel investigation.¹⁶⁹ In the letter, Furman discusses the direct and predictable effect of the steel investigation on Greenbrier.¹⁷⁰

The day after Furman sent his letter, Ross divested between \$250,001 and \$500,000 worth of Greenbrier stock.¹⁷¹ Ross had not disclosed that he owned Greenbrier stock when he entered government.¹⁷² One of his investment funds previously held Greenbrier stock, but a note in one of his financial disclosure reports indicated that the fund no longer held it.¹⁷³ Ross sold Greenbrier stock three times in 2017.¹⁷⁴

Forbes' Dan Alexander recently obtained copies of Ross' calendar for May 2017.¹⁷⁵ What Alexander uncovered is startling. A few days before Ross presided over the steel investigation, he entertained Furman at the White House Mess:¹⁷⁶

May 18, 2017 was a busy day for Secretary of Commerce Wilbur Ross. He arrived at the Mayflower Hotel in downtown Washington, D.C., for a morning event with the president of Colombia, attended a hearing on trade deficits, took a call from a governor, met with a foreign minister, had a talk with a second governor, then another one with an ambassador, all according to Ross' calendar. He kept his schedule packed into short segments, sometimes double-booked. The only thing allotted more than 45 minutes? Lunch. For that, Ross went to the White House, where he dined next to the Situation Room, in a wood-paneled bunker adorned with paintings of ships. He brought two guests with him, "Wendy and Bill Furman," according to his calendar.¹⁷⁷

Ross' spokesperson said the meeting was social in nature, but the timing casts doubt on this statement.¹⁷⁸ The spokesperson's claim that "no items specific to Greenbrier have been before the secretary during his tenure at commerce" also adds a layer of doubt,¹⁷⁹ inasmuch as Furman's letter regarding the steel investigation's effect on Greenbrier shows this claim was misleading.¹⁸⁰ In addition, Ross and Furman were joined at the luncheon by a Commerce Department official named Wendy Teramoto¹⁸¹ who — as of Aug. 6, 2018, when we last checked — was still listed on Greenbrier's website as a member of Greenbrier's board

of directors.¹⁸² The link between Teramoto, Greenbrier, and the steel investigation is concerning. (The Inspector General is likely aware that there are additional circumstances that may warrant a separate investigation of Teramoto.)¹⁸³

III. “Particular matter” – the steel investigation was a particular matter

In Part 3(III) above, we explained that Ross’ investigation of the steel industry was a particular matter.

IV. “Financial interest directly and predictably affected” – Greenbrier

Ross held shares of Greenbrier stock in 2017.¹⁸⁴ As a steel-dependent rail car manufacturer, Greenbrier was directly and predictably affected by the steel investigation.¹⁸⁵ As noted above, even White House staffers were concerned about the effect of the investigation on steel-dependent companies.¹⁸⁶ Greenbrier has emphasized the direct and predictable effect of the steel investigation on its interests:

We depend on having access to a stable supply of railcar axles and wheels made of steel, including those received from Sumitomo Corporation of Americas (“Sumitomo”) imported from Japan.

...

In carrying out its investigation, we hope the Department will distinguish between state-owned entities that enjoy limitless financing from their home governments and publicly traded, investor-owned companies such as Sumitomo that compete fairly and have invested significantly in the U.S. economy over the past several decades.

...

Investments such as this demonstrate that Sumitomo poses no threat to the economic and national security interests of the United States and, in fact, furthers these interests. However, a reliable supply of railcar axles and wheels is critical to Greenbrier’s North America operations at GBSummit and at our American railcar assembly, parts and repair network which includes nearly 3,500 U.S. workers.¹⁸⁷

The head of another rail car manufacturer expressed similar concerns. He told a trade publication that the cost of import restrictions would likely come out of rail car manufacturers’ margins:

I asked Bob Pickel, Senior Vice President at National Steel Car, a railcar manufacturer based in Canada, what will happen if the

tariffs are implemented. He told me, “Our expectation would be that prices will increase if the tariffs are put in place. ... One could expect that [customers] will demand an already beleaguered manufacturing group to reduce their prices as steel costs increase. Any additional decreases would come out of the manufacturer’s margins—especially once price increases begin to set in. It creates a poor dynamic in the market.”¹⁸⁸

V. “Knowledge” – Ross’ knowledge

Ross claims he did not know he owned Greenbrier stock.¹⁸⁹ This claim seems implausible because Ross sold Greenbrier stock in March and May 2017.¹⁹⁰ Even if Ross was surprised on three occasions to learn that he held Greenbrier stock, he does not appear to have recused from the steel investigation pending divestiture after each discovery that he owned Greenbrier stock. Although not necessary to establish a violation of 18 U.S.C. § 208, we also note that Ross was aware of his obligation to recuse from particular matters directly and predictably affecting Greenbrier’s interests.

A. There is cause to question Ross’ claimed lack of knowledge of his Greenbrier stock and, even if his claim is true, he does not appear to have recused after discovering he owned the stock

Although Ross did not disclose that he owned Greenbrier stock when he entered government, his periodic transaction reports reveal three sales of Greenbrier stock on Mar. 31, 2017,¹⁹¹ May 31, 2017,¹⁹² and Dec. 14, 2017.¹⁹³ Ross indicates that he acquired this stock between 2009 and 2012.¹⁹⁴

In the periodic transaction reports reflecting his first two sales of Greenbrier stock, Ross did not explain how he came to hold previously undisclosed Greenbrier stock.¹⁹⁵ In a third periodic transaction report dated Dec. 21, 2017, he offered the following explanation:

Shares in Greenbrier I earned as a director of the company for the period 2009-2012 were recorded in electronic book entry form by a transfer agent but I did not otherwise have a record of these shares in a personal account. When I prepared my nominee report these holdings 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.¹⁹⁶

This endnote seems to claim that Ross did not know he owned any Greenbrier stock until December, but Ross sold Greenbrier stock in March and May and contemporaneously signed periodic transaction reports disclosing those sales.¹⁹⁷ Perhaps Ross meant that he discovered his ownership of Greenbrier stock on three separate occasions and sold the stock after each discovery. In that case, it would be hard to believe Ross failed to demand a full

accounting from Greenbrier after the first time he discovered the company held shares belonging to him, and it would be even harder to believe he failed to do so after the second time.

Even if Greenbrier truly surprised Ross three times in 2017, his participation in the steel investigation was problematic. In order to comply with 18 U.S.C. § 208, Ross needed to recuse from the steel investigation each time he discovered that he owned additional shares of Greenbrier stock until he divested them. However, there does not appear to be any public record of Ross having recused from the steel investigation three times in 2017.

Beyond the lack of a record showing that Ross recused, there is reason to believe he did not recuse. Ross opened a short position in Greenbrier in 2017, ostensibly to resolve his conflict of interest with one of his three tranches of Greenbrier — an action that shows he knew his Greenbrier stock posed a conflict of interest.¹⁹⁸ If Ross mistakenly thought opening a short position was a valid substitute for divestiture, he would not have believed he needed to recuse from the steel investigation. However, opening a short position does not resolve a conflict of interest, and the acting director of the U.S. Office of Government Ethics reprimanded Ross for opening short positions.¹⁹⁹

Ross also appears to have concealed his Greenbrier short sale from ethics officials. Although he filed periodic transaction reports to disclose other short sales, Ross did not file a periodic transaction to disclose his Greenbrier short sale.²⁰⁰ Because Ross has not disclosed this short sale in a periodic transaction report, we do not know when he opened or closed it, but the Inspector General can easily obtain this information.

The Inspector General should conduct an investigation to determine whether Ross' participation in the steel investigation violated 18 U.S.C. § 208 as to his ownership of Greenbrier stock. As discussed above, it is hard to believe that Greenbrier surprised Ross three times in 2017. However, Ross references communications he had with Greenbrier's transfer agent about the stock.²⁰¹ If his account of these events is true, he will be able to provide the Inspector General with records or a witness to confirm that he was unaware of his ownership of Greenbrier stock before each discovery of additional shares. In addition, the Inspector General will be able to compare the dates of any such discoveries with the dates of Ross' divestitures and his participation in activities related to the steel investigation.

This inquiry will reveal whether Ross properly recused from the steel investigation pending divestiture of his Greenbrier stock. For example, Ross presided over the May 24, 2017, public hearing on the steel investigation²⁰² and sold Greenbrier stock on May 31, 2017.²⁰³ Therefore, Ross needs to demonstrate that he learned of his ownership of Greenbrier stock after the May 24, 2017, hearing and that he recused from the investigation until he sold the stock on May 31, 2017. If Ross is not able to make such a showing as to this sale and similar showings as to the other two sales, the Inspector General should evaluate whether Ross violated 18 U.S.C. § 208 by participating personally and substantially in a particular matter directly and predictably affecting Greenbrier's financial interests.

B. Though not necessary for a finding that Ross violated 18 U.S.C. § 208, we note he was aware of the law and his duty to recuse as to Greenbrier

Ross was on notice of his obligation under 18 U.S.C. § 208 to recuse from particular matters directly and predictably affecting Greenbrier. Ross signed a letter to the ethics official for the U.S. Department of Commerce in which he described his understanding of this recusal obligation under 18 U.S.C. § 208:

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).²⁰⁴

Ross also received an individualized ethics briefing from the department's ethics office upon entering government service.²⁰⁵ Executive branch-wide regulations required the agency ethics official to counsel Ross "on the basic recusal obligation under 18 U.S.C. 208(a)."²⁰⁶

In addition, Ross was required to complete new employee ethics training during the first three months of his appointment.²⁰⁷ By regulation, that training was required to cover financial conflicts of interest.²⁰⁸ Notably, executive branch-wide regulations also required Ross, as secretary of Commerce, to support the agency's efforts to carry out an interactive ethics training program.²⁰⁹

VI. Conclusion

For the foregoing reasons, the Inspector General should investigate whether Ross violated 18 U.S.C. § 208 by participating personally and substantially in an investigation to determine whether the United States should impose a tariff on steel imports. The investigation qualified as a particular matter because it focused on the interests of a discrete and identifiable class of persons, the steel industry. While participating in the steel investigation, Ross held stock in Greenbrier, a steel-dependent rail car manufacturer. The company submitted a written comment to the U.S. Department of Commerce regarding the direct and predictable effect of the investigation on its financial interests.

Ross' claim that he was unaware of his Greenbrier stock in 2017 seems implausible. His first or second discovery that he owned shares of the company's stock would have put him on notice that he needed to find out from company officials whether he owned additional shares before December 2017. Even if Ross' claim is true, however, he does not appear to have recused from the steel investigation pending divestiture after each discovery of additional shares of Greenbrier stock pending divestiture. Therefore, there is reason to believe he may have violated 18 U.S.C. § 208.

5

Part 5 Navigator Holdings, Ltd.

POSSIBLE VIOLATION OF 18 U.S.C. § 208

I. Summary

Ross participated personally and substantially in several particular matters directly and predictably affecting the financial interests of a shipping company named Navigator Holdings Ltd. (Navigator) while he was invested in the company. At issue are the following particular matters: the Trump administration's effort to promote the liquefied natural gas (LNG) trade, seven discrete trade agreements, and the previously discussed steel investigation.

Although Ross eventually divested some of his financial interests in Navigator, he appears to have held financial interests in Navigator at all times while participating in these particular matters. During 2017, Ross held 14 discrete financial interests in Navigator. Ross still appears to hold three of his Navigator interests as of the date of this complaint. There is also a question as to whether Ross properly divested two other Navigator interests, which means he may still hold five discrete financial interests in Navigator.

In the spring of 2017, Ross began participating personally and substantially in the administration's effort to promote the LNG trade and in the steel investigation. Ross held interests in Navigator while participating in both of these particular matters. Though Navigator does not transport LNG or steel, it transports natural gas products directly and predictably affected by the LNG trade and the steel investigation.

Ross also participated personally and substantially in negotiations over seven trade agreements, which were signed on Nov. 8, 2017. Each was a particular matter directly and predictably affecting Navigator. Ross held interests in Navigator while participating in these trade agreements.

II. “Personal and substantial participation” in the Trump administration's effort to promote the LNG trade, seven trade agreements, and the steel investigation

Ross participated personally and substantially in several particular matters directly and predictably affecting Navigator's financial interests: the Trump administration's effort

to promote the LNG trade, seven trade agreements, and an investigation to determine whether the United States should impose a tariff on steel imports.

A. Terms used

This part uses several terms related to the natural gas industry. We explain them in more detail and their economic link to one another in our discussion of the direct and predictable effect of certain particular matters on Navigator's financial interests (*see* section IV(C), below), but the following is a brief list of key terms:

- Liquefied natural gas (**LNG**) is natural gas that has been liquefied for transport or storage.
- Natural gas liquids (NGLs) are inevitable byproducts of producing LNG.
- Some NGLs are converted into liquefied petroleum gas (**LPG**) or petrochemicals such as **ethylene**.

As we discuss in more detail in section IV(C) below, particular matters focused on increasing the LNG trade directly and predictably affect Navigator's LPG and ethylene export business. An increase in LNG production would increase the production of feedstock NGLs needed for LPG and ethylene at a time when the United States is producing more of these products than it consumes domestically. Navigator itself has articulated this economic link in its SEC filings.

B. Ross participated personally and substantially in the Trump administration's effort to promote the LNG trade

When the Trump transition team announced Wilbur L. Ross Jr. as the future Commerce secretary, he was already a recognizable figure with well-known views on the natural gas industry, including the LNG and LPG trade:

US president-elect Donald Trump has officially confirmed that billionaire Wilbur Ross – who has significant holdings in the shipping sector – will be the nominee for secretary of commerce.

...

Ross is a vocal advocate of increasing US exports, including energy exports – a potential positive for the tanker, liquefied natural gas (LNG), and liquefied petroleum gas (LPG) sectors. Trump said in a statement on 30 November that as commerce secretary, Ross would “unleash America's energy resources.”²¹⁰

Even before Trump won the 2016 election, Ross and future White House director of trade and industrial policy Peter Navarro had published a review of the Trump economic plan that highlighted Trump's focus on natural gas exports:

Trump would also accelerate the approval process for the exportation of oil and natural gas, thereby helping to also reduce the trade deficit. Numerous other low-level rules that are individually insignificant but important in the aggregate will also be reviewed.²¹¹

Ross and Navarro also commented approvingly on Trump's focus on Asia as a target for expanding American hydrocarbon exports. The most common hydrocarbon is methane, which is the primary component of natural gas.²¹² Ross and Navarro favored an aggressive approach to increasing hydrocarbon exports to China:

As for South Korea, Germany, and Japan, all import a very high percentage of their hydrocarbons (as does South Korea)[sic]. However, most of these imports do not come from the US. With Trump promising to increase oil and natural gas production in the US and remove any restrictions on US exports, there are reasonable deals to be made here with little or no cost to our petroleum-dependent trading partners, and there are many high-paying American jobs that would be created in our energy industries as a result. China is likely to pose the biggest challenge. That said, the US is still China's biggest market, and the Chinese Communist Party runs a huge risk if it chooses to destabilize its own economy, and undermine Party control. For example, China cannot cancel imports of American soybeans because there is not enough global excess supply of soybeans to replace the American output. If China paid a premium to divert supplies from other countries, the US would simply fill the market void created so there would be no net impact on US exports. In terms of deals to be had, China likewise imports much of its petroleum needs so there is room to negotiate here.²¹³

After he was appointed Commerce secretary on Feb. 28, 2017, Ross quickly began pushing the LNG trade. In spring 2017, at a time when he held 13 discrete financial interests in Navigator,²¹⁴ Ross participated in a bilateral negotiation with China that addressed America's LNG exports.²¹⁵ On May 19, 2017, the U.S. Department of Commerce announced Ross had struck a deal with China on LNG:

A deal to open the Chinese market to U.S. liquefied natural gas exports could break Qatar's grip on LNG pricing — even if no additional American supplies ever reach the Asian powerhouse.

Last week, the U.S. Commerce Department said it had reached an agreement with Chinese authorities that would see Beijing give state-owned companies the green light to negotiate long-term contracts with U.S. LNG exporters, something it has been hesitant to do.

On Thursday, Commerce Secretary Wilbur Ross suggested the White House would aim to boost LNG exports not just to China,

but other nations with whom the United States posts a trade deficit, including Japan, the world's top LNG importer.²¹⁶

Thereafter, Ross sought to build support for this deal and touted, among other things, the potential for increased LNG exports:

Commerce Secretary Wilbur Ross hailed the agreement as “a herculean accomplishment” forged in record time.

...

Under the agreement, the United States would welcome Chinese companies negotiating agreements to purchase U.S.-produced liquefied natural gas [LNG]. The Energy Department has already authorized the shipment of 19.2 billion cubic feet per day of natural gas exports to China and other interested countries, the Commerce Department said.²¹⁷

An energy news outlet, E&E News, discussed the potential significance for American LNG exporters and indicated that Ross broached the idea of pushing the LNG trade further:

A true test for Trump is what his administration can actually do to dramatically accelerate penetration of U.S. energy exports in glutted global markets that are ruled by low prices and stiff competition.

One telling opportunity is on the White House's doorstep — and China's, too. That is the possibility, *broached by Commerce Secretary Wilbur Ross*, that China will sign long-term commitments to buy a game-changing supply of U.S. liquefied natural gas and double down by investing part of the capital needed to start a new round of LNG export terminal expansion in this country.

A May 11 trade agreement between the Trump administration and China's government sets the stage for expanding LNG shipments. It described China on favorable terms as a buyer invited to strike gas-export deals with U.S. exporters, a confidence builder after Trump's targeting of China's trade and currency policies.

U.S. companies ship about 7 percent of China's LNG imports, according to a Wood MacKenzie analysis. And with Chinese LNG demand perhaps tripling by 2030, the opportunities are enormous, according to an analysis by the firm.²¹⁸

Ross participated in this effort to promote the LNG trade in 2017 while he held the 12 discrete financial interests in Navigator that he had disclosed in his nominee financial disclosure report, as well as a 13th interest in undisclosed Navigator stock.²¹⁹ (Ross would

later acquire a 14th discrete interest in the company by shorting Navigator stock on Oct. 31, 2017.)²²⁰ As discussed below in the section addressing Ross' financial interests in Navigator (see section IV, below), Ross appears to have retained some of his discrete financial interests in Navigator into 2018.

In 2018, Ross continued to participate in the effort to increase the LNG trade. In January 2018, he traveled to Davos, Switzerland for the World Economic Forum, where, according to one news outlet, he pressed the case for United States LNG exports: "One way to try to rebalance the trade deficit could be raising exports of liquefied natural gas, or LNG, which Ross championed during Davos panels, touting the administration's rollback of the 'regulatory burden to the energy sector' that made this possible."²²¹

In March 2018, Ross participated in an interview with Bloomberg in which he discussed the likelihood of tariffs and what he thought might be China's response. During the interview, Ross urged China to import more LNG from the United States:

"China needs to import very, very large amounts of LNG and from their point it would be very logical to import more of it from us, if for no reason other than to diversify their sources of supply," Ross said. "It would also have the side effect of reducing the deficit."²²²

C. Ross participated personally and substantially in seven trade agreements

On Nov. 8, 2017, Ross attended the signing ceremony for a series of 19 discrete trade agreements with China.²²³ Rather than negotiating one omnibus trade agreement, Ross and other members of the administration negotiated 19 separate company-specific agreements. As we will discuss in section III below, the fact that these agreements were distinct from one another and involved different parties means each qualified as a "particular matter." Ross also personally spoke about these deals:

"It was a great honor for these to be witnessed by President Trump and President Xi today," continued Ross. "A special thank you to our CEO Delegation for their hard work in support of this historic event."²²⁴

At least seven of these trade agreements specifically focused on the business activities of individual LNG, LPG, and ethylene companies. In a press release, the U.S. Department of Commerce²²⁵ described these seven discrete agreements, as follows:

Alaska Gasline Development Corporation (AGDC)

Partners:

- China Petrochemical Corp (Sinopec)
- China Investment Corporation (CIC)
- Bank of China (BOC)

The State of Alaska, Alaska Gasline Development Corporation (AGDC), China Petrochemical Corp (Sinopec), China Investment Corporation (CIC), and Bank of China (BOC) signed a Joint Development Agreement to advance Alaska LNG. The deal, involving total investment of up to \$43 billion, will create up to 12,000 American jobs during construction, reduce the trade deficit between the United States and Asia by \$10 billion annually, and provide China with clean, reliable and affordable energy for generations.

...

Cheniere Energy

Partner: China National Petroleum Corporation

Cheniere Energy and China National Petroleum Corporation signed a “Memorandum of Understanding on Long-term LNG Sale and Purchase Cooperation.” According to the MOU, Cheniere Energy and CNPC will continue in-depth discussions to strengthen cooperation on LNG export projects and the long-term LNG procurement cooperation between China and the U.S.

...

Delfin Midstream

Partner: China Gas Holdings

Delfin Midstream, developing the first floating facility to export U.S. natural gas, has sealed a memorandum of understanding for a 15-year sales deal with city gas distributor China Gas Holdings to supply 3 million tons a year of liquefied natural gas (LNG) from 2021. The \$8 billion LNG project will be located 50 miles off the coast of Louisiana.

...

GE

Partner: China Datang Group

GE and China Datang Group (CDT) signed a framework agreement for *energy partnership, setting the stage for future joint projects and commercial deals*. Under the agreement, GE will supply CDT with gas turbines, gas turbine components, and steam turbine components as well as services and IoT solutions for Chinese domestic projects. The proposed projects are valued in total at approximately US\$1 billion.

...

Honeywell

Partner: Oriental Energy

Oriental Energy to collaborate with Honeywell UOP on PDH projects. Honeywell UOP and Oriental Energy Co., Ltd. have

signed a memorandum of understanding on the adoption of UOP's C3 Oleflex™ units in Oriental Energy's five new Propane Dehydrogenation (PDH) projects to help convert propane into propylene. The total propylene production capacity for those five projects combined will reach 3 million tons per year, helping Oriental Energy become the largest on-purpose PDH producer in the world.

...

American Ethane Company

The contract signed between American Ethane and Nanshan Group is a 20-year, take or pay agreement for American Ethane to supply 2.5 million annual tons of liquid Ethane from its terminal Development on the U.S. Gulf Coast to Nanshan Group in China. The economic value of the gas sale will exceed \$25 billion, with several billion dollars of infrastructures built in the United States and China.

...

West Virginia

The state of West Virginia has entered into a memorandum of understanding with Shenhua corporation, the largest energy company in the world. The project is for the development of shale gases into petro chemical industries within the state of West Virginia. The projects will total \$83 billion over the next 20 years and will have a significant positive impact on not only West Virginia but surrounding states as well.²²⁶

D. Ross participated personally and substantially in the steel investigation

In Part 3 above, we discussed Ross' participation in an investigation to determine whether the United States should impose a tariff on steel imports. The investigation began in April 2017 and concluded in January 2018.²²⁷ In his report of investigation, Ross recommended the imposition of a tariff on steel imports, which President Trump agreed to impose.²²⁸ Pursuant to a presidential memorandum, Ross was authorized to grant exceptions to the tariff.²²⁹

III. “Particular matter” – these matters were particular matters

These matters in which Ross participated were “particular matters” for purposes of the primary criminal conflict of interests statute, 18 U.S.C. § 208.

A. The Trump administration’s effort to promote the LNG trade was a particular matter

As explained in Part 2 above, the term “particular matter” means a matter that focuses on the interests of identified parties or a discrete and identifiable class of persons.²³⁰ The administration’s effort to promote the LNG trade was a particular matter because it focused on the interests of a discrete and identifiable class of persons, the natural gas industry.²³¹

B. Each of the seven trade agreements was a particular matter

As discussed in Part 2 above, some trade agreements are particular matters and some are not. Though the countries involved in the trade agreement are technically parties to the agreement, the question as to whether a trade agreement qualifies as a particular matter turns on the nature of the substantive focus of the trade agreement.²³² As with all particular matters, the determining factor is whether the trade agreement focuses on the interests of either identified parties (other than the countries involved) or a discrete and identifiable class of persons.²³³ If, for example, a trade agreement between 50 countries broadly covered multiple sectors of their economies, the trade agreement would not be a particular matter.²³⁴ On the other hand, if a trade agreement between two countries were to focus on a discrete and identifiable class of persons (such as an industry) or identified parties (such as specific companies), the trade agreement would be a particular matter.²³⁵

Each of these seven discrete trade agreements focused on the interests of a discrete and identifiable class of persons, the natural gas industry. Each also focused on the interests of identified parties, specific companies engaged in the LNG, LPG and ethylene trade.²³⁶ Therefore, each of these discrete trade agreements qualified as a particular matter.

C. The steel investigation was a particular matter

In Part 3(III) above, we explained that Ross’ investigation of the steel industry was a particular matter.

IV. “Financial interest directly and predictably affected” – ownership of Navigator

Ross held at least 14 discrete financial interests in Navigator during 2017. Ross has indicated in periodic transaction reports that he divested some of these interests at various times. Nevertheless, by his own admission, he held some of these interests during 2017 while he was participating personally and substantially in the administration’s effort to promote the LNG trade, the seven discrete trade agreements, and the steel investigation. To this date, Ross also appears to have retained some of his interests in Navigator through a private equity fund: WLR Select Associates DSS LP. As we discuss in this section, there is also a question as to whether Ross properly divested his carried interests in two other private equity funds

that hold Navigator stock: WLR Recovery Associates IV DSS AIV LP and WLR Recovery Associates V DSS AIV LP.

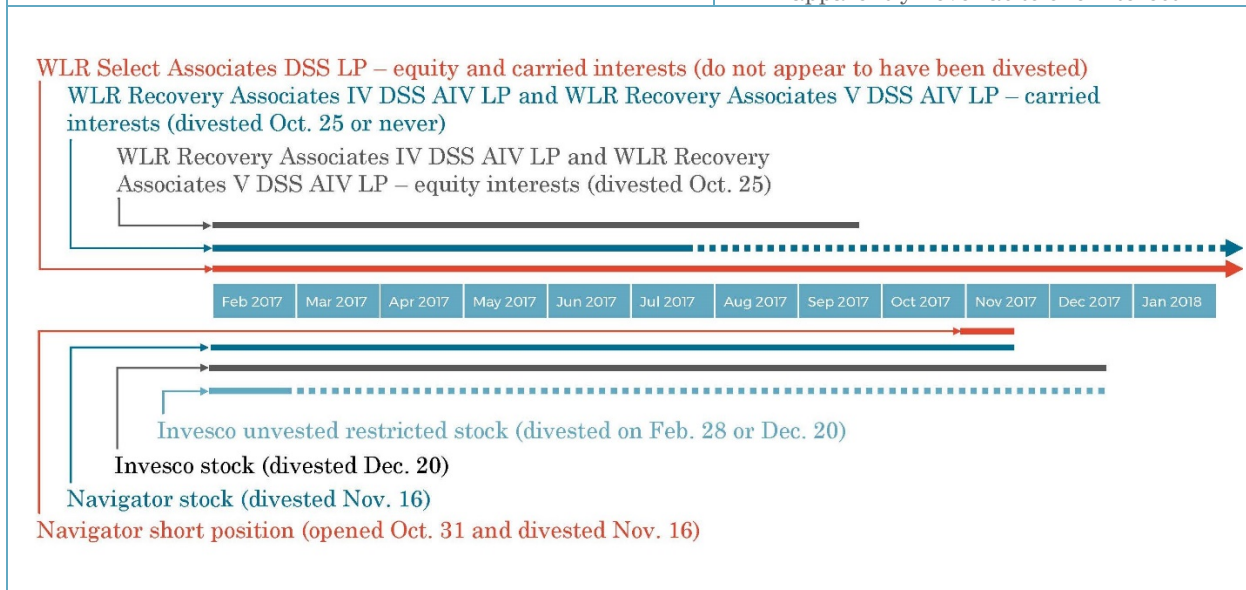
A. Ross' 14 discrete interests in Navigator

Ross held 14 discrete financial interests in Navigator during 2017. His nominee financial disclosure report revealed 12 discrete financial interests in Navigator. His subsequent periodic transaction reports also revealed his previously undisclosed ownership of Navigator stock. In addition, he opened a short position in Navigator in October 2017.

1. List of the 14 discrete interests

The 14 discrete interests in Navigator that Ross held in 2017 were:

Asset	Apparent Final Divestiture
shares of Navigator stock	Nov. 16, 2017
short position in Navigator	Nov. 16, 2017
shares of Invesco stock (Invesco is Navigator's largest shareholder through one of its wholly owned subsidiaries)	Dec. 20, 2017
unvested restricted shares of Invesco stock	Dec. 20, 2017 or by Feb. 28, 2017
seven equity interests in private equity funds that hold Navigator	Oct. 25, 2017, as to five interests and apparently never as to two interests
three carried interests in private equity funds that hold Navigator	Oct. 25, 2017, or never as to two interests and apparently never as to one interest



2. Two interests in Navigator through Ross' Invesco assets

Ross is a prior Chairman of Navigator's board of directors, a position from which he resigned in November 2014.²³⁷ Until Ross entered government on Feb. 28, 2017, he was also the Chairman and Chief Strategy Officer of an investment management company named after him, WL Ross & Co. (WLR).²³⁸ WLR is a wholly owned subsidiary of Invesco. WLR is also a Navigator shareholder and holds the single largest stake in that company.²³⁹



Through his employment with WLR, Ross earned both unvested restricted stock in Invesco and Invesco stock. Ross valued each of these interests as separately worth between \$5,000,001 and \$25,000,000.²⁴⁰ As discussed in Part 3 above, there is some ambiguity about Ross' divestiture of the unvested restricted stock, but it is clear he held the stock until Dec. 20, 2017. Therefore, Ross still held Invesco stock while he participated in the steel investigation, the effort to promote the LNG trade, and the seven discrete trade agreements. Ross claims he did not know he owned Invesco stock after entering government, but his claim seems implausible for reasons we discussed in Part 3(IV) above.

3. Ross' short position in Navigator

On Oct. 31, 2017, Ross opened a short position in Navigator worth \$100,001 to \$250,000.²⁴¹ On Nov. 16, 2017, Ross closed this short position.²⁴² While holding this short position, Ross participated in negotiations over the seven discrete trade agreements, which were signed on Nov. 8, 2017. The administration's effort to promote the LNG trade and Ross' steel investigation were also ongoing during this time, so the Inspector General should ascertain whether Ross attended any meetings, reviewed any documents, engaged in any communications, or otherwise participated in those particular matters between Oct. 31, 2017, and Nov. 16, 2017.

4. Ross' directly held Navigator stock

Ross did not disclose his ownership of Navigator stock when he entered government. However, in subsequent periodic transaction reports, he later reported his divestiture of Navigator stock on May 31, 2017 (\$15,001–\$50,000)²⁴³ and Nov. 16, 2017 (\$100,001 – \$250,000).²⁴⁴ The transaction on Nov. 16, 2017, was the closure of his open position, but Ross indicates he used his own stock to close that position, rather than acquiring new stock on the market:

Ross, in an emailed statement to CNBC, said, “I first sold Navigator stock on May 31, as reported on my public filing. I later learned in late October that there were more shares belonging to me in an account that the company had opened in electronic form at a firm acting as its agent.

“I 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 and when the shares were delivered by the agent on November 16 I delivered those shares to the broker to close out the transaction,” Ross said. “Therefore, it made no economic difference to me whether the shares went up or down between the sale date and the date I delivered them.”²⁴⁵

Ross’ ownership of this Navigator stock stemmed from his prior employment with Navigator, which ended in November 2014.²⁴⁶ For that reason, Ross appears to have held this stock between Feb. 28, 2017, and Nov. 16, 2017.²⁴⁷ Therefore, Ross held Navigator stock while he participated in the effort to promote the LNG trade, the negotiations over the seven discrete trade agreements, and the steel investigation.

5. Ross’ 10 discrete interests in Navigator held through four private equity funds

Ross’ other 10 financial interests in Navigator during 2017 were the product of his investment in four private equity funds. In this subsection, we identify the 10 interests. As to each, we discuss whether Ross appears to have divested the interest and, if so, when he divested it.

List of the 10 discrete interests

Ross’ nominee financial disclosure report identifies his direct ownership of the following private equity funds, which are the first tier (“Tier 1”), or parent asset, of several multitiered investments:

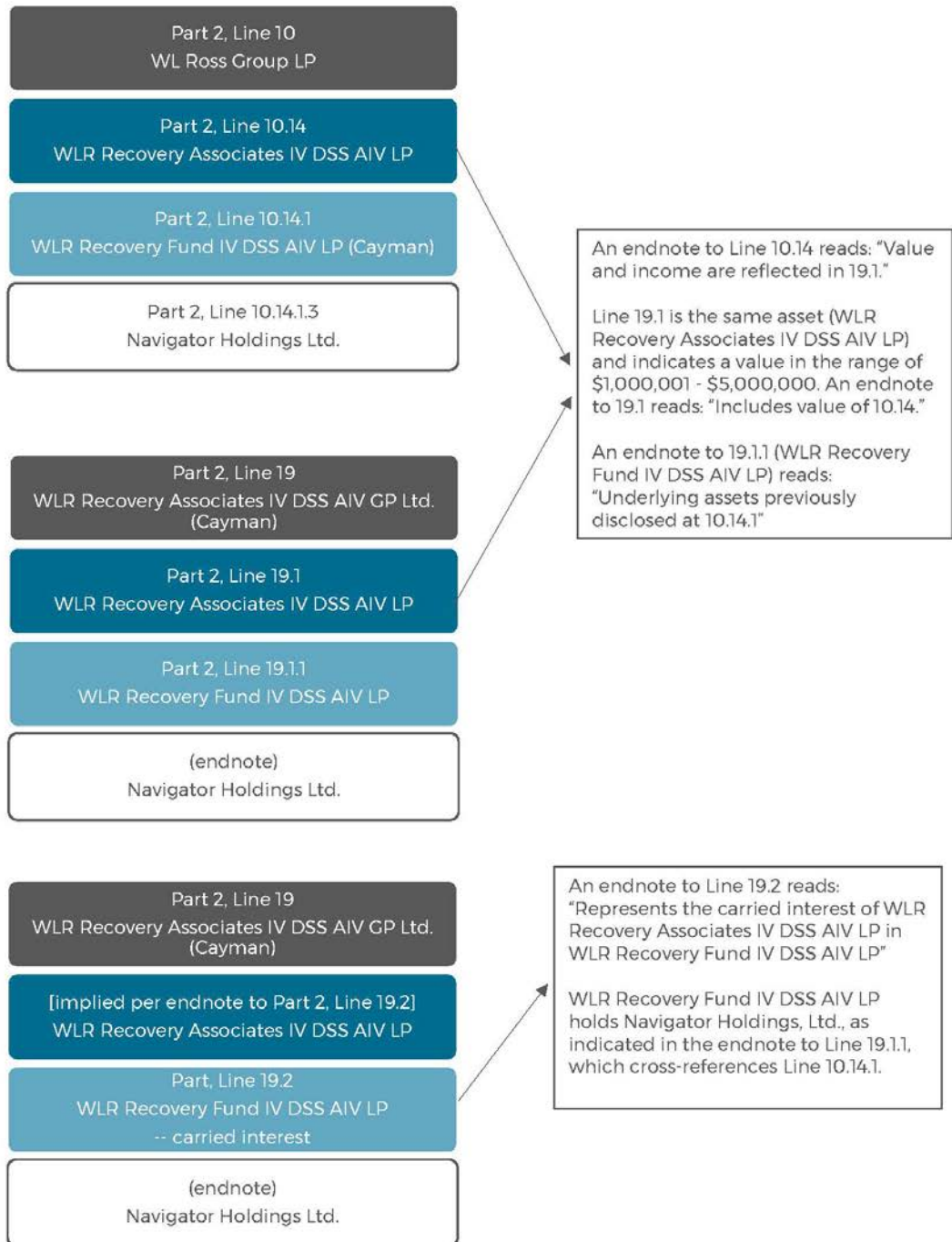
- WL Ross Group LP;²⁴⁸
- WLR Recovery Associates IV DSS AIV GP Ltd. (Cayman);²⁴⁹
- WLR Recovery Associates V DSS AIV GP Ltd.;²⁵⁰ and
- WLR Select Associates DSS GP Ltd. (Cayman).²⁵¹

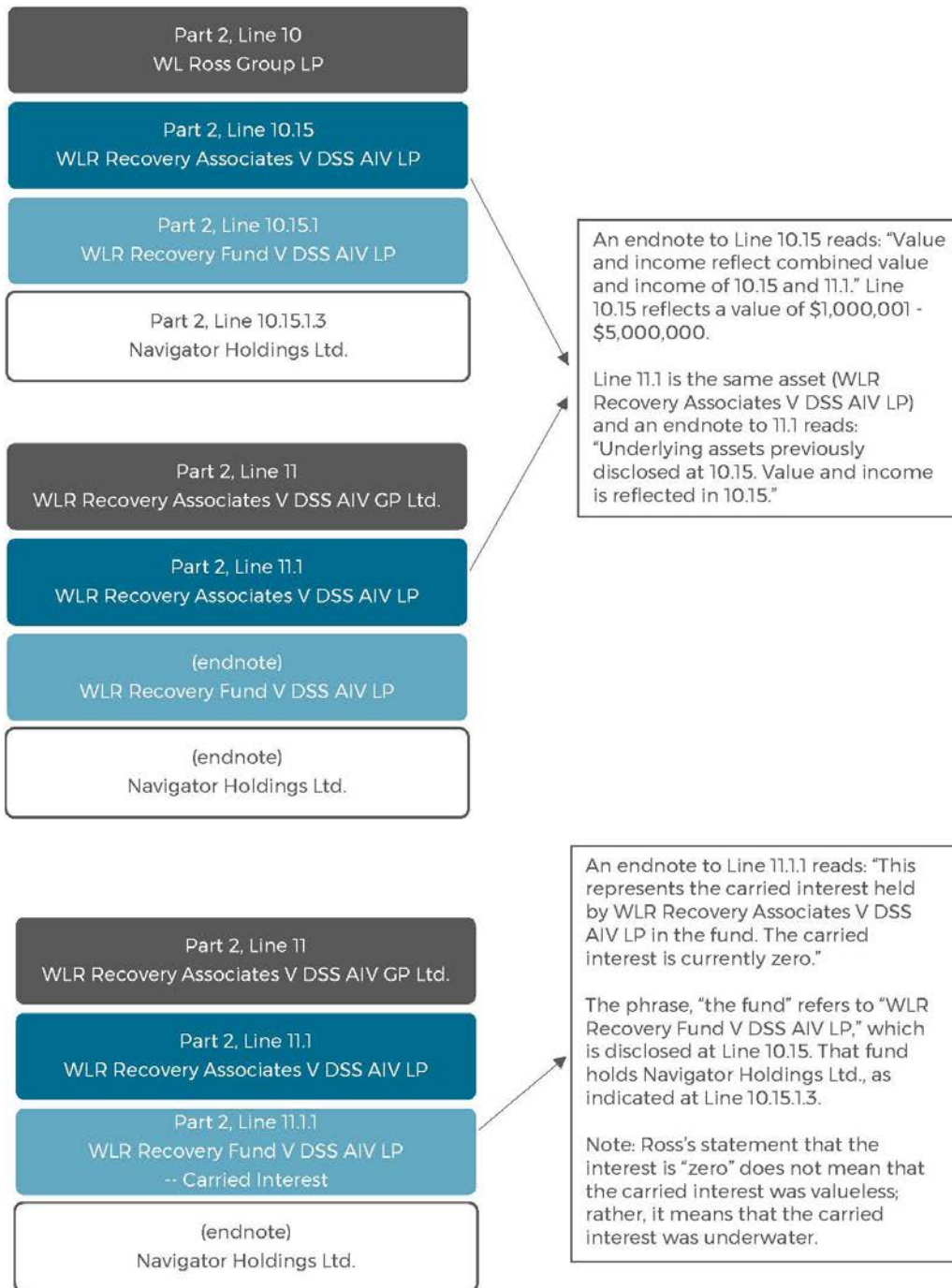
Drilling down through the tiers beneath these four Tier 1 assets, it is possible to determine that Ross disclosed 10 discrete financial interests in Navigator through them:

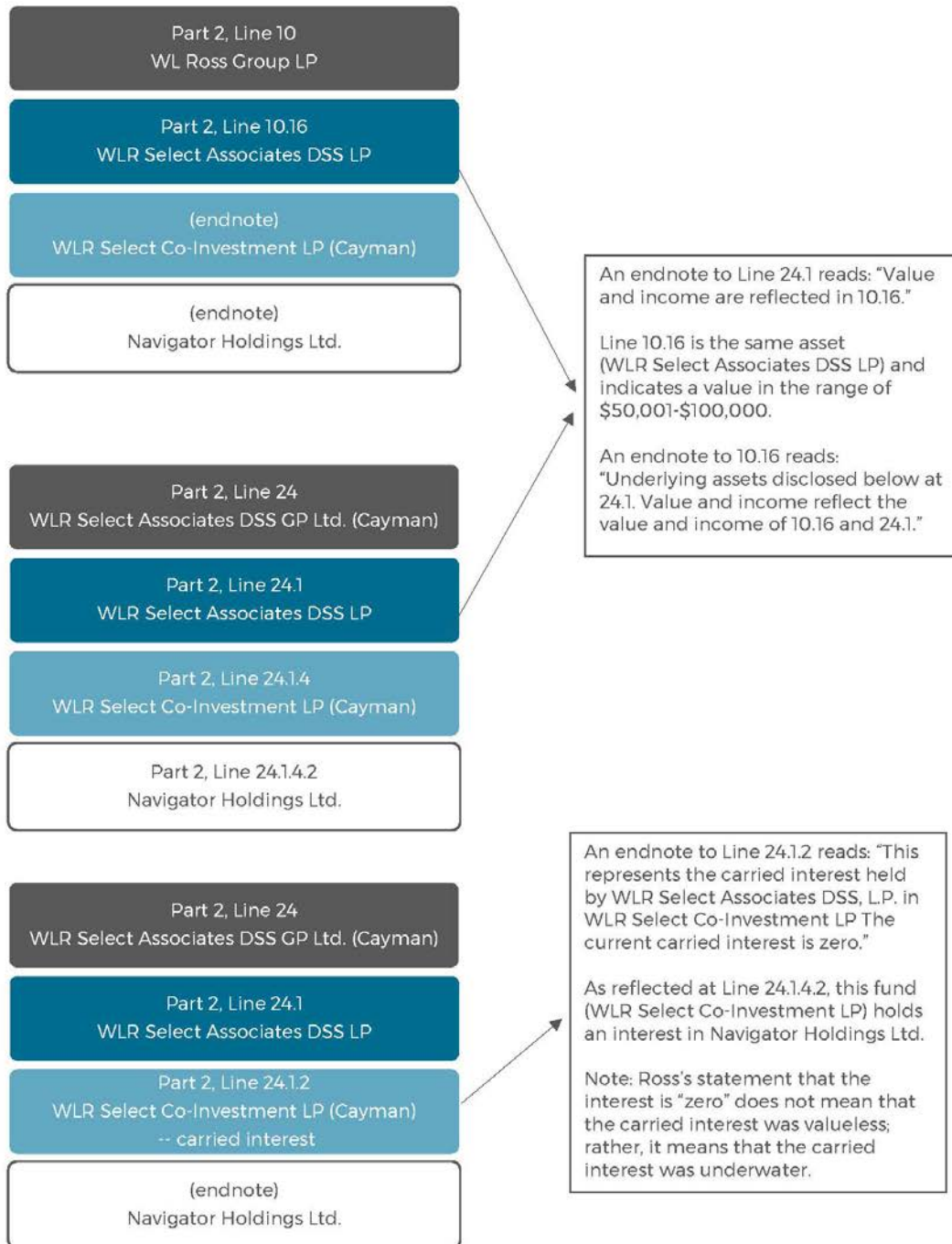
1. Tier 1 (pt. 2, line 10): WL Ross Group LP
 - Tier 2 (pt. 2, line 10.14): WLR Recovery Associates IV DSS AIV LP
 - Tier 3 (pt. 2, line 10.14.1): WLR Recovery Fund IV DSS AIV LP (Cayman)
 - Tier 4 (pt. 2, line 10.14.1.3): Navigator Holdings Ltd.
2. Tier 1 (pt. 2, line 19): WLR Recovery Associates IV DSS AIV GP Ltd. (Cayman)
 - Tier 2 (pt. 2, line 19.1): WLR Recovery Associates IV DSS AIV LP
 - Tier 3 (pt. 2, line 19.1.1): WLR Recovery Fund IV DSS AIV LP
 - Tier 4 (endnote to pt. 2, line 19.1.1): Navigator Holdings Ltd.
3. Tier 1 (pt. 2, line 19): WLR Recovery Associates IV DSS GP Ltd. (Cayman)
 - Tier 2 ([Implied per endnote to line 19.2] pt. 2, line 19.1): WLR Recovery Associates IV DSS AIV LP
 - Tier 3 (pt. 2, line 19.2 [“19.2” might be a typo and should probably be “19.1.2” because the endnote indicates that this line item represents the carried interest of WLR Recovery Fund IV DSS AIV LP, which appears at 19.1]): WLR Recovery Fund IV DSS AIV LP – carried interest
 - Tier 4 (endnote to pt. 2, line 19.2 [or 19.1.2]): Navigator Holdings Ltd.
4. Tier 1 (pt. 2, line 10): WL Ross Group LP
 - Tier 2 (pt. 2, line 10.15): WLR Recovery Associates V DSS AIV LP
 - Tier 3 (pt. 2, line 10.15.1): WLR Recovery Fund V DSS AIV LP
 - Tier 4 (pt. 2, line 10.15.1.3): Navigator Holdings Ltd.
5. Tier 1 (pt. 2, line 11): WLR Recovery Associates V DSS AIV GP Ltd.
 - Tier 2 (pt. 2, line 11.1): WLR Recovery Associates V DSS AIV LP
 - Tier 3 (endnote): WLR Recovery Fund V DSS AIV LP
 - Tier 4 (endnote): Navigator Holdings Ltd.
6. Tier 1 (pt. 2, line 11): WLR Recovery Associates V DSS AIV GP Ltd.
 - Tier 2 (pt. 2, line 11.1): WLR Recovery Associates V DSS AIV LP
 - Tier 3 (11.1.1): WLR Recovery Fund V DSS AIV LP – carried interest
 - Tier 4 (endnote): Navigator Holdings Ltd.
7. Tier 1 (pt. 2, line 10): WL Ross Group LP
 - Tier 2 (pt. 2, line 10.16): WLR Select Associates DSS LP
 - Tier 3 (endnote): WLR Select Co-Investment LP (Cayman)
 - Tier 4 (endnote): Navigator Holdings Ltd.
8. Tier 1 (pt. 2, line 24): WLR Select Associates DSS GP Ltd. (Cayman)
 - Tier 2 (pt. 2, line 24.1): WLR Select Associates DSS LP
 - Tier 3 (pt. 2, line 24.1.4): WLR Select Co-Investment LP (Cayman)
 - Tier 4 (pt. 2, line 24.1.4.2): Navigator Holdings Ltd.
9. Tier 1 (pt. 2, line 24): WLR Select Associates DSS GP Ltd. (Cayman)
 - Tier 2 (pt. 2, line 24.1): WLR Select Associates DSS LP
 - Tier 3 (pt. 2, line 24.1.2): WLR Select Co-Investment LP (Cayman) – carried interest
 - Tier 4 (endnote): Navigator Holdings Ltd.

10. Tier 1 (pt. 2, 14.5): WLR Recovery Associates IV DSS AIV GP Ltd. (Cayman) (*held through an individual retirement account, disclosed at part 2, line 14*)
 - Tier 2 (pt. 2, line 14.5.1): WLR Recovery Associates IV DSS AIV, LP
 - Tier 3 (endnote): Navigator Holdings Ltd.

These 10 interests in Navigator through the four first-tier private equity holdings disclosed in Ross' nominee financial disclosure report are also depicted graphically on the next four pages.







Part 2, Line 14.5
WLR Recovery Associates IV DSS AIV GP Ltd.
(Cayman) [asset in an IRA (see Part 2, Line 14)]

Part 2, Line 14.5.1
WLR Recovery Associates IV DSS AIV LP

(endnote)
Navigator Holdings Ltd.

An endnote to Line 14.5.1 reads:
"Underlying assets previously
disclosed at 10.14."

Line 10.14 is WLR Recovery Associates
IV DSS AIV LP, which holds WLR
Recovery Fund IV DSS AIV LP
(Cayman), at Line 10.14.1, which in turn
holds Navigator Holdings Ltd, at
Line 10.14.13

Ross' reported divestitures

Ross' filings are ambiguous with respect to the first-tier holdings through which he held Navigator. In addition, they indicate that he divested seven of his private equity interests in Navigator but still appears to hold three of them — two equity interests and a carried interest. There is also cause for concern that he may not have properly divested two other carried interests.

The Inspector General should ascertain whether Ross has divested the four first-tier funds through which he held Navigator: (1) WLR Recovery Associates IV DSS AIV GP Ltd. (Cayman); (2) WL Ross Group LP; (3) WLR Recovery Associates V DSS AIV GP Ltd.; and (4) WLR Select Associates DSS GP Ltd. (Cayman). Ross' periodic transaction reports do not indicate that he sold any of these first-tier funds.²⁵² However, Ross pledged to sell two of them, and he received a Certificate of Divestiture as to both.²⁵³ An employee can request a Certificate of Divestiture in order to defer capital gains taxes, but the employee must show that the asset poses a conflict of interest and must commit to divesting the asset.²⁵⁴

	WL Ross Group LP	WLR Recovery Associates IV DSS AIV GP Ltd.	WLR Recovery Associates V DSS AIV GP Ltd.	WLR Select Associates DSS GP Ltd.
Do Ross' periodic transaction reports indicate that he sold this asset?	No	No	No	No
Did Ross pledge to sell this asset?	Yes <i>(See Ross Ethics Agreement at 9, item 18)</i>	No <i>(See Ross Ethics Agreement at 5, section 10, item 7)</i>	No <i>(See Ross Ethics Agreement at 6, section 10, item 9)</i>	Yes <i>(See Ross Ethics Agreement at 9, item 36)</i>
Did he receive a Certificate of Divestiture for this asset?	Yes	No	No	Yes

The lack of a periodic transaction report disclosing the divestiture of these four first-tier assets normally would mean Ross failed to divest any of his private equity interests in Navigator, which he held through them. However, his Dec. 21, 2017, periodic transaction report is unusual. The report indicates that he somehow divested the second-tier assets associated with three of these four first-tier assets.²⁵⁵

The sale of a second-tier asset is unusual because a financial disclosure filer's personal investment is usually in the first-tier asset.²⁵⁶ Government officials typically resign from any outside positions as investment fund managers and do not generally retain the authority to control the investment decisions of any private equity funds in which they are invested.²⁵⁷ It is not clear how Ross had the authority to tell these three private equity funds to divest some

of their assets. The Inspector General should ascertain how Ross was able to sell second-tier assets; i.e., sub-holdings of the first-tier assets in which he invested.

By whatever means he used, Ross indicates in his Dec. 21, 2017, periodic transaction report that he sold two second-tier assets through which he held seven of his 10 private equity interests in Navigator: WLR Recovery Associates IV DSS AIV LP and WLR Recovery Associates V DSS AIV LP These second-tier funds are highlighted in bold red text below:

1. Tier 1 (pt. 2, line 10): WL Ross Group LP
 - **Tier 2 (pt. 2, line 10.14): WLR Recovery Associates IV DSS AIV LP**
 - Tier 3 (pt. 2, line 10.14.1): WLR Recovery Fund IV DSS AIV LP (Cayman)
 - Tier 4 (pt. 2, line 10.14.1.3): Navigator Holdings Ltd.
2. Tier 1 (pt. 2, line 19): WLR Recovery Associates IV DSS AIV GP Ltd. (Cayman)
 - **Tier 2 (pt. 2, line 19.1): WLR Recovery Associates IV DSS AIV LP**
 - Tier 3 (pt. 2, line 19.1.1): WLR Recovery Fund IV DSS AIV LP
 - Tier 4 (endnote to pt. 2, line 19.1.1): Navigator Holdings Ltd.
3. Tier 1 (pt. 2, line 19): WLR Recovery Associates IV DSS GP Ltd. (Cayman)
 - **Tier 2 ([implied per endnote to line 19.2] pt. 2, line 19.1): WLR Recovery Associates IV DSS AIV LP**
 - Tier 3 (pt. 2, line 19.2 [“19.2” might be a typo and should probably be “19.1.2” because the endnote indicates that this line item represents the carried interest of WLR Recovery Fund IV DSS AIV LP, which appears at 19.1]): WLR Recovery Fund IV DSS AIV LP – *carried interest*
 - Tier 4 (endnote to pt. 2, line 19.2 [or 19.1.2]): Navigator Holdings Ltd.
4. Tier 1 (pt. 2, line 10): WL Ross Group LP
 - **Tier 2 (pt. 2, line 10.15): WLR Recovery Associates V DSS AIV LP**
 - Tier 3 (pt. 2, line 10.15.1): WLR Recovery Fund V DSS AIV LP
 - Tier 4 (pt. 2, line 10.15.1.3): Navigator Holdings Ltd.
5. Tier 1 (pt. 2, line 11): WLR Recovery Associates V DSS AIV GP Ltd.
 - **Tier 2 (pt. 2, line 11.1): WLR Recovery Associates V DSS AIV LP**
 - Tier 3 (endnote): WLR Recovery Fund V DSS AIV LP
 - Tier 4 (endnote): Navigator Holdings Ltd.
6. Tier 1 (pt. 2, line 11): WLR Recovery Associates V DSS AIV GP Ltd.
 - **Tier 2 (pt. 2, line 11.1): WLR Recovery Associates V DSS AIV LP**
 - Tier 3 (11.1.1): WLR Recovery Fund V DSS AIV LP – *carried interest*
 - Tier 4 (endnote): Navigator Holdings Ltd.

[Items 7 – 9 intentionally omitted.]

10. Tier 1 (pt. 2, 14.5): WLR Recovery Associates IV DSS AIV GP Ltd. (Cayman) (*held through an individual retirement account, disclosed at part 2, line 14*)
 - **Tier 2 (pt. 2, line 14.5.1): WLR Recovery Associates IV DSS AIV, LP**
 - Tier 3 (endnote): Navigator Holdings Ltd.

By Ross' own account, he held all 10 private equity interests in Navigator until Oct. 25, 2017.²⁵⁸ That means he held them while he participated in the effort to promote the LNG trade and in the steel investigation. Depending on whether negotiations over the seven discrete trade agreements began before Oct. 25, 2017, Ross may also have held all 10 of his private equity interests while he participated in the negotiations.

It seems probable that negotiations over the seven trade agreements began before Oct. 25, 2017, given that the agreements were signed on Nov. 8, 2017. The trade agreements involved multiple Chinese and American companies, and officials from both governments participated.²⁵⁹ It would seem likely that at least some of the following activities occurred before Oct. 25, 2017: internal deliberations over whether to initiate the negotiations, research, identification of companies with interests in the negotiations, selection of companies to include in the negotiations, coordination with selected companies, narrowing of topics for negotiations, development of policy positions, scheduling of negotiations, outreach to Chinese government and corporate counterparts, preliminary negotiations, establishment of procedures and ground rules, and arrangement of travel. The Inspector General should be able to ascertain when these activities began.

The three private equity interests that Ross appears to have retained

Regardless of when preparation for the trade negotiations began, Ross appears to have held at least three interests in Navigator when the trade agreements were signed on Nov. 8, 2017. Based on his periodic transaction reports, Ross does not appear to have divested the second-tier fund, WLR Select Associates DSS LP, through which he held three of his private equity interests in Navigator (two equity interests and one carried interest):

7. Tier 1 (pt. 2, line 10): WL Ross Group LP
 - **Tier 2 (pt. 2, line 10.16): WLR Select Associates DSS LP**
 - Tier 3 (endnote): WLR Select Co-Investment LP (Cayman)
 - Tier 4 (endnote): Navigator Holdings Ltd.
8. Tier 1 (pt. 2, line 24): WLR Select Associates DSS GP Ltd. (Cayman)
 - **Tier 2 (pt. 2, line 24.1): WLR Select Associates DSS LP**
 - Tier 3 (pt. 2, line 24.1.4): WLR Select Co-Investment LP (Cayman)
 - Tier 4 (pt. 2, line 24.1.4.2): Navigator Holdings Ltd.
9. Tier 1 (pt. 2, line 24): WLR Select Associates DSS GP Ltd. (Cayman)
 - **Tier 2 (pt. 2, line 24.1): WLR Select Associates DSS LP**
 - Tier 3 (pt. 2, line 24.1.2): WLR Select Co-Investment LP (Cayman)
 - carried interest
 - Tier 4 (endnote): Navigator Holdings Ltd.

Two other carried interests that Ross may have retained

There is also a concern that Ross may not have properly divested his carried interests in two other investment funds: WLR Recovery Associates IV DSS AIV LP and WLR Recovery Associates V DSS AIV LP. Ross indicated in his Dec. 21, 2017, periodic transaction report that he divested these investment funds. He did not expressly mention his two carried

interests in these funds anywhere in that periodic transaction report, but a reference in the endnotes to general partner interests seems to be a reference to these two carried interests.

Tier 2 Asset (Line # refers to nominee report)	Discussion
<p>WLR Recovery Associates IV DSS AIV LP</p> <ul style="list-style-type: none"> • Tier 2 (pt. 2, line 10.14): This is tiered investment vehicle #1 from the list above. • Tier 2 (pt. 2, line 19.1): This is tiered investment vehicle #2 from the list above. • Tier 2 (pt. 2, line 14.5.1): This is tiered investment vehicle #10 from the list above. 	<p>12/21/17 periodic transaction report, line 5, endnote (WLR Recovery Associates IV DSS AIV LP): “General Partner interest in the fund was divested to a trust in which neither the filer nor his spouse has any financial interest. Limited Partner interest sold to independent third party. Includes all underlying holdings. Both transactions took place on 10/25/17.”</p>
<p>WLR Recovery Associates IV DSS AIV LP – carried interest</p> <ul style="list-style-type: none"> • Tier 2 (pt. 2, line 19.1, as associated with pt. 2, line 19.2 [or, if a typo, 19.1.2]): This is tiered investment vehicle #3 from the list above. 	<p>This carried interest is not mentioned in the periodic transaction report, but the reference in an endnote to a “General Partner interest” (see box immediately above) seems to be a reference to it. The basis for this conclusion is Part 3, Line 22 of Ross’ nominee financial disclosure report: “WLR Recovery Associates IV DSS LP (Cayman).” The name differs in its omission of the letters “AIV” and the parenthetical “(Cayman),” but there is no entry in Part 2 that matches the name he used at Part 3, Line 22. Therefore, this entry appears to correspond to WLR Recovery Associates IV DSS AIV LP. Part 3, Line 22 provides: “I am a shareholder in the General Partner of this entity, which in turn serves as a General Partner of a fund. After investors recoup their principal plus an 8% return, the General Partner receives 2% as a carried interest. Any profit above that is divided 80% to investors, 20% to the General Partner.”</p>
<p>WLR Recovery Associates V DSS AIV LP</p> <ul style="list-style-type: none"> • Tier 2 (pt. 2, line 10.15): This is tiered investment vehicle #4 from the list above. • Tier 2 (pt. 2, line 11.1): This is tiered investment vehicle #5 from the list above. 	<p>12/21/17 periodic transaction report, line 7 (WLR Recovery Associates V DSS AIV LP): “General Partner interest in the fund was divested to a trust in which neither the filer nor his spouse has any financial interest. Limited Partner interest sold to independent third party. Includes all underlying holdings. Both transactions took place on 10/25/17.”</p>
<p>WLR Recovery Associates V DSS AIV LP – carried interest</p> <ul style="list-style-type: none"> • Tier 2 (pt. 2, line 11.1): This is tiered investment vehicle #6 from the list above. 	<p>As was the case with the items above, this carried interest is not mentioned in his periodic transaction report, but the reference in the endnote to a “General Partner interest” (see box immediately above) appears to be a reference to it. The basis for this conclusion is Part 3, Line 23 of his nominee financial disclosure report: “WLR Recovery Associates V DSS LP (Cayman).” The name differs in its omission of the letters “AIV” and the parenthetical “(Cayman),” but there is no entry in Part 2 (employment-related assets) that matches the name he used at Part 3, Line 23. Therefore, this entry appears to correspond to WLR Recovery Associates V DSS AIV LP. The explanation at Part 3, Line 23 provides: “I am a shareholder in the General Partner of this entity, which in turn serves as a General Partner of a fund. After investors recoup their principal plus an 8% return, the General Partner receives 2% as a carried interest. Any profit above that is divided 80% to investors, 20% to the General Partner.”</p>

These possible references to carried interests are far from clear, however, and the Inspector General should ascertain precisely which interests Ross was purporting to have divested in his Dec. 21, 2017, periodic transaction report.

Assuming that Ross is claiming to have divested these two carried interests, there is a question as to how he went about divesting them. Ross uses only the ambiguous term “divested” instead of a more specific term like “sold” or “gifted.” The means of divestiture is important in order to ascertain whether Ross has actually accomplished a full divestiture for purposes of 18 U.S.C. § 208.²⁶⁰ The Inspector General should ascertain the specific means by which Ross claims to have divested these carried interests to the trust.

This issue as to the means of divestiture arises partly because a carried interest might not be readily marketable due to its uncertain future value. In fact, Ross indicated in his nominee financial disclosure report that the value of his carried interest in WLR Recovery Associates V DSS AIV LP was not readily ascertainable.²⁶¹ A Jun. 28, 2018, article in Bloomberg News seems to indicate that he was unable to sell some of his interests easily:

On Thursday, Ross said he’s divested himself of all *easily sold* holdings in compliance with the Office of Government Ethics, *and placed those he couldn’t easily sell in a trust* that goes beyond requirements. He said he doesn’t have investments in Russia or China.²⁶²

Similarly, Pro Publica recently interviewed Forbes’ Dan Alexander, who has reported that Ross claims he transferred some assets to a family trust instead of selling them:

“Trump, Inc.” spoke to reporter Dan Alexander about what else he found. Ross transferred many of his assets to a family trust last fall. Among those assets: an auto parts firm owned jointly with a Chinese-government-owned entity, and a stake in a shipping company also owned in part by Russian oligarchs.²⁶³

Based on the audio recording of the interview, the reference to the “shipping company also owned in part by Russian oligarchs” appears to be Navigator.

In addition to being difficult to value, carried interest entail contractual and tax considerations. A carried interest is a contractual arrangement, and we do not know whether the terms of these two carried interests required the fund manager’s permission for any transfer. In addition, one law firm has explained that applicable tax law requirements may complicate the transfer of a carried interest:

Transferring carried interests can be difficult for a few reasons. First, only a transfer of vested carried interests is considered to be “complete” for gift tax purposes. Thus, unvested carried interests cannot be effectively transferred. Moreover, if a transfer of carried interest is not accompanied by a proportionate transfer of capital interest, certain tax code provisions may apply with significant adverse tax consequences.²⁶⁴

If Ross remains liable for the taxes on any carried interests he transferred, he still has a financial interest tied specifically to the fluctuating value of the carried interests.²⁶⁵ The carried interests will not be taxed until they are paid out, and the value will continue to

rise and fall in the meantime based on the profitability of the investment funds to which they are tied.²⁶⁶ In that case, Ross’ transfer of the carried interests would not constitute a complete divestiture for purposes of 18 U.S.C. § 208. The Inspector General should ascertain whether Ross remains liable for taxes on the carried interests.

A more recent guidance document from another financial adviser indicates that there are “unique and complex regulations that apply to the transfer of carried interest.”²⁶⁷ The adviser indicates that these regulations require the transfer of a proportionate amount of the transferring party’s equity interest along with any transferred carried interest.²⁶⁸ It is not clear from Ross’ filings whether he transferred any of his equity interests to the trust along with his carried interests.²⁶⁹ The value of his sales to the third-party purchaser are in the same range as the values of the equity interests he disclosed in his nominee financial disclosure report, which suggests that he may not have transferred equity interests to the trust.

Tier 2 Asset	Value Disclosed in Nominee Report	Value of Sale Disclosed in Periodic Transaction Report
WLR Recovery Associates IV DSS AIV LP <ul style="list-style-type: none"> • Tier 2 (pt. 2, line 10.14): This is tiered investment vehicle #1 from the list above. • Tier 2 (pt. 2, line 19.1): This is tiered investment vehicle #2 from the list above. • Tier 2 (pt. 2, line 14.5.1): This is tiered investment vehicle #10 from the list above. 	\$1,050,002 - \$5,100,000 [\$1,000,001 - \$5,000,000 (combined value of 10.14 & 19.1) + \$50,001 - \$100,000 (value of 14.5.1, which is the sole asset of 14.5) = \$1,050,002 - \$5,100,000]	\$1,000,001 - \$5,000,000
WLR Recovery Associates IV DSS AIV LP – <i>carried interest</i> <ul style="list-style-type: none"> • Tier 2 (pt. 2, line 19.1, as associated with pt. 2, line 19.2 [or, if a typo, 19.1.2]): This is tiered investment vehicle #3 from the list above. 	\$1,000,001 - \$5,000,000	Ross appears to claim he donated this carried interest to a trust for members of his family.
WLR Recovery Associates V DSS AIV LP <ul style="list-style-type: none"> • Tier 2 (pt. 2, line 10.15): This is tiered investment vehicle #4 from the list above. • Tier 2 (pt. 2, line 11.1): This is tiered investment vehicle #5 from the list above. 	(combined value) \$1,000,001 - \$5,000,000	\$1,000,001 - \$5,000,000
WLR Recovery Associates V DSS AIV LP – <i>carried interest</i> <ul style="list-style-type: none"> • Tier 2 (pt. 2, line 11.1): This is tiered investment vehicle #6 from the list above. 	currently unascertainable	Ross appears to claim he donated this carried interest to a trust for members of his family.

If Ross ran into difficulty transferring these two carried interests, he may not have accomplished a complete divestiture for purposes of 18 U.S.C. § 208. He may have merely entered into an agreement to give the money to the trust when he receives it from the fund managers in the future. Such a side agreement would amount only to an economic offset, which would not resolve Ross’ conflict of interest problem.

This concern is a realistic one, given Ross’ contemporaneous effort to create an economic offset for the conflicts of interest problem associated with his directly held Navigator stock. Days after his Oct. 25, 2017, divestiture of private equity interests in Navigator, Ross shorted Navigator.²⁷⁰ He claims to have opened the short position in order

to offset any economic benefit he might derive from his continued ownership of Navigator stock.²⁷¹

Ross decided for himself that this economic offset was as good as a divestiture. Although Ross had previously completed training that, by regulation, included guidance on contacting ethics officials for help,²⁷² he chose not to consult them when he opened his short position.²⁷³ This self-help effort was at best misguided and at worst disingenuous. It is inconceivable that any government ethics official would have approved Ross opening a new short position in a company he had pledged to divest. Ross likely knew ethics officials would not have approved short sales because his compliance certification included the statement: “I also understand that I may not repurchase these assets during my appointment without OGE’s prior approval.”²⁷⁴ The acting director of the Office of Government Ethics later reprimanded Ross for opening short positions:

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. A variety of sources have raised concerns about your actions.

...

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. § 208.²⁷⁵

Given this troubling history and the complexity of divesting carried interests, it seems entirely possible that Ross may have engaged in a similar effort at self-help with respect to his carried interests. There simply is not enough publicly available information to rule out the possibility. In a recent article, Dan Alexander explained that Ross has not been forthcoming about these divestitures:

What does Ross say about all of this now? Not much. When Forbes asked, a month ago, what became of his holdings, he passed the message to his spokesman, who said he hoped to have an answer the next day. Five days later, he sent a one-sentence statement, promising Ross’ current assets would be reflected on an annual financial disclosure, which he had not yet filed. Given two weeks to respond to a list of detailed questions, the spokesperson declined to answer most of them but underscored that Ross eventually divested of his holdings. The spokesperson also issued a statement about whether Ross had broken the law by lying to federal officials. “The secretary did not lie,” he said, adding that Ross filed amended paperwork, which is currently under review by the Office of Government Ethics.²⁷⁶

Concerns about Ross' family trust

Even absent these considerations regarding Ross' divestiture of the two carried interests, there is also a foundational question as to whether a donation of assets to Ross' family trust can be deemed a full divestiture for purposes of 18 U.S.C. § 208. The question is a fact-specific one that turns on the terms of the trust agreement. Ross claims that neither he nor his spouse has a "financial interest" in the trust;²⁷⁷ however, his misguided effort to resolve conflicts of interest by opening short positions shows that he does not know what qualifies as a "financial interest" for purposes of 18 U.S.C. § 208. A donation to the trust would fail to qualify as a divestiture if any of the following conditions exist:

- a. The trust is revocable;²⁷⁸
- b. The trust gives Ross or his spouse an interest in the trust's income, the trust's assets, or any remainder, including a provision that provides for the use of trust funds in emergencies for their health or welfare;²⁷⁹
- c. The trust is a discretionary trust for which Ross is the grantor;²⁸⁰
- d. Ross is the trustee of the trust;²⁸¹
- e. The trust agreement or a side agreement provides for Ross or his spouse to receive payments tied to profits of the trust's assets;²⁸²
- f. Ross remains responsible for the taxes on any of the trust's assets, particularly in the case of any carried interests;²⁸³ or
- g. Either the trust agreement or a side agreement provides for the return of assets to Ross after he leaves government.²⁸⁴

The Commerce Department has not indicated whether an ethics official reviewed the trust agreement for potential conflicts of interest. Therefore, the Inspector General should ascertain whether any of these conditions exist and evaluate whether the transfer of assets to this family trust constituted a full divestiture for purposes of 18 U.S.C. § 208.

Recap of the 10 private equity interests

In sum, Ross held 10 private equity interests in Navigator through four first-tier investment funds in 2017. He held all 10 when he began participating in the administration's effort to promote the LNG trade and in the steel investigation. Depending on whether preparations for the 7 trade agreements began before Oct. 25, 2017, Ross may also have held all 10 while participating in those preparations. Regardless of when the preparations began, Ross appears to have held at least three of these interests while participating in negotiations over the trade agreements, because he does not appear to have ever divested his two equity interests and his carried interest in WLR Select Associates DSS LP. There is also a question as to whether he properly divested two carried interests in WLR Recovery Associates IV DSS AIV LP and WLR Recovery Associates V DSS AIV LP.

B. These particular matters directly and predictably affected Navigator

The administration's effort to promote the LNG trade, the steel investigation, and the seven trade agreements directly and predictably affected Navigator's financial interests.

1. [The effort to promote the LNG trade directly and predictably affected Navigator's financial interest in transporting LPG](#)

As discussed above, Ross participated personally and substantially in particular matters focused on the natural gas industry, specifically LNG, LPG, and ethylene. Although Navigator does not transport LNG, it does transport LPG and ethylene. These products are economically linked in meaningful ways.

A general understanding of that link is necessary to recognize the direct and predictable effect of the particular matters on Navigator's financial interests. The following is a simplified introduction:

- Raw natural gas is extracted from the ground.²⁸⁵ This raw natural gas is predominately methane.²⁸⁶ Between one percent and ten percent of raw natural gas is made up of other gases.²⁸⁷
- The methane is isolated from the other gases and converted to **liquefied natural gas (LNG)**.²⁸⁸ The conversion process involves cooling the methane to -161°C , at which point it becomes a liquid.²⁸⁹ This makes it easier to store or transport.²⁹⁰
- The leftover chemicals are called **natural gas liquids (NGLs)**.²⁹¹ NGLs are **inevitable byproducts** of this process for creating LNG.²⁹²
- Certain NGLs are converted into various forms of **liquefied petroleum gas (LPG)** through a process that involves pressurization.²⁹³ The most common LPGs are propane and butane.²⁹⁴
- In addition, one type of NGL, called ethane, is used to create a petrochemical called **ethylene**.²⁹⁵
- Navigator, which owns specially designed ships²⁹⁶ for transporting LPG and ethylene, has provided the following description of its business:

Navigator Holdings Ltd. is the owner and operator of the world's largest combined fleet of handysize and midsize liquefied gas carriers, including the largest fleet of ethylene vessels, by tonnage. Navigator Holdings provides international and regional seaborne transportation services of ethylene, ethane, LPG, petrochemical gases and ammonia for energy companies, industrial users and commodity traders. Navigator Holdings's fleet of 38 vessels, 14 of which are the largest ethylene and

ethane-capable liquefied gas carriers available in the market, enables cost-effective and efficient long-haul transportation of ethylene for our customers.²⁹⁷

As this brief introduction indicates, an increase in LNG production directly and predictably affects LPG and ethylene activities because the feedstock NGLs needed to produce them are inevitable byproducts of producing LNG.²⁹⁸ This summer, the U.S. Energy Information Agency reported that there has been an increase in the production of NGL and that **“all of the growth in NGL production occurred at natural gas processing plants as a byproduct of processing the growing supply of natural gas from shale gas and tight oil formations.”**²⁹⁹ In a 2016 SEC filing, Navigator explained that this production boom has been directly responsible for increasing the volume of LPG that it transports:

LPG is a supply driven product, and due to limited storage facilities, companies extracting oil and gas are still expected to produce it as a byproduct and price it accordingly to clear the market. **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,** following a period of project delays and stalled start-ups due to the global economic downturn. U.S. based shale plays have been developing rapidly over the last few years, increasing LNG production, which consists of among others, propane, butane and ethane molecules [i.e., NGLs].³⁰⁰

Thus, Navigator itself has established that increasing the LNG trade has a direct and predictable effect on its business activities. In one recent news report, ABC News explained:

The shipping company in which Ross’ financial partnerships still have a 31 percent stake, Navigator Holdings, exports a different energy product, liquefied petroleum gas (LPG). But **Navigator’s own statements, filed with the Securities and Exchange Commission, say that when there’s a global expansion in LNG production facilities, that benefits the trade in LPG.** That in turn could help Navigator’s bottom line, and thus Ross himself.

...

Ross himself predicted that Navigator would benefit under the Trump administration. **At an event celebrating his nomination as commerce secretary, Ross assured Navigator CEO David Butters about the company's future, according to a January article in Bloomberg Businessweek. “Your interest is aligned to mine,” Butters remembers Ross saying. “The U.S. economy will grow, and Navigator will be a beneficiary.”**³⁰¹

The increased production of LNG and its inevitable byproducts necessarily affects the shipping industry because the supply exceeds domestic demand. According to the New York Times:

The United States was supposed to be a big L.N.G. importer, not a world class exporter. The frenzy of drilling in shale gas fields across the country changed that over the last decade, creating a glut far larger than domestic demand could possibly consume.³⁰²

In fact, the United States has become the world's biggest exporter of LNG.³⁰³ The U.S. Energy Information Administration indicates that this is because the "application of horizontal drilling and hydraulic fracturing techniques in oil and gas production has revolutionized the energy system of the United States."³⁰⁴

In this context, it seems Ross' focus on opening Asian markets to more American natural gas exports is no coincidence. When Ross was still the Chairman of Navigator's board of directors, he signed an SEC filing that emphasized the company's focus on Asian markets: "Asian countries (especially emerging economies) represent the fastest growing market for LPG, in part because the penetration of LPG use in a large number of these countries remains relatively low."³⁰⁵

Therefore, the administration's effort to promote the LNG trade directly and predictably affected Navigator's financial interests in the transport of LPG. As noted above, the 6th Circuit explained in *United States v. Gorman* that "[G]ain or loss need not be probable for the prohibition [under 18 U.S.C. § 208] against official action to apply" and that "All that is required is that there be a real, as opposed to a speculative, possibility of benefit or detriment."³⁰⁶ Therefore, it is not necessary to determine the extent to which the administration's effort to promote the LNG trade ultimately affected exports. What matters is that there was realistic possibility that a concerted governmental effort to increase the LNG trade would increase LNG exports and, in turn, LPG exports.

2. [Five of the seven trade agreements directly and predictably affected Navigator's financial interest in transporting LPG](#)

As discussed above, Ross also participated personally and substantially in negotiations over seven discrete trade agreements. These trade agreements directly and predictably affected Navigator's interests in transporting LPG.

Of particular interest is one trade agreement that specifically focused on increasing Chinese demand for propane, which is a common type of LPG.³⁰⁷ An increase in Chinese demand for propane affects the financial interests of Navigator as "the owner and operator of the world's largest fleet of handysize liquefied gas carriers and a global leader in the seaborne transportation of petrochemical gases, such as ethylene and ethane, liquefied petroleum gas (LPG) and ammonia."³⁰⁸ The U.S. Department of Commerce described the agreement as follows:

Honeywell

Partner: Oriental Energy

Oriental Energy to collaborate with Honeywell UOP on PDH projects. Honeywell UOP and Oriental Energy Co., Ltd. have signed a memorandum of understanding on the adoption of UOP's C3 Oleflex™ units in Oriental Energy's five new Propane Dehydrogenation (PDH) **projects to help convert propane** into propylene. The total propylene production capacity for those five projects combined will reach 3 million tons per year, helping Oriental Energy become the largest on-purpose PDH producer in the world.³⁰⁹

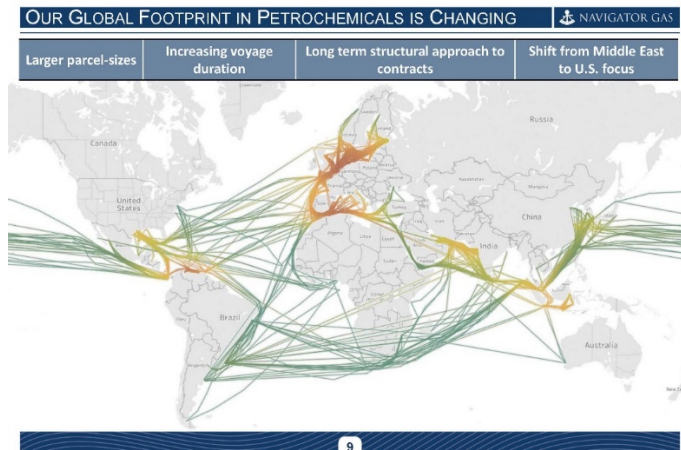
Honeywell has explained that its role is to assist in the conversion process but does not appear to be responsible for supplying the propane:

In addition to technology licensing, Honeywell UOP provided the engineering design, equipment, staff training, technical service and catalyst for the project. . . . Honeywell UOP (www.uop.com) is a leading international supplier and licensor of process technology, catalysts, adsorbents, equipment, and consulting services to the petroleum refining, petrochemical, and gas processing industries.³¹⁰

As China increases its production of propylene, it will need to import more propane. This development affects the propane transport industry in which Navigator operates. A 2014 publication by Oxford University explains:

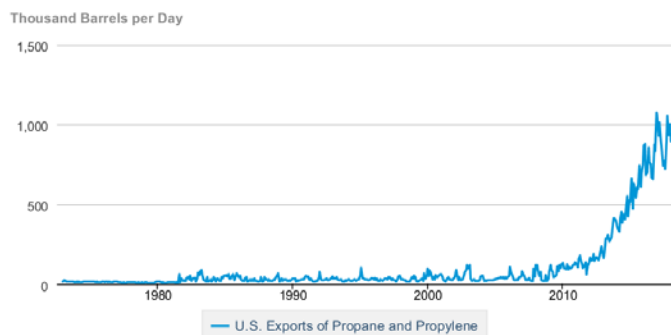
One key market for US LPG exports is Asia. In China, petrochemicals firms have been investing heavily in PDH plants with a total propylene production capacity of 5.36 mtpa being built across the country and nine more PDH projects with capacity of 4.74 mtpa of propylene are being planned. **If all of these plants were constructed, they would require huge volumes of propane. Chinese PDH plants are likely to require imported propane due to a lack of high-purity domestic propane production.** For a long time, China's petrochemicals had little choice but to rely heavily on Middle East imports, but this is already changing. Many Chinese PDH plants have signed export agreements with US propane producers to secure long-term propane supplies. For instance, China Petroleum & Chemical Corp., the country's largest oil refiner, has recently signed a long-term contract to buy LPG from Phillips 66, estimated at 34 thousand b/d. In fact, Chinese customs data show that the country has already started importing US propane from May 2013. Media reports indicate that China has lined up about 0.1 million b/d of long-term US LPG imports with supplies mostly starting in 2015–16.³¹¹

Navigator is in a position to transport the needed propane to China.³¹² Some of its vessels “have the versatility to transport the full range of liquefied gases such as propane and butane, as well as petrochemicals including ethylene and ethane, and ammonia.”³¹³ Its current shipping activities already included China.³¹⁴



Source: Navigator slide presentation (Aug. 2017)³¹⁵

U.S. Exports of Propane and Propylene



Source: U.S. Energy Information Administration

Source: U.S. Energy Information Agency (Jun. 29, 2018).³¹⁶

Another trade agreement involving an American natural gas exporter, Cheniere Energy, also directly and predictably affected Navigator. A trade publication explained:

Cheniere, which operates Sabine Pass LNG, the only operating export facility in the Lower 48, is said to have an MOU to export gas for China National Petroleum Corp. worth as much as \$11 billion. Cheniere also is building an export terminal in Corpus Christi, TX.”³¹⁷

The description released by the U.S. Department of Commerce reveals that this agreement focuses on increased LNG trade:

Cheniere Energy

Partner: China National Petroleum Corporation

Cheniere Energy and China National Petroleum Corporation signed a “Memorandum of Understanding on Long-term LNG Sale and Purchase Cooperation.” According to the MOU, Cheniere Energy and CNPC will continue in-depth discussions **to strengthen cooperation on LNG export projects and the long-term LNG procurement cooperation between China and the U.S.**³¹⁸

The Commerce Department announced other trade agreements similarly affecting the natural gas industry:

Alaska Gasline Development Corporation (AGDC)

Partners:

- China Petrochemical Corp (Sinopec)
- China Investment Corporation (CIC)
- Bank of China (BOC)

The State of Alaska, Alaska Gasline Development Corporation (AGDC), China Petrochemical Corp (Sinopec), China Investment Corporation (CIC), and Bank of China (BOC) signed a Joint Development Agreement to advance **Alaska LNG**. The deal, involving total investment of up to \$43 billion, will create up to 12,000 American jobs during construction, **reduce the trade deficit between the United States and Asia by \$10 billion annually, and provide China with clean, reliable and affordable energy for generations.**

...

Delfin Midstream

Partner: China Gas Holdings

Delfin Midstream, developing the first floating facility to export U.S. natural gas, has sealed a memorandum of understanding for a 15-year sales deal with city gas distributor China Gas Holdings to supply 3 million tons a year of liquefied natural gas (LNG) from 2021. **The \$8 billion LNG project will be located 50 miles off the coast of Louisiana.**

...

GE

Partner: China Datang Group

GE and China Datang Group (CDT) signed a framework agreement for **energy partnership, setting the stage for future joint projects and commercial deals**. Under the agreement, GE will supply CDT with gas turbines, gas turbine

components, and steam turbine components as well as services and IoT solutions for Chinese domestic projects. The proposed projects are valued in total at approximately US\$1 billion.³¹⁹

Whether these agreements ultimately help or harm Navigator's financial interests is not relevant, nor is the amount of the benefit or harm. An employee has a financial interest if there is a realistic, as opposed to speculative, potential for gain or loss.³²⁰ The applicable regulation provides: "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."³²¹ Therefore, it is enough that these five trade agreements directly and predictably affect Navigator.

3. The effort to promote the LNG trade and two of the trade agreements directly and predictably affected Navigator's financial interest in ethylene exports

As with LPG, ethylene is economically linked to the production of LNG. Ethylene is made from ethane, which is one of the NGLs that are byproducts of LNG production.³²² Navigator's fleet includes ships specially designed to transport ethylene.³²³ Navigator recently increased its vulnerability to fluctuations in the ethylene market because Navigator entered into a joint venture to develop a major ethylene export facility in 2017.

One petrochemical information provider has explained that ethylene is produced commercially by cracking the NGL **ethane**.³²⁴ (Cracking involves breaking larger hydrocarbon molecules into smaller molecules.³²⁵) In a March 2018, SEC filing Navigator reiterated that an increase in LNG production results in increased production of the NGL byproducts, including ethane, which are the feedstocks for LPG and ethylene:

The demand for seaborne transportation of LPG, petrochemical gases and ammonia is expected to continue to grow, **particularly ethylene and ethane**, due to evolving energy and petrochemical market dynamics, as seaborne transportation is often the only, or the most cost effective, way to transport liquefied gases between major exporting and importing markets.
...

U.S. based shale plays have been developing rapidly over the last few years, increasing LNG production, which consists of among others, propane, butane and ethane molecules.³²⁶

As LNG production has increased in recent years, ethylene has experienced a corresponding production boom. One market research firm noted the increased LNG production and its effect on both ethylene and its feedstock, ethane:

Innovations in oil and gas drilling have led to lower production costs for crude oil and natural gas in the US, leading to **surpluses of ethane and ethylene supplies**. Surplus ethane output is expected to reach nearly 700,000 barrels per day by

2020, even after the commissioning of new ethylene production capacity.³²⁷

In the midst of this boom, Navigator is making a big investment in exporting ethane. A July 2017 press release announced that Navigator was partnering with Enterprise Products Partners L.P. (Enterprise) to expand its ethylene business interests by developing a major ethylene export facility at Morgan's Point, Texas, on the Houston Ship Channel.³²⁸ Navigator indicates it expects the new ethylene export terminal will move approximately 2.2 billion pounds of ethylene per year.³²⁹ Navigator's CEO, David Butters, explained this development project in the context of broader ethylene market growth in the United States:

The U.S. petrochemical industry is expanding its ethylene production capacity by 45 percent between 2016 and 2020, based on currently announced projects. These expansions are driven by plentiful, low-cost supplies of natural gas and ethane as a result of the development of U.S. shale reserves. Almost 90 percent of these expansions are at facilities located along the Texas and Louisiana Gulf Coast. Enterprise's ethylene storage and pipeline system, together with the proposed ethylene export terminal, would provide the petrochemical industry with logistical flexibility and an outlet to international markets.

"A strategically located ethylene export terminal is the key to unlocking growing petrochemical production capacity in the U.S. We are proud to work with Enterprise, with their proven commercial and technical capabilities, on a project that promises to meet the needs of our customers and provides the seamless transportation of ethylene from the producer to the customer," commented David Butters, chief executive officer of Navigator Gas.³³⁰

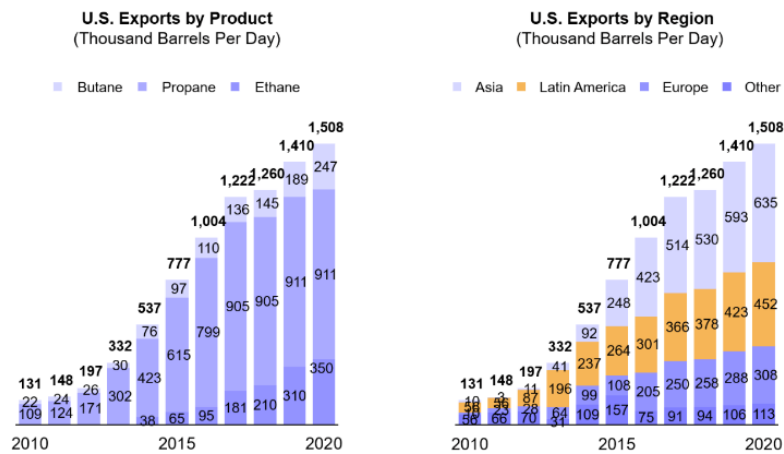
A few months earlier, Butters reportedly had a conversation with Ross that now seem relevant to Butters' optimism about the joint venture:

As for Navigator, its leadership sees blue skies ahead with one of its key investors now at the helm of American trade policy.

On Nov. 30 of last year, hours after being nominated as commerce secretary, Mr. Ross celebrated at Gramercy Tavern, an upscale Manhattan restaurant, at an event hosted by Navigator. He and David J. Butters, Navigator's chief executive, arrived early to a private room and had a chat.

"Your interest is aligned to mine," Mr. Butters recalls Mr. Ross saying, according to Bloomberg Businessweek. "The U.S. economy will grow, and Navigator will be a beneficiary."³³¹

A market research firm illustrated the growth in ethylene exports resulting from this boom and identified the Navigator-Enterprise joint venture as one of only a few natural gas facilities currently under development:³³²



Hydrocarbon exports from the U.S. are now turning toward olefin derivatives and ethylene in particular. The shale revolution is also driving the installation of a significant amount of ethane cracking capacity.

...

Given this background, there is growing interest in exporting ethylene overseas via export terminals. Currently, a small amount of ethylene is exported from a single terminal operated by Targa Resources and located at Galena Park, Texas. However, three new ethylene export terminals have been proposed in the U.S. Gulf Coast with announced operational dates in 2019 and 2020.

	<ul style="list-style-type: none"> Located in Galena Park, Texas, Targa has the only operational ethylene export terminal in U.S. Gulf Coast Has export capacity of ~0.3 million tons / year ethylene Contracted to Mitsubishi Chemical
	<ul style="list-style-type: none"> Enterprise Products and Navigator Gas are planning an ethylene export terminal at Enterprise's Morgan's Point complex in Texas Proposed export capacity of 1 million tons / year ethylene Expected to be in service by the first quarter of 2020
	<ul style="list-style-type: none"> Secured long term contracts with Flint Hill Resources and a major Japanese trading company
	<ul style="list-style-type: none"> Odfjell Terminals (a joint venture between Odfjell SE and Lindsay Goldberg) is considering an ethylene export terminal at its existing facility in Seabrook, Texas Proposed export capacity of 0.75 million tons / year ethylene Expected to start operating in 2019
	<ul style="list-style-type: none"> NOVA Chemicals and Energy Transfer Partners are planning to develop an ethylene export terminal on US Gulf Coast Proposed export capacity of 0.8 million tons / year ethylene Anticipated start date of mid-2020
	<ul style="list-style-type: none"> NOVA Ethylene Hub will be the source of ethylene for the export facility

Quartz's Heather Timmons noted that, during the June 2017 negotiations in which Ross participated, Energy secretary Rick Perry specifically mentioned that the development of new ethylene export facilities was an objective of the Trump administration's energy policy:

Ross, through an offshore entity, owns a stake in shipping company Navigator Holdings, journalist consortium ICIJ reported on Nov. 5.

...

On July 12, Navigator announced an agreement to develop an ethylene marine export terminal in Houston.

...

Exporting LNG and industrial chemicals from the US has been described as the "centerpiece" of Trump's energy plan, despite resistance from US manufacturers who fear their LNG bills will go up, and a market glut (paywall) that threatens profitability. **Speaking about the exports, former Texas governor Rick Perry, who is now the US energy secretary, told officials in Beijing in June, "My role is to make sure that the facilities are as operational and open for business as quickly as they can be."**³³³

For its part, Navigator emphasized in a March 2017 SEC filing that its business interests are directly affected by the Trump administration's energy plan:

During his 2016 presidential campaign, President Trump indicated his intent to work with U.S. Congress to modify certain existing international trade agreements, reform tax laws, modify sanctions regulations, increase tariffs on imports into the United States and deregulate the energy sector. At this time, it is uncertain what actions President Trump will take based on statements made during his presidential campaign and the response by U.S. Congress and any affected foreign and domestic entities to such actions. Until specific laws are passed, executive actions are taken or federal regulatory action is enacted, it is unclear what impact these policies will have on our business. Adverse impacts could include, among others, a disruption to the LPG or petrochemical production in the U.S., restrictions on loading LPG or petrochemical cargoes on our vessels in the U.S., or prohibitions on discharging cargoes in the U.S. which originate in certain countries. All of the foregoing impacts may adversely affect our results of operations.³³⁴

As discussed above, Ross participated personally and substantially in the negotiation of seven trade agreements with China. One of the agreements signed on Nov. 8, 2017, directly and predictably affects American exports of petrochemicals, including ethylene:

West Virginia

The state of West Virginia has entered into a memorandum of understanding with Shenhua corporation, the largest energy company in the world. The project is for the development of shale gases into **petrochemical industries** within the state of West Virginia. The projects will total \$83 billion over the next 20 years and will have a significant positive impact on not only West Virginia but surrounding states as well.³³⁵

The company mentioned in this agreement, Shenhua, is one of two companies that merged to form China Energy.³³⁶ This deal between West Virginia and China Energy will result in an increase in the supply of ethane in the United States, and it pulls from a shale reserve relied upon by Enterprise, Navigator's partner in the ethylene venture:

After learning that China Energy plans to invest \$83.7 billion for **ethane crackers**, power plants and related infrastructure in West Virginia, Ford quickly identified the former Weirton Steel Corp. property along the Ohio River as a prime location for such a facility. Other potential sites in Brooke and Hancock counties include the former Wheeling Corrugating plant at Beech Bottom and the area just south of Mountaineer Casino, Racetrack and Resort.

According to the U.S. Energy Information Administration, the nation's ethane production should reach 1.7 million barrels per day in 2018. This is an increase of 450,000 barrels per day compared to 2016 yields.

...

Any ethane cracker would take ethane produced from Marcellus and Utica shale wells to "crack" the liquid into ethylene.³³⁷

...

In addition to the regional crackers, these pipelines now ship ethane out of the Marcellus and Utica shale region for processing elsewhere:

- **the Enterprise Products Partners ATEX Express pipeline, which sends ethane to the Gulf Coast;**
- the Sunoco Logistics Mariner East pipeline, which sends ethane to the East Coast; and
- the Sunoco Mariner West pipeline, which sends ethane northwest to Canada.

Ross also participated in another trade agreement that resulted in an export deal for one of Navigator's competitors, American Ethane Company:

American Ethane Company

The contract signed between American Ethane and Nanshan Group is a 20-year, take or pay agreement for American Ethane to supply 2.5 million annual tons of liquid **Ethane** from its terminal Development on the U.S. Gulf Coast to Nanshan Group in China. The economic value of the gas sale will exceed \$25 billion, with several billion dollars of infrastructures built in the United States and China.³³⁸

In this context, it is important to remember that the conflict of interest law applies not only to potential gain but also to potential loss.³³⁹ In essence, the law applies an absolute value standard in which the chance to gain \$1 is viewed the same as the chance to lose \$1. The applicable regulation provides: “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.”³⁴⁰ This is an important feature of the law because it addresses the risk that a government official will participate in a matter that harms the official’s interests in order to mitigate the harm or to benefit from long-range gain after an initial downturn. Regardless of whether these particular matters ultimately helped or hurt Navigator, what matters is only that the administration’s effort to promote the LNG trade and these two specific trade agreements directly and predictably affected Navigator’s interests.

4. [The steel investigation directly and predictably affected Navigator’s financial interest in ethylene exports](#)

In Part 3 above, we discussed in detail Ross’ personal and substantial participation in an investigation to determine whether the United States should impose a tariff on steel imports. Navigator’s joint venture to develop a major ethylene export facility,³⁴¹ which we discussed in the preceding subsection, made the company vulnerable to changes in the availability and price of steel supplies for the project.

In this respect, Navigator was situated similarly to chemical companies affected by the steel investigation at a time when they were expanding their production plants.³⁴² The American Chemical Council expressed concern about the direct and predictable effect of the steel investigation and tariff on its member companies:

ACC is asking Trump to reconsider the tariffs because they will drive up the cost of building chemical plants in the U.S.

“For a chemical manufacturing industry that has invested \$185 billion in new factories, expansions, and restarts of facilities around the country, President Trump’s announcement comes at the worst possible time,” ACC said. “More than half of these investment projects are still in the planning stage, and market shifts caused by tariff increases may convince investors to do business elsewhere.”

Petrochemical plants use a lot of steel. For example, Sasol estimates that the \$11 billion ethylene cracker and downstream chemical complex it is erecting in Lake Charles, La., will require 58,400 metric tons of steel.³⁴³

The American Petroleum Institute expressed similar concerns, but focused even more specifically on the work of the U.S. Department of Commerce:

API President and CEO Jack Gerard highlighted the importance of having clarity and flexibility with the Commerce Department's newly announced exclusion process for the steel and aluminum import tariffs for U.S. companies.

"We support an exclusion process from the Department of Commerce that is both transparent and flexible. That will allow the U.S. oil and **natural gas industry** to continue our significant investments in producing, **transporting** and refining U.S. energy resources, building world-class infrastructure and creating high-paying American jobs," said Gerard.

"We expect the Department will acknowledge various market realities and take into consideration the complex supply chains of the U.S. oil and natural gas industry and the need for specialty steel not available domestically for many of its projects."

The U.S. oil and natural gas industry relies on global steel imports for its operations, including steel for drilling, production facilities onshore and offshore, pipelines, LNG terminals, refineries and petrochemical plants.³⁴⁴

Therefore, the steel investigation directly and predictably affected Navigator's financial interest with respect to the construction of its new ethylene export facility.

5. The steel investigation directly and predictably affected Navigator's financial interest in transporting LPG

The steel investigation discussed in Part 3 above also directly and predictably affected Navigator's financial interest in transporting LPG in two ways. First, the investigation focused the production of LNG, which affected the production of LPG as we discussed above. Second, the investigation affected the shipping industry's competition with the natural gas pipeline industry.

The president of the American Exploration & Production Council recently sounded the alarm as to the need to import steel from foreign manufacturers:

Many people aren't aware of the integral role that steel plays in all phases of oil and natural gas development. Well construction, drilling, processing, refining, transportation and distribution all require steel and it is necessary to safely conduct our operations. The American Exploration & Production Council (AXPC) has joined forces with trade associations – energy and non-energy alike – around the country to express our concerns with the policy, and the importance of sensible exclusions for our members, all of whom depend on the ability of steel.

...

Steel is one of the main materials used to construct pipelines and storage tanks. Unfortunately, the United States does not currently produce enough pipeline-grade steel to meet the demand for these projects. Pipeline-grade steel is a high-cost, specialty product from which most domestic manufacturers have moved away. In fact, there is zero domestic availability for certain types of steel pipeline products. As a result, the oil and gas industry is forced to rely on foreign imports to make up the difference.

A steep hike on the price of imported steel does not bode well for these much-needed infrastructure projects and will substantially increase material costs. A study conducted by the Association of Oil Pipelines found that a 25 percent tariff on steel will result in a \$76 million cost increase for a typical pipeline project and more than a \$300 million cost increase for a major cross-country pipeline project.³⁴⁵

The Washington Post noted that Ross himself holds the power to grant exceptions to the tariff:

Trump's tariff order potentially offers the energy industry some wiggle room. It directs Commerce Secretary Wilbur Ross, in consultation with the State, Treasury and Defense departments, to "provide relief" for companies that need "any steel article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality."

That provision, toward the bottom of Trump's order, is where oil and gas pipeline companies see their solution. The production of high-grade pipeline steel strong enough to withstand pressures is a niche market making up just 3 percent of the total U.S. steel market, pipeline-laying companies say, one that stateside

steelmakers have exited as foreign competition became more intense.³⁴⁶

With this grant of authority from the president, Ross' action or inaction would directly affect the LNG trade, in turn affecting LPG businesses. The conflict of interest statute covers not only a decision to grant an exception but also a decision not to grant one. In this way, Ross' inaction on exception requests would implicate the conflict of interest statute unless he recused and affirmatively delegated his authority to another official.

On Mar. 14, 2018, for example, an industry group applied to Ross for an exemption for pipeline steel.³⁴⁷ Ross does not appear to have announced publicly that he has recused from consideration of this request. The Inspector General should determine whether there are any exception requests that have not been granted and whether Ross has delegated his authority to another official.

As discussed in previous sections, Navigator's interest in the LPG trade is directly affected by the production of LNG. Navigator is also on record as stating that an increase in the number of natural gas pipelines would affect its business:

If the demand for liquefied gases and the seaborne transportation of liquefied gases does not continue to grow, our business, financial condition and operating results could be adversely affected.

Our growth depends on continued growth in world and regional demand for liquefied gases and the **seaborne** transportation of liquefied gases, each of which could be adversely affected by a number of factors, such as:

...

...increases in the demand for industrial and residential natural gas in areas linked by pipelines to producing areas, or the conversion of existing non-gas pipelines to natural gas pipelines in those markets....³⁴⁸

Therefore, the steel investigation and the resulting tariff, which includes a process for granting individual exceptions to the tariff, directly and predictably affected Navigator. Ross held interests in Navigator while he participated in the steel investigation. In addition, as we discussed above, it appears that Ross still holds some interests in Navigator through private equity funds.

V. “Knowledge” – Ross’ knowledge

Ross was aware that he held Navigator, and he knew of Navigator's financial interests in these particular matters. Although not necessary to establish a violation of 18 U.S.C. § 208, Ross also knew that he needed to recuse from particular matters directly and predictably affecting Navigator's financial interests.

A. Ross had knowledge of his Navigator interests

Ross was the Chairman of Navigator's board of directors until 2014.³⁴⁹ He also was WLR's Chairman and Chief Strategy Officer until he entered government in 2017, and WLR is Navigator's biggest shareholder.³⁵⁰ As a result, Ross is intimately familiar with the natural gas products at issue in this complaint.³⁵¹ In addition, he demonstrated knowledge of his 14 discrete financial interests in Navigator when he disclosed them in his financial disclosure reports.

Furthermore, Ross would have known that his private equity funds held Navigator stock. Ross was not a casual investor who acquired all of his interests in these private equity funds on the open market. He was an insider who ran investment funds and shaped their strategy. A reference note in one of Navigator's SEC filings highlights Ross connection to many of these particular private equity funds:

[An entry in the SEC form] [r]epresents 13,058,516 shares of common stock held directly by **WLR Recovery Fund IV DSS AIV, L.P.**, 4,422,528 shares of common stock held directly by **WLR Recovery Fund V DSS AIV, L.P.**, 4,288,484 shares of common stock held directly by **WLR Select Co-Investment, L.P.**, 52,727 shares of common stock held directly by WLR IV Parallel ESC, L.P. and 41,619 shares of common stock held directly by WLR V Parallel ESC, L.P. (collectively, the "WLR Investors"). **Wilbur L. Ross, Jr. is the chairman and chief executive officer of WLR, the chairman and president of Invesco Private Capital, Inc. and a director and shareholder of WLR Recovery Associates IV DSS AIV GP, Ltd., WLR Recovery Associates V DSS AIV GP, Ltd. and WLR Select Associates DSS GP, Ltd.** Invesco Private Capital, Inc. is the managing member of Invesco WLR IV Associates LLC, which in turn is the general partner of WLR IV Parallel ESC, L.P. Invesco Private Capital, Inc. is also the managing member of Invesco WLR V Associates LLC, which in turn is the general partner of WLR V Parallel ESC, L.P. **WLR Select Associates DSS GP, Ltd.** is the general partner of **WLR Select Associates DSS, L.P.**, which in turn is the general partner of **WLR Select Co-Investment, L.P.** **WLR Recovery Associates IV DSS AIV GP, Ltd.** is the general partner of **WLR Recovery Associates IV DSS AIV, L.P.**, which in turn is the general partner of **WLR Recovery Fund IV DSS AIV, L.P.** **WLR Recovery Associates V DSS AIV GP, Ltd.** is the general partner of **WLR Recovery Associates V DSS AIV, L.P.**, which in turn is the general partner of **WLR Recovery Fund V DSS AIV, L.P.** **Mr. Ross is a member of the investment committee of each WLR Investors' general partner, which has investment and voting control over**

the shares held or controlled by each of the WLR Investors.³⁵²

Ross' role in this complex web of investments is not the work of an unsophisticated investor. With this background, Ross knew that his private equity interests in these investment funds included Navigator.

Ross also held an interest in Navigator through his Invesco stock, which he divested on Dec. 20, 2017.³⁵³ He denies knowing he held Invesco stock after he entered government, but we explain in Part 3 above why this claim seems implausible.

Ross also claims he was unaware of his directly held Navigator stock when he began his government service. However, he learned on several occasions during 2017 that he held Navigator stock, and he does not appear to have recused pending divestiture of that stock.

B. Though not necessary for a finding that Ross violated 18 U.S.C. § 208, we note he was aware of the law and his duty to recuse as to Navigator

When Ross persuaded the Commerce Department's ethics official, David Maggi, to let him keep his private equity interests in Navigator, Ross signed a letter offering Maggi the following assurances:

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.**³⁵⁴

Ross also received ample notice of his recusal obligation under the criminal conflict of interest law:

- His letter to Maggi opens with a recitation of the basic recusal obligation:

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).³⁵⁵

- Ross also assured a Senator during his confirmation hearing that he would focus carefully on his recusal obligations:

Senator CANTWELL. Well, I want to make sure that — I will get this to you, and you can respond in writing, but there will be times in which those interests will be impacted by decisions made by your organization. And if you would take a look at the specific questions and areas where you would recuse yourself in addition to what you’ve already done with ethics, I would so appreciate this.

Mr. ROSS. Oh, I intend to be quite scrupulous about recusal and any topic where there is the slightest scintilla of doubt.³⁵⁶

- In response to a follow-up question from another Senator, Ross explained how he would handle interim recusals pending divestitures:

Question 10. In Section 9 of your Ethics Agreement, you commit to divesting yourself of significant assets within 90 days and additional assets within 180 days. How do you intend to handle potential conflicts of interest that may arise during this extended period of retained ownership?

Answer. In the event that a matter involving an asset I still hold should arise, I assure you that I will recuse myself in accordance with the commitments that I made in my ethics agreement. Further, I will at all times rely on the monitoring and judgment of the Department’s ethics officials to ensure that I do not participate in any matter about which they advise me that a conflict of interest would arise.³⁵⁷

- Ross has confirmed that he received an individualized ethics briefing from the ethics office for the U.S. Department of Commerce upon entering government service.³⁵⁸ Executive branch-wide regulations required the agency ethics official to counsel Ross “on the basic recusal obligation under 18 U.S.C. 208(a).”³⁵⁹
- By regulation, Ross was also required to complete new employee ethics training during the first three months of his appointment, and that training was required to cover financial conflicts of interest.³⁶⁰ Notably, executive branch-wide regulations also required Ross, as Commerce secretary, to support the agency’s efforts to carry out an interactive ethics training program.³⁶¹

- In 2017, Ross also filed three forms in which he attested that “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.”³⁶²

For these reasons, Ross was clearly on notice of his duty to recuse from particular matters directly and predictably affecting Navigator’s financial interests. It bears emphasizing that Ross’ letter to Maggi specifically addressed the applicability of 18 U.S.C. § 208 to the underlying holdings of his private equity funds: “I will remain vigilant in identifying any particular matters affecting the interests of these entities and their holdings.”³⁶³

VI. Conclusion

For the foregoing reasons, the Inspector General should investigate whether Ross violated 18 U.S.C. § 208 by participating personally and substantially in the administration’s effort to promote the LNG trade, the steel investigation, and negotiations over seven discrete trade agreements. These particular matters directly and predictably affected Navigator’s financial interests, and Ross participated personally and substantially in these particular matters while he held multiple discrete interests in Navigator.

6

Part 6 Other Financial Interests

POSSIBLE VIOLATIONS OF 18 U.S.C. § 208

I. Summary

Ross may have violated 18 U.S.C. § 208 with respect to some of his other financial interests. He has not publicly accounted for the divestiture of 46 assets he pledged to divest, there is a concern as to his possible divestiture of carried interests, and there are concerns about his investments in other shipping companies besides Navigator.

First, Ross' periodic transaction reports do not account for the divestiture of a number of assets that he had planned to divest in order to avoid conflicts of interest. They include 35 illiquid assets that he pledged to divest within 180 days of confirmation and 11 liquid assets that he pledged to divest within 90 days of confirmation. The 35 illiquid assets include investment funds with holdings that posed the potential for significant conflicts of interest. Ross appears to have received extensions as to the deadline for divesting some of his illiquid assets. Ross may have divested these 35 illiquid assets by donating them to a family trust on Oct. 25, 2017, but he does not appear to have publicly claimed that he did so. Additionally, the deadline for divesting the 11 liquid assets was May 28, 2017, before Ross appears to have established his family trust, so it is unlikely that he divested any of them assets by donating them to the family trust.

Second, Ross' nominee financial disclosure report disclosed his ownership of at least 25 carried interests. Divesting a carried interest, which is a contractual agreement with an employer, can be difficult due to the terms of the agreement and complex tax requirements. There is cause for concern that Ross may not have properly divested these carried interests or that he may continue to be responsible for taxes on them. In either case he would have failed to resolve his conflict of interest under 18 U.S.C. § 208.

Ross has demonstrated an inability to follow requirements for resolving conflicts of interest under 18 U.S.C. § 208. The acting director of the U.S. Office of Government Ethics (OGE) recently reprimanded Ross for his misguided decision to open short positions in companies that he had pledged to divest. Ross expressed an incorrect view that opening these short positions had the same effect as divesting his stock in the companies for purposes of resolving conflicts of interest under 18 U.S.C. § 208. Although Ross had completed training that, by regulation, necessarily included guidance on how to contact ethics officials for assistance, Ross decided not to consult either his agency's ethics office or the OGE before opening these short positions. Inasmuch as Ross disregarded the requirements for resolving conflicts of interest with simple stock holdings, there is cause for concern that Ross may have

disregarded the requirements for resolving conflicts of interest with respect to his complex carried interests.

Third, Ross’ shipping interests have been the subject of extensive media coverage and intense public criticism. In this complaint, we have focused in detail on his financial interests in Navigator because, unlike other shipping companies Ross held, Navigator is subject to certain transparency requirements as a publicly traded company. However, various media reports have also highlighted a cause for concern with respect to Ross’ other shipping companies.

II. Unaccounted-for illiquid assets

Ross planned to divest a number of assets in order to resolve conflicts of interest.³⁶⁴ He also specifically committed that he would recuse from particular matters affecting his assets until he divested them.³⁶⁵ Consistent with an executive branch-wide standard, he committed that he would divest many of them within 90 days.³⁶⁶ Some of his conflicting assets were illiquid, however, and he committed that he would divest them within 180 days.³⁶⁷

In 2017 and 2018, Ross filed periodic transaction reports for sales of some — but not all — of his illiquid assets. As indicated in the table below, Ross’ periodic transaction reports do not account for the sale of 35 of the assets that he had pledged to divest within 180 days.

ASSET*	PTR* Filed	DATE FILED	AMOUNT	CERTIFICATE OF DIVESTITURE ISSUED?
* number listed corresponds to number assigned in ethics agreement	*periodic transaction report			
12. Nexeo Solutions Inc.	Yes link ³⁶⁸	4/24/17	\$25,000,001 - \$50,000,000	Yes - 3/14/17 4,961,006 shares
21. WLR Conduit MM LLC [Endnote: Includes WLR-SC Financing Conduit LLC]	Yes link ³⁶⁹	12/21/17	\$1,000,001 - \$5,000,000	Yes - 6/5/17 100%
31. WLR Recovery Associates III LLC [Endnote: “General Partner interest in the fund was divested to a trust in which neither the filer nor his spouse has any financial interest. Limited Partner interest sold to independent third party. Includes all underlying holdings. Both transactions took place on 10/25/17.”]	Yes link ³⁷⁰	12/21/17	\$500,001 - \$1,000,000	Yes - 6/5/17 100%
32. WLR Recovery Associates IV LLC [Endnote: “General Partner interest in the fund was divested to a trust in which neither the filer nor his spouse has any financial interest. Limited Partner interest sold to independent third party. Includes all underlying holdings. Both transactions took place on 10/25/17.”]	Yes link ³⁷¹	12/21/17	\$1,000,001 - \$5,000,000	Yes - 6/5/17 100%

ASSET*	PTR* Filed	DATE FILED	AMOUNT	CERTIFICATE OF DIVESTITURE ISSUED?
* number listed corresponds to number assigned in ethics agreement	*periodic transaction report			
34. WLR Recovery Associates V LLC [Endnote: “General Partner interest in the fund was divested to a trust in which neither the filer nor his spouse has any financial interest. Limited Partner interest sold to independent third party. Includes all underlying holdings. Both transactions took place on 10/25/17.”]	Yes link ³⁷²	12/21/17	\$1,000,001 - \$5,000,000	Yes - 6/5/17 100%
1. 8 Partners VC Fund I LP	No			Yes - 6/5/17 100%
2. SVC Angel Fund I LP [name is not an exact match to CD]	No			Yes - 6/5/17 100%
3. Absolute Recovery Capital Partners LLC	No			Yes - 6/5/17 100%
4. Absolute Recovery Hedge Fund Ltd.; Absolute Recovery Master Fund Ltd.	No			Yes - 6/5/17 100% of both
5. Euro Wagon II LP	No			Yes - 6/5/17 100%
6. Euro Wagon LP	No			Yes - 6/5/17 100%
7. Formations Partners Entrepreneur Fund II [name is not an exact match to CD]	No			Yes - 6/5/17 100%
8. S. Formations Partners Fund I [name is not an exact match to CD]	No			Yes - 6/5/17 100%
9. India Asset Recovery Associates LLC	No			Yes - 6/5/17 100%
10. India Asset Recovery Fund Limited (Mauritius)	No			Yes - 6/5/17 100%
11. India Asset Recovery GP Ltd. (Cayman)	No			Yes - 6/5/17 100%
13. Ross CG GP LLC	No			Yes - 6/5/17 100%
14. Ross Expansion FLP LP	No			Yes - 6/5/17 100%
15. Ross Expansion GP LLC	No			Yes - 6/5/17 100%
16. Ross FOF LLC	No			No
17. WL Ross GP LLC	No			Yes - 6/5/17 100%
18. WL Ross Group LP	No			Yes - 6/5/17 100%
19. WL Ross Sponsor LLC	No			Yes - 6/5/17 100%
20. WLR China Energy Associates Ltd.	No			Yes - 6/5/17 100%
22. WLR Euro Wagon Management Ltd. (Jersey)	No			Yes - 6/5/17 100%
23. WLR IV Loans AIV Feeder (Cayman) Ltd.	No			Yes - 6/5/17 100%

ASSET*	PTR* Filed	DATE FILED	AMOUNT	CERTIFICATE OF DIVESTITURE ISSUED?
* number listed corresponds to number assigned in ethics agreement	*periodic transaction report			
24. WLR Master Co-Investment GP LLC	No			Yes - 6/5/17 100%
25. WLR Master Co-Investment SLP Associates LP (Cayman)	No			Yes - 6/5/17 100%
26. WLR Master Co-Investment SLP GP Ltd. (Cayman)	No			Yes - 6/5/17 100%
27. WLR Master Co-Investment SLP LLC	No			Yes - 6/5/17 100%
28. WLR Nanotechnology GP LLC	No			Yes - 6/5/17 100%
29. WLR Nanotechnology LP LLC	No			Yes - 6/5/17 100%
30. WLR Recovery Associates II LLC	No			Yes - 6/5/17 100%
33. WLR Recovery Associates LLC	No			Yes - 6/5/17 100%
35. WLR Ross Group (Cayman) Ltd.	No			Yes - 6/5/17 100%
36. WLR Select Associates DSS GP Ltd.	No			Yes - 6/5/17 100%
37. WLR Select Associates DSS, LP	No			Yes - 6/5/17 100%
38. WLR Select Associates LLC	No			Yes - 6/5/17 100%
39. WLR-SC Financing Cond [name is not an exact match to CD]	No			Yes - 6/5/17 100%
40. YG Partners Fund LP [CD is for H. Geary]	No			Yes - 6/5/17 100%

In an endnote to three of the transactions that Ross disclosed in his periodic transaction reports, Ross indicated that he gave related general partner interests to a family trust.³⁷³ Ross does not appear to have ever indicated publicly that he gave these 35 assets to the trust. Forbes' Dan Alexander, who has spoken to Ross about his holdings, claims Ross has not been forthcoming with information about his divestitures or the nature of his family trust.³⁷⁴ The Inspector General should investigate to determine whether Ross divested these assets. Given that Ross' Nov. 1, 2017, compliance certification proved to be incorrect, the Inspector General should require Ross to provide proof of the divestitures.³⁷⁵

If Ross indicates he donated any of these assets to his family trust, there is a foundational question as to whether his donation of assets to the trust qualifies as a divestiture for purposes of 18 U.S.C. § 208. The question is a fact-specific one that turns on the terms of the trust agreement. Ross claims neither he nor his spouse has a "financial interest" in the trust;³⁷⁶ however, his previously discussed effort to resolve conflicts of interest by opening short positions shows that he does not know what qualifies as a "financial

interest” for purposes of 18 U.S.C. § 208.³⁷⁷ A donation to the trust would fail to qualify as a divestiture if any of the following conditions exist:

- a. The trust is revocable;³⁷⁸
- b. The trust gives Ross or his spouse any interest in the trust’s income, the trust’s assets, or any remainder, including a provision that provides for the use of trust funds in emergencies for their health or welfare;³⁷⁹
- c. The trust is a discretionary trust for which Ross is the grantor;³⁸⁰
- d. Ross is the trustee of the trust;³⁸¹
- e. The trust agreement or a side agreement provides for Ross or his spouse to receive payments tied to profits of the trust’s assets;³⁸²
- f. Ross remains responsible for the taxes on any of the trust’s assets, particularly in the case of any carried interests;³⁸³ or
- g. The trust agreement or a side agreement provides for the return of assets to Ross after he leaves government.³⁸⁴

The Commerce Department has not indicated whether an ethics official has reviewed the trust agreement for conflicts of interest. Therefore, the Inspector General should ascertain whether any of these conditions exist and evaluate whether the transfer of assets to this family trust constitutes a full divestiture for purposes of 18 U.S.C. § 208.

Included among these unaccounted-for illiquid assets are carried interests, which bear the same divestiture requirement as equity interests under Ross’ ethics agreement.³⁸⁵ Ross disclosed at least 25 carried interests in his nominee financial disclosure report.³⁸⁶ As discussed in Part 5 above, Ross claims he donated carried interests associated with two investment funds to the family trust; however, he does not appear to have spoken publicly about divesting his other carried interests. If Ross attempted to divest his carried interests, there is a question as to how he divested them. The means of divestiture is important in order to ascertain whether any steps he took were adequate to qualify as a divestiture for purposes of 18 U.S.C. § 208.

Divesting carried interests can be complicated: A carried interest might not be readily marketable due to its uncertain future value, and there are both contractual and tax considerations. Ross indicated that he was not able to ascertain the value of some of his carried interests, which might make them difficult to sell.³⁸⁷ In addition, a carried interest is a contractual arrangement, and we do not know whether the terms of any of Ross’ carried interests required the fund manager’s permission for any transfer. One law firm has also explained that applicable tax law requirements may further complicate the transfer of a carried interest:

Transferring carried interests can be difficult for a few reasons. First, only a transfer of vested carried interests is considered to be “complete” for gift tax purposes. Thus, unvested carried interests cannot be effectively transferred. Moreover, if a transfer of carried interest is not accompanied by a proportionate transfer of capital interest, certain tax code provisions may apply with significant adverse tax consequences.³⁸⁸

Significantly, if Ross remains liable for the taxes on any carried interests he transferred, he still has a financial interest tied specifically to the fluctuating value of the carried interests.³⁸⁹ The carried interests will not be taxed until they are paid out, and the value will continue to rise and fall in the meantime based on the profitability of the investment funds to which they are tied.³⁹⁰ In that case, Ross' transfer of the carried interests would not constitute a divestiture for purposes of 18 U.S.C. § 208.

If Ross ran into difficulty transferring any of his carried interests, he may not have accomplished a complete divestiture for purposes of 18 U.S.C. § 208. He may, for instance, have merely entered into an agreement to give the money to the trust in the future once he has received it from the fund managers, which would not be a divestiture at all. Such a side agreement would amount only to an economic offset, which would not resolve Ross' conflict of interest problem. This concern is a realistic one, given Ross' contemporaneous effort to create an economic offset for the conflicts of interest problem associated with his Navigator stock. Days after his Oct. 25, 2017, divestiture of some of his private equity interests in Navigator, Ross shorted Navigator. He claims to have opened this short position in order to offset any economic benefit he might derive from his continued ownership of Navigator stock.³⁹¹

Ross decided for himself that this economic offset was as good as a divestiture. Although he had previously completed training that, by regulation, included guidance on contacting ethics officials for help,³⁹² he chose not to consult them when he opened the short position.³⁹³ This self-help effort was at best misguided and at worst disingenuous. No government ethics official would have approved Ross opening a new short position in a company he had pledged to divest, and Ross likely knew as much because his compliance certification included the statement: "I also understand that I may not repurchase these assets during my appointment without OGE's prior approval."³⁹⁴ The OGE's acting director later reprimanded Ross for opening the short position:

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. A variety of sources have raised concerns about your actions.

...

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. § 208.³⁹⁵

Given Ross' past troubles with properly completing divestitures, and the complexity of divesting carried interests, it seems entirely possible that Ross may have engaged in a similar effort at self-help with respect to the carried interests. There simply is not enough publicly available information to rule out the possibility. In a recent article, Dan Alexander explained that Ross has not been forthcoming about his divestitures.³⁹⁶

For these reasons, the Inspector General should investigate Ross whether divested the 35 illiquid assets he pledged to divest. In investigating these divestitures, the Inspector General should address both Ross' equity interests and his carried interests. If Ross retained any of these assets or delayed their divestiture, the Inspector General should determine whether he violated 18 U.S.C. § 208 by participating personally and substantially in any particular matters directly and predictably affecting them.

III. Unaccounted-for liquid assets

Ross' periodic transaction reports also fail to account for the divestiture of some of the conflicting liquid assets that he had planned to divest within 90 days of confirmation. Specifically, Ross' periodic transaction reports do not disclose sales of the following 11 assets:

1. (Item 7) Bank of Cyprus
2. (Item 16) FireEye Inc.
3. (Item 19) Invesco Core Plus Fixed Income Fund
4. (Item 20) Invesco Private Capital Investments Inc.
5. (Item 21) Invesco Private Capital Inc.
6. (Item 23) Invesco WLR Private Equity Investment Management Ltd.
7. (Item 29) SSgA Inflation Protected Bond Index Fund
8. (Item 30) SSgA U.S. Bond Index Non-Lending Series Fund Class C
9. (Item 36) WL Ross & Co (India) LLC
10. (Item 38) XTO Energy Corp 61/2% 12/18/18
11. (Item 39) XTO Energy Inc. SR NTS 6.500% Matures 12/15/18

In addition, Ross reported the sales of two other assets subject to the 90-day deadline for significantly more than he had previously reported owning:

- Ross disclosed the sale of Intercontinental Exchange, Inc., stock that was worth \$1,000,001 – \$5,000,000, but his nominee financial disclosure report had indicated his stock was worth only \$250,001 – \$500,000.
- Ross also disclosed multiple sales of ArcelorMittal SA stock totaling \$1,000,001 – \$5,000,000, but his nominee financial disclosure report had indicated that his interest in this company was worth only \$250,001 – \$500,000.

Ross' periodic transaction reports do not disclose any purchases that could account for the sale of more of these assets than he had previously claimed he owned.

In addition, Ross also reported selling stock in Air Lease Corporation, Ocwen, Navigator, Greenbrier, and Sun Bancorp. As to each of these stock holdings, Ross either did not disclose the asset in his nominee financial disclosure report or disclosed a lower value than he later reported selling:

Stock	Amount Disclosed in Nominee Financial Disclosure Report	Amount Sold
Air Lease Corporation	\$250,001 - \$500,000	\$250,001 - \$250,000 ³⁹⁷ + another \$50,001 - \$100,000 in stock he says he used to close a short position in June 2018 ³⁹⁸
ArcelorMittal SA	\$750,002 - \$1,500,000	\$1,815,008 - \$6,750,000
Intercontinental Exchange, Inc.	\$250,001 - \$500,000	\$1,000,001 - \$5,000,000
Navigator Holdings Ltd.	\$0	\$115,002 - \$300,000
Ocwen	\$1,001 - \$15,000	\$2,002 - \$30,000 ³⁹⁹ + stock used to close an unreported short position (amount unknown)
Sun Bancorp	\$1,001 - \$15,000	\$1,001 - \$15,000 + another \$1,001 - \$15,000 in stock he says he discovered in October, which he used to close a short sale ⁴⁰⁰
The Greenbrier Companies	\$0	\$550,003 - \$1,000,000 + (maybe) stock he used to close an unreported short position (amount unknown)

The Inspector General should investigate whether Ross divested the 11 conflict interests for which he did not report sales. If Ross retained any of these companies or delayed their divestiture, the Inspector General should investigate whether he violated 18 U.S.C. §208 by participating personally and substantially in any particular matters directly and predictably affecting the financial interests of the companies.

In light of Ross' sales of larger interests than he had previously disclosed, the Inspector General should also investigate whether Ross has violated 18 U.S. § 208 by participating personally and substantially in any particular matters directly and predictably affecting any undisclosed assets.

IV. Ross' Other Shipping Interests

Although Ross has divested a number of assets, he has retained several assets associated with the transoceanic shipping industry. For purposes of this complaint, we have focused on Navigator because, as a publicly traded company, Navigator discloses more information than other shipping companies in which Ross has interests. The Inspector General should also investigate whether Ross participated in any particular matters directly and predictably affecting any of these other shipping companies.

This concern arises in connection with media reports surrounding his various shipping interests. For example, Maria Curi and Tom Scheck of *APM Reports* undertook last fall to highlight just how extensive Ross' shipping interests may be:

An APM Reports investigation reveals Ross has financial ties to 36 previously undisclosed ships that are spread among at least nine companies. Combined with the Russia-tied company — Navigator Holdings Ltd. — Ross has a financial interest in at least 75 ships, most of which move oil and gas products across the globe. The value of those ships stands to grow as Ross

negotiates trade deals on behalf of the U.S. and advises on U.S. infrastructure policy. And one fund linked to Ross was still buying and selling ships after Ross was confirmed as Commerce secretary.

This article by Curi and Scheck also contains a troubling claim by a spokesperson for Ross regarding his activities:

A spokesman for the U.S. Commerce Department did not make Ross available for an interview and did not respond to repeated attempts to answer a list of 28 questions about Ross' shipping ties, though **he released a statement this week saying Ross is recusing himself from all matters involving transoceanic vessels. Ross also told Bloomberg on Monday that he will probably sell his stake in Navigator** but emphasized it wasn't because of the news linking the company to Russia.⁴⁰¹

The claim by Ross' spokesperson is patently incorrect, as our analysis of Ross' Navigator holdings demonstrates. At the time of this statement, Ross was participating in the Trump administration's effort to promote LNG exports and in negotiations over seven trade agreements. The inaccuracy of the information disseminated by Ross' spokesperson raises a legitimate question as to whether Ross may have participated in other particular matters affecting his shipping interests.

In their article, Curi and Scheck discussed some of the conflict of interest concerns associated with these shipping interests.⁴⁰² The authors note that "Most of Ross' ships — 80 percent — move oil and gas products," but that "the stark reality is that Ross' investments haven't paid off." They emphasize that Ross is now in a position as Commerce secretary to promote trade for industries that depend heavily on shipping, including the natural gas industry. In addition, Curi and Scheck point out that "As a key figure on President Trump's infrastructure team, Ross can influence which U.S. ports receive federal funding to deepen shipping channels that would accommodate a larger fleet of ships." The authors emphasize that "If the ports are deepened to handle big ships though, Ross could lose money" because he holds a financial interest in mostly small and midsized ships that would have trouble competing with the big ships.

Forbes' Alexander identified similar concerns by comparing Ross' calendars to various financial interests, including some in the overseas shipping industry:

Ross also did not list a shipping company called Nautical Bulk Holding anywhere on his financial disclosure report. The commerce secretary did, however, include an interest in a private equity fund called WLR Recovery Fund V. And according to documents reviewed by *Forbes*, the largest single investment in WLR Recovery Fund V is Nautical Bulk Holding. It appears the commerce secretary held an interest in the shipping firm for most of last year, then dumped part of it into a family trust in

October 2017, without publicly disclosing that he ever owned a stake in the company.

That's especially significant because of the nature of Nautical Bulk Holding's business. The company was founded to finance the construction of 20 vessels in a Chinese shipyard. Which means that Wilbur Ross, one of Trump's top lieutenants in America's trade war with China, apparently had a hidden interest in a company connected to China for most of last year.⁴⁰³

Given these reports and Ross' pattern of disregarding ethics requirements, the Inspector General should investigate Ross' participation in particular matters affecting his shipping interests.

V. Conclusion

For the foregoing reasons, there is cause for concern regarding Ross' interests in companies other than the three that are the primary focus of this complaint (Invesco, Greenbrier, and Navigator). Ross' periodic transaction reports do not account for the divestiture of 46 assets he had planned to divest, which raises a concern about his possible participation in particular matters affecting them. In addition, if Ross attempted to divest his carried interests, he may not have properly divested them. The Inspector General should investigate these issues. The Inspector General should also examine Ross' interests in the shipping industry to determine whether he may have participated in particular matters directly and predictably affecting those interests in violation of 18 U.S.C. § 208.

7

Part 7 Possible False Statements

POSSIBLE VIOLATIONS OF 18 U.S.C §§ 1001, 1621, and 5 U.S.C. app. § 104

I. Summary

The documents we reviewed suggest Ross may have made material false statements or omissions. The Inspector General should investigate to determine whether Ross acted knowingly and willfully in violation of 18 U.S.C. §§ 1001, 1621, or 5 U.S.C. app. § 104.

- Nov. 1, 2017, compliance certification

Before he entered government, Ross pledged that he would divest Sun Bancorp stock in order to resolve conflicts of interest.⁴⁰⁴ However, on Oct. 31, 2017, Ross opened a new short position in Sun Bancorp. The next day, he filed a compliance certification in which he declared that he had divested all companies he had pledged to divest, which included Sun Bancorp.

Sun Bancorp was not the only required divestiture that Ross had failed to complete when he filed his Nov. 1, 2017, compliance certification. At the time, Ross also held stock in Invesco and Air Lease Corporation. For the reasons discussed in Part 3(IV), Ross' claim that he did not know until December 2017 that he still held Invesco seems implausible. In light of this implausibility, his claim that he was also unaware of his Air Lease stock may similarly warrant skepticism. If Ross' claim is true, he will be able to produce records or a witness to demonstrate when he discovered his continued ownership of each of these stocks.

Significant the compliance certification form includes the following warning immediately above his signature: "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." To the left of his signature appears the following language: "I certify that the information I have provided is complete and accurate."

- Congressional testimony

Ross also made an untrue statement in recent congressional testimony regarding a change to the census. In response to questioning by a member of Congress, Ross claimed that the change originated from a request by the U.S. Department of Justice. This claim was material because Ross was trying to demonstrate to Congress that the change was necessary

for law enforcement purposes. Documents that the U.S. Department of Commerce has been forced to release in litigation now reveal that the change originated from a request by Ross; that Ross was not only the originator of this change but its driving force; and that his staff had to persuade the Justice Department to support the change. The judge in that litigation has noted this inconsistency.

II. Nov. 1, 2017, Compliance Certification

Ross promised to divest his financial interests in, among other companies, Air Lease Corporation, Invesco, and Sun Bancorp.⁴⁰⁵ On Nov. 1, 2017, Ross filed a compliance certification form regarding these divestitures.⁴⁰⁶ In Item 3a of the certification, he affirmed 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.⁴⁰⁷

At the time, however, Ross had not divested his interests in these three companies.⁴⁰⁸

Ross was on notice of his duty to file an accurate form. The following warning was printed in immediately above his signature: "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. 208."⁴⁰⁹ To the left of his signature appeared the following language: "I certify that the information I have provided is complete and accurate."⁴¹⁰

Sun Bancorp

Ross knew this Nov. 1, 2017, compliance certification was incorrect with regard to his interests in Sun Bancorp. One day earlier, on Oct. 31, 2017, he had acquired a new interest in Sun Bancorp by opening a short position in the company.⁴¹¹ The compliance certification form contained a statement putting Ross on notice that it covered this new acquisition: "I also understand that I may not repurchase these assets during my appointment without OGE's prior approval."

Ross's actions after filing this compliance certification suggest he may have attempted to delay or prevent discovery that his certification was incorrect. Notably, he missed the deadline for disclose his acquisition of the Sun Bancorp short position. A public filer like Ross is required to disclose a transaction within 30 days of receiving notice of the transaction.⁴¹² Ross indicates that he consciously made the decision to open a short position in Navigator in a misguided effort to resolve conflicts of interest with shares of Sun Bancorp stock he thought he still owned.⁴¹³ Therefore, given that Ross was aware that he was opening a short position on Oct. 31, 2017, the deadline to disclose the short sale was Dec. 1, 2017. However, he missed that deadline.⁴¹⁴

Ross' failure to meet the deadline for disclosing the Sun Bancorp short position is significant because he filed a periodic transaction report on Nov. 6, 2017, in which he

disclosed his divestiture of shares of Sun Bancorp stock but not the short position he opened on Oct. 31, 2017.⁴¹⁵ On Nov. 7, 2017, Ross filed a second periodic transaction report to disclose that he had opened a short position in Navigator on Oct. 31, 2017.⁴¹⁶ This Nov. 7, 2017, disclosure is especially significant because Ross opened the short position in Navigator on the same day that he opened the short position in Sun Bancorp.⁴¹⁷ Once again, Ross chose not to disclose that he had shorted Sun Bancorp, a disclosure that would have revealed his Nov. 1, 2017, compliance certification was untrue.⁴¹⁸

Over the next month, Ross was the subject of intense public scrutiny in regard to his financial interests in Navigator. A series of media reports questioned his compliance with applicable ethics requirements.⁴¹⁹ Only after this intense scrutiny did Ross finally disclose his short position in Sun Bancorp by filing another periodic transaction report on Dec. 21, 2017.⁴²⁰ Although he ultimately disclosed this transaction after the filing deadline, however, the circumstances raise a question as to whether he may have violated 5 U.S.C. app. § 104 by omitting the Sun Bancorp short position from the periodic transaction reports he filed on Nov. 6th and 7th. The Inspector General should make a determination as to whether these omissions were knowing and willful.

Invesco

Ross' Dec. 21, 2017, periodic transaction report also disclosed that he still held his Invesco stock when he filed his Nov. 1, 2017, compliance certification.⁴²¹ He was required to divest his Invesco stock by May 28, 2017, but he did not complete the divestiture until Dec. 20, 2017.⁴²² Ross claims he was unaware that he continued to hold his Invesco stock after entering government, but his claim seems implausible for the reasons we discussed in Part 3(IV), above.

Air Lease Corporation

When Ross filed his Nov. 1, 2017, compliance certification, he also still held an interest in another company he was required to divest: Air Lease Corporation.⁴²³ In 2017, Ross opened a short position in that company, too.⁴²⁴ Ross claims he was unaware of his continued ownership of shares of Air Lease Corporation stock until May or June 2018, when he received a dividend payment of less than \$200 for the company.⁴²⁵ If this claim is true, Ross should be able to provide the Inspector General with copies of his communications with the company showing he was surprised to learn he still held this stock.

III. Congressional testimony

On Mar. 22, 2018, Ross testified before the House Ways and Means Committee regarding a controversial decision to add a citizenship question to the upcoming census.⁴²⁶ When Representative Judy Chu pressed the issue, Ross testified under oath that the decision to include this question in the census was predicated on a request that originated from the U.S. Department of Justice: “The Department of Justice, as you know, initiated the request for inclusion of the citizenship question.”⁴²⁷

The statement was material to the proceeding because Ross appears to have offered it in support of a claim that the new question was legal and based on the legitimate needs of the nation's lead law enforcement agency.⁴²⁸ NPR has reported that "Ross says the Justice Department needs responses to the question to better enforce the Voting Rights Act's provisions against racial discrimination."⁴²⁹

Ross' statement, however, was untrue. Records uncovered by plaintiffs challenging the new question in litigation reveal that the decision to include this question in the census originated from Ross himself.⁴³⁰ The judge in that case appears to have noted the inaccuracy of Ross' statement, according to NPR:

But earlier this month, a federal judge in New York City said internal documents the administration previously filed in court as part of the lawsuits suggest Ross' statements "were potentially untrue."

"It now appears that the idea of adding the citizenship question originated with Secretary Ross, not the Department of Justice, and that its origins long predated the December 2017 letter from the Justice Department," Judge Jesse Furman said in Manhattan federal court during a hearing on July 3, when he ordered the Commerce Department and Justice Department to release more internal documents about the citizenship question.

Furman cited Ross' recent admission that he started considering adding a citizenship question "soon after" his February 2017 confirmation as commerce secretary and that he and his staff asked the DOJ whether it would submit a request for the question — a request he would later approve.⁴³¹

NPR's reporting also shows that Ross was not only the original source of this new question but its driving force.⁴³² NPR cites an email in which Ross vented his frustration as to the pace of the effort to add the question:

A few months after he started leading the Commerce Department, Secretary Wilbur Ross became impatient. As a powerful decider for the U.S. census, he had a keen interest in adding a citizenship question to the 2020 census as soon as possible.

"I am mystified why nothing [has] been done in response to my months old request that we include the citizenship question. Why not?" he wrote in a May 2017 email to two Commerce Department officials.⁴³³

The response from Ross' staff was that they were still trying to persuade the Justice Department to support his desire to add the question.⁴³⁴

The fact that Ross' statement was untrue is not in dispute. Contrary to his prior congressional testimony, Ross now admits that the Justice Department did not initiate consideration of this question.⁴³⁵ Therefore, the Inspector General should evaluate whether Ross' acted knowingly and willfully in violation of 18 U.S.C. § 1001 or 18 U.S.C. § 1621 when he testified before Congress.

IV. Credibility Determination

As the Inspector General investigates these matters, it may be necessary to make a credibility determination regarding Ross' statements. For that reason, it may be relevant for the Inspector General to be aware of other statements Ross has made to the public, even though they may not be subject to 18 U.S.C. § 1001.

Ross' public explanation regarding his short positions appears to be untrue. According to CNBC, "Ross said that all of the trades were approved, after he executed them, by the Commerce Department's office of ethics and compliance."⁴³⁶ This statement seems to be contradicted by circumstances surrounding a letter from the OGE's acting director, who reprimanded Ross for opening the short positions.⁴³⁷

The OGE's letter indicates Ross did not consult his ethics officials prior to opening the short positions. While the letter does not say what happened after Ross opened the positions, Ross held these short positions for months. He opened two (Air Lease and Ocwen)⁴³⁸ in May 2017 and closed one (Bancorp) in December 2017.⁴³⁹ If Ross had consulted agency ethics officials regarding these short sales at any time between May and December, they would almost certainly have instructed him to divest these short positions. In his letter, the OGE's director explained that short positions do not resolve conflicts of interest related to stock interests: "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."⁴⁴⁰ Therefore, Ross' public explanation seems untrue.

Similar cause for skepticism arises from another public explanation Ross offered regarding his ethical compliance. In a Nov. 5, 2017, interview with Bloomberg News, Ross stated, "[B]efore I meet with any corporate party, the OGE clears (a) that I can meet and (b) the extent to which I can participate in the conversation. I have never sought a waiver from any of those strictures."⁴⁴¹ However, the service Ross describes does not appear to be one that the OGE provides, for the ethics program is decentralized and each agency has its own ethics officials.⁴⁴²

Ross has also been the subject of significant coverage regarding the discovery that he is not a billionaire. CNN recounted this discovery, which Forbes published in an article by Dan Alexander:

The article, a 3,000-word feature written by Forbes reporter Dan Alexander, alleges that Ross repeatedly embellished his net worth by crediting himself with his investors' money. Alexander's digging apparently began last month, when the

magazine told Ross that he was being taken off The Forbes 400, an annual ranking of the richest people in America.

Financial disclosure forms filed after Ross' nomination to the Commerce Department showed he had less than \$700 million in assets, far lower than the \$2.9 billion Forbes had listed as his net worth a year earlier. And Alexander claims he ultimately found that Ross had been inflating his worth dating back to 2004, when he had first cracked The Forbes 400.

“It seems clear that Ross lied to us, the latest in an apparent sequence of fibs, exaggerations, omissions, fabrications and whoppers that have been going on with Forbes since 2004,” Alexander wrote.⁴⁴³

Significantly, Alexander confirms that the previous assessment that Ross was a billionaire came from Ross himself:

Wilbur Ross is not known for telling the truth. On a Sunday afternoon last fall, just back from a trip to Asia, Ross called Forbes to lie about his personal fortune. Forbes had listed the commerce secretary on its billionaires rankings for years, but his financial disclosure report revealed less than \$700 million in assets. When pressed about the discrepancy, Ross calmly cited more than \$2 billion in undisclosed assets, saying he had shifted a chunk of his fortune to a trust for his family.⁴⁴⁴

V. Conclusion

For the reasons discussed above, the Inspector General should investigate whether Ross may have violated 18 U.S.C. § 1001 with respect to his Nov. 1, 2017, compliance certification or his recent congressional testimony. In connection with the congressional testimony, 18 U.S.C. §1621 may also be applicable. In addition, 5 U.S.C. app. §104 may be implicated by Ross' omission of his short position in Sun Bancorp from the periodic transaction reports that he filed on Nov. 6, 2017, and Nov. 7, 2017.

¹ 18 U.S.C. § 208(a).

² 5 C.F.R. § 2640.103(a)(2).

³ *Id.*

⁴ 18 U.S.C. § 208(a).

⁵ 5 C.F.R. § 2640.103(a)(1).

⁶ See Example 3 to 5 C.F.R. § 2640.103(a)(1).

⁷ See, e.g., Example 4 to 5 C.F.R. § 2640.103(a)(3) (in which a company, Waste Management, is a party).

⁸ See Example 3 to 5 C.F.R. § 2640.103(a)(1).

⁹ 5 C.F.R. 2641.201(h)(2).

¹⁰ *Id.*

¹¹ See 5 C.F.R. § 2640.103(a)(1).

¹² See Example 8 to 5 C.F.R. § 2641.201(h)(2).

¹³ 5 C.F.R. § 2641.201(h)(2); see also Example 3 to 5 C.F.R. § 2640.103(a)(1).

¹⁴ 5 C.F.R. § 2641.201(h)(2); see also Example 3 to 5 C.F.R. § 2640.103(a)(1).

¹⁵ 5 C.F.R. § 2640.103(a)(3).

¹⁶ *Id.*

¹⁷ 18 U.S.C. § 208.

¹⁸ 18 U.S.C. § 208(a) (prohibition applies to a “particular matter” in which an employee has “financial interest”).

¹⁹ See Example 1 to 5 C.F.R. § 2640.103(c) (requiring an employee’s recusal from a particular matter affecting a company in which the employee’s minor child holds stock, without regard to the effect of the particular matter on the stock price); Example 1 to § 2640.202(a) (requiring an employee to recuse from a particular matter in which the employee holds stock, without regard to the effect of the particular matter on the stock price).

²⁰ Office of Gov’t Ethics, *Conflicts of Interest Considerations: Assets* (June 22, 2018), <https://bit.ly/2mmG9wy>.

²¹ 5 C.F.R. § 2640.103(b) (“[T]he term financial interest means the potential for gain or loss to the employee. . .”). Note that, with respect to the ownership of stock, the employee stands in the shoes of the company, and the issue is the potential for gain or loss to the company. See also Example 1 to 5 C.F.R. § 2640.103(c) (requiring an employee’s recusal from a particular matter affecting a company in which the employee’s minor child holds stock, without regard to the effect of the particular matter on the stock price); Example 1 to 5 C.F.R. § 2640.202(a) (requiring an employee to recuse from a particular matter in which the employee holds stock, without regard to the effect of the particular matter on the stock price); Office of Gov’t Ethics, *Conflicts of Interest Considerations: Assets* 13-14 (June 22, (2018), <https://bit.ly/2mmG9wy>) (“Because shares of stock represent an ownership interest in a company, a particular matter that has a direct and predictable effect on the issuing company’s financial interests is treated as having a direct and predictable effect on the financial interests of the shareholders. Therefore, an employee who holds stock in a company is prohibited from participating personally and substantially in any particular matter that the employee knows would have a direct and predictable effect on the issuing company.”).

²² *United States v. Gorman*, 807 F.2d 1299, 1303 (6th Cir. 1986) (citing Office of Gov’t Ethics Advisory, OGE Inf. Adv. Op., 83 OGE 1 (1983)).

²³ 5 C.F.R. § 2640.103(a)(3)(ii).

²⁴ 18 U.S.C. §208(a).

²⁵ See Charles Doyle, *False Statements and Perjury: A Sketch of Federal Criminal Law*, CONG. RESEARCH SERV., at 2 (May 11, 2018), <https://bit.ly/2AqT5LM>.

²⁶ See 5 U.S.C. app. § 102; see also U.S. Office of Gov’t Ethics, Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e) (Mar. 2014), <https://bit.ly/2LMb3gg> (“I certify that the statements I have made in this report are true, complete, and correct to the best of my knowledge.”).

²⁷ 18 U.S.C. § 1001(a).

²⁸ 18 U.S.C. § 1001(c).

²⁹ See 18 U.S.C. § 1001(a); see also Charles Doyle, *False Statements and Perjury: A Sketch of Federal Criminal Law*, CONG. RESEARCH SERV., Summary (May 11, 2018), <https://bit.ly/2AqT5LM>.

³⁰ 18 U.S.C. § 1621.

³¹ *United States v. Dunnigan*, 507 U.S. 87, 94 (1993).

³² See Charles Doyle, *False Statements and Perjury: A Sketch of Federal Criminal Law*, CONG. RESEARCH SERV., at 2 (May 11, 2018), <https://bit.ly/2AqT5LM>.

³³ 5 U.S.C. app. § 104.

³⁴ 5 U.S.C. app. § 104(a).

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- ³⁵ U.S. Senate, Roll Call Vote 115th Congress – 1st Session, *On the Nomination (Confirmation Wilbur L. Ross Jr., of Florida, to be Secretary of Commerce)* (Feb. 27, 2017), <https://bit.ly/2mMxyS4>; Mark Katkov, *Wilbur Ross Is Confirmed as Commerce Secretary*, NPR (Feb. 28, 2017), <https://n.pr/2KJgNri>.
- ³⁶ U.S. Dep't of Commerce, *Wilbur Ross Jr., Secretary of Commerce*, <https://bit.ly/2q8cAmf> (last viewed August 7, 2018).
- ³⁷ U.S. Dep't of Commerce, *The Effect of Imports of Steel on the National Security*, 18 (2018), <https://bit.ly/2CpTqdp> (report of investigation).
- ³⁸ *Id.* at 18.
- ³⁹ *Id.* at 18.
- ⁴⁰ U.S. Dep't of Commerce, *Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel*, 82 Fed. Reg. 19,205 (Apr. 26, 2017), <https://bit.ly/2Nt8i1l>.
- ⁴¹ U.S. Dep't of Commerce, *Public Hearing on Section 232 Investigation of Steel Imports on National Security*, YOUTUBE (May 24, 2017), <https://bit.ly/2tZ5pgD>.
- ⁴² *Id.* (quoted excerpt beginning at approximately 0:11:15).
- ⁴³ U.S. Dep't of Commerce, Transcript of Steel 232 Investigation Public Hearing, at 50, 60, 66, 70, 78, 91, 108, 126, 127, 157, 165, 171 (May 24, 2017), <https://bit.ly/2Ky4ePr>.
- ⁴⁴ The U.S. Department of Commerce has posted all comments received in response to the April 26, 2017, solicitation at the following website: <https://bit.ly/2LDjJpU> (last visited Aug. 7, 2018).
- ⁴⁵ David Lawder & Lesley Wroughton, *Trump to Demand G20 Action on Steel; Closely-Watched Report Delayed*, REUTERS (June 29, 2017), <https://reut.rs/2MZhDNg>.
- ⁴⁶ Patrick Gillespie, *Trump Could Slap Big Tariffs on Steel Soon*, CNN (June 30, 2017), <https://cnnmon.ie/2L3yle3>.
- ⁴⁷ David Lawder & Lesley Wroughton, *Trump to Demand G20 Action on Steel; Closely-Watched Report Delayed*, REUTERS (June 29, 2017), <https://reut.rs/2MZhDNg>.
- ⁴⁸ David Lawder, *Lawmakers Say Ross Defers to Trump on U.S. Steel Tariff Timing*, REUTERS (July 27, 2017), <https://reut.rs/2uIP675>.
- ⁴⁹ Steven Mufson, *Is Wilbur Ross Still President Trump's 'Go-to Guy'?*, WASH. POST (Dec. 8, 2017), <https://wapo.st/2NCz7A4>.
- ⁵⁰ *Id.*
- ⁵¹ David J. Lynch, Josh Dawsey & Damian Paletta, *Trump Imposes Steel and Aluminum Tariffs on the E.U., Canada and Mexico*, WASH. POST (May 31, 2018), <https://wapo.st/2m7popc>.
- ⁵² Mike Allen & Jonathan Swan, *Trump Overrules Cabinet, Plots Global Trade War*, AXIOS (June 30, 2017), <https://bit.ly/2LJmrdK>.
- ⁵³ *Id.*
- ⁵⁴ *Id.*
- ⁵⁵ *Id.*
- ⁵⁶ David Lawder, *Lawmakers Say Ross Defers to Trump on U.S. Steel Tariff Timing*, REUTERS (July 27, 2017), <https://reut.rs/2uIP675>.
- ⁵⁷ Andrew Mayeda & Joe Deaux, *Ross Says Steel Tariff Decision to Wait Until After Tax Bill*, BLOOMBERG (Sept. 22, 2017), <https://bloom.bg/2xu87Nn>.
- ⁵⁸ *Id.*
- ⁵⁹ U.S. Dep't of Commerce, *The Effect of Imports of Steel on the National Security* 6 (2018), <https://bit.ly/2CpTqdp> (report of investigation).
- ⁶⁰ Press Release, U.S. Department of Commerce Announces Steel and Aluminum Tariff Exclusion Process (Mar. 18, 2018), <https://bit.ly/2u1iLv5> (statement from the department on submission of steel section 232 report to the president).
- ⁶¹ Presidential Proclamation 9705 of March 8, 2018, Adjusting Imports of Steel into the United States, 83 Fed. Reg. 11,625, 11,627 (Mar. 15, 2018), <https://bit.ly/2KBdgGv>; see also *U.S. Exempts Certain Steel Products of Japan, Four Other Nations from 25% Import Duties*, JAPAN TIMES (June 21, 2018), <https://bit.ly/2AIUlpz>; David J. Lynch, Josh Dawsey & Damian Paletta, *Trump Imposes Steel and Aluminum Tariffs on the E.U., Canada and Mexico*, WASH. POST (May 31, 2018), <https://wapo.st/2m7popc>.
- ⁶² David J. Lynch, Josh Dawsey & Damian Paletta, *Trump Imposes Steel and Aluminum Tariffs on the E.U., Canada and Mexico*, WASH. POST (May 31, 2018), <https://wapo.st/2m7popc>.
- ⁶³ 5 C.F.R. § 2640.103(a)(1).
- ⁶⁴ See Example 3 to 5 C.F.R. § 2640.103(a)(1) (illustrating that an industry is a discrete and identifiable class of persons).
- ⁶⁵ Exemption Amendments Under 18 U.S.C. § 208(b)(2), 67 Fed. Reg. 12,443, 12,444 (Mar. 19, 2002) (final rule issued by the OGE to create an exemption to 18 U.S.C. § 208 for *de minimis* interests in nonparties to a

particular matter, due to concerns expressed by executive branch agencies about the broad effect of nonparty interests being covered by 18 U.S.C. § 208).

⁶⁶ See U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr.); Letter from Wilbur Ross Jr., Sec'y of Dep't of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement).

⁶⁷ See 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., note Part 1, Line 4).

⁶⁸ U.S. Sec. & Exch. Comm'n, *Order Instituting Cease-And-Desist Proceedings Pursuant to Section 203(K) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order*, File No. 3-17491, ¶ 5, (Aug. 24, 2016) ("Since 2006, WL Ross has been wholly owned by Invesco Private Capital, Inc., a subsidiary of Invesco Ltd., a publicly traded company (collectively, 'Invesco')."), <https://bit.ly/2cuqZUf>.

⁶⁹ See 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., note Part 2, Lines 1.4, 1.5).

⁷⁰ See 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., note Part 2, Lines 1.4 – 1.5).

⁷¹ See 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., note Part 2, Lines 1.4 – 1.5), <https://bit.ly/2iy3hJa>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note Lines 15-16).

⁷² Letter from Wilbur Ross Jr., Sec'y of Dep't of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement).

⁷³ Invesco's compensation plan provided for Invesco to deliver shares of stock to its employees upon the vesting of restricted stock grants. See *Invesco Ltd., 2011 Global Equity Incentive Plan, Restricted Stock Unit Award Agreement - Conversion and Payment*, § 3.2 (Feb. 19, 2016), <https://bit.ly/2OrzG02> (Securities and Exchange Commission Form 10-K, Exhibit 10.15 ("3.2 Conversion and Payment. Unless the RSUs are forfeited on or before the Vesting Date, the RSUs will be converted into an equal number of Shares, . . . [and] will be delivered as soon as practicable thereafter, but not later than March 15 of the year following the year in which the Vesting Date occurs if you are subject to U.S. federal income tax on such Shares." (emphasis added))).

⁷⁴ Invesco is traded on the New York Stock Exchange. See NYSE, *Invesco, Ltd.*, <https://bit.ly/2urdKsG>.

⁷⁵ 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).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See, e.g., Matt Simon, *RSUs: Essential Facts*, CHARLES SCHWAB (last viewed July 30, 2017), <https://bit.ly/2NWJcXX>.

⁷⁹ See *Invesco Ltd., 2011 Global Equity Incentive Plan, Restricted Stock Unit Award Agreement - Conversion and Payment*, § 3.2 (Feb. 23, 2017), <https://bit.ly/2OrzG02> (Securities and Exchange Commission Form 10-K, Exhibit 10.17).

⁸⁰ Letter from Wilbur Ross Jr., Sec'y of Dep't of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official 2 (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement).

⁸¹ 18 U.S.C. § 209; see also *Crandon v. United States*, 494 U.S. 152 (1990).

⁸² Letter from Wilbur Ross Jr., Sec'y of Dep't of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official 2 (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ 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 8) (June 2, 2017), <https://bit.ly/2tuwXJS>.

⁸⁷ *Id.* (box 11).

⁸⁸ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note Lines 15-16).

⁸⁹ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 15, 2018), <https://bit.ly/2lU5ttz> (report of Wilbur L. Ross Jr., note Line 1).

⁹⁰ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Apr. 20, 2017), <https://bit.ly/2tUVs38>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Apr. 20, 2017), <https://bit.ly/2tQYBk9>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Apr. 20, 2017), <https://bit.ly/2yUjf8L>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Apr. 24, 2017), <https://bit.ly/2KwXgOz>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 12, 2017), <https://bit.ly/2N7LvYK>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 16, 2017), <https://bit.ly/2KjNRGI>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 17, 2017), <https://bit.ly/2tKvpeK>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 17, 2017), <https://bit.ly/2Kryvuv>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 18, 2017), <https://bit.ly/2KzZ69s>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2KtYt1f>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2Kn4np7>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2tGjAam>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2N9KgYU>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2KxNTX2>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2Kz2chh>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2KiJpYq>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2IGN3wc>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2lBb5C7>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2yXHXW4>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 23, 2017), <https://bit.ly/2Kj42DE>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 23, 2017), <https://bit.ly/2lCRXUb>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 24, 2017), <https://bit.ly/2lCTXM0>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 1, 2017), <https://bit.ly/2Kcp325>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 2, 2017), <https://bit.ly/2KluLj2>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 15, 2018), <https://bit.ly/2lU5ttz>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (July 14, 2017), <https://bit.ly/2tRUkgm>; 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>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Nov. 6, 2017), <https://bit.ly/2KiK782>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Nov. 7, 2017), <https://bit.ly/2tGKsqx>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 15, 2018), <https://bit.ly/2lU5ttz> (report of Wilbur L. Ross Jr.).

⁹¹ U.S. Office of Gov't Ethics, *Certification of Ethics Agreement Compliance* (of Wilbur L. Ross Jr.), at 3 [page 6 of the combined document] (box 8b) (Sept. 5, 2017), <https://bit.ly/2tuwXJS>.

⁹² Letter from Wilbur Ross Jr., Sec'y of Dep't of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official 2 (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement).

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- ⁹³ U.S. Office of Gov't Ethics, *Certification of Ethics Agreement Compliance* (of Wilbur L. Ross Jr.), at 1 (box 3a) (Nov. 1, 2017), <https://bit.ly/2tuwXJS>.
- ⁹⁴ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note Lines 15-16).
- ⁹⁵ *Id.*
- ⁹⁶ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note endnote to Line 15).
- ⁹⁷ *Id.*
- ⁹⁸ Letter from Wilbur Ross Jr., Sec'y of Dep't of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official 2 (Jan. 15, 2017), <https://bit.ly/2KdIlZD> (ethics agreement).
- ⁹⁹ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note endnote to Line 15).
- ¹⁰⁰ Compare U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note endnote to Line 15), with U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report (OGE Form 278e)* (Dec. 19, 2016), <https://bit.ly/2iv3hJa> (nominee financial disclosure report of Wilbur L. Ross Jr., note Part 2, Lines 1.4 & 1.5).
- ¹⁰¹ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note Lines 15-16).
- ¹⁰² U.S. Office of Gov't Ethics, *Invesco, Ltd., Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 2017*, at 4 (Feb. 23, 2018), <https://bit.ly/2zSc4ia> (SEC Form 10-K).
- ¹⁰³ *Id.*
- ¹⁰⁴ See *Investment Teams*, INVESCO, LTD., <https://bit.ly/1pKuEXW> (last viewed Aug. 7, 2018); see also *Company Subsidiary Report*, INVESCO, LTD. (2017), <https://bit.ly/2uhmHWz> (last viewed Aug. 7, 2018).
- ¹⁰⁵ Michael C. Bender & Nick Timiraos, *Wilbur Ross Expected to Be Named Commerce Secretary by Donald Trump*, WALL ST. JOURNAL (Nov. 23, 2016), <https://on.wsj.com/2L203HS>.
- ¹⁰⁶ Michela Tindera, *How Wilbur Ross Made a Fortune in Blue-Collar Industries*, FORBES (Jan. 18, 2017), <https://bit.ly/2Kb3Yks>.
- ¹⁰⁷ Wang Ying, *New Fund to Help Recast Steel Sector*, CHINA DAILY (Apr. 8, 2017), <https://bit.ly/2msHv90>.
- ¹⁰⁸ James T. Areddy, *Firm Founded by U.S. Commerce Secretary Wilbur Ross to Form China Steel Venture*, WALL STREET JOURNAL (Apr. 4, 2017), <https://on.wsj.com/2KSdHkd>.
- ¹⁰⁹ *Id.*
- ¹¹⁰ Carolina Recycling Ass'n, *WL Ross & Co. Among Investors in China Steel Restructuring Fund*, (Apr. 10, 2017), <https://bit.ly/2moZMUS>.
- ¹¹¹ *Commerce Secretary's Former Firm Investing in Chinese Steel*, STAR ONLINE (Apr. 10, 2017), <https://bit.ly/2LtkU7i>.
- ¹¹² *Commerce Secretary Ross' Former Firm Investing in Chinese Steel*, GULF NEWS (Apr. 9, 2017), <https://bit.ly/2zZSL6H>.
- ¹¹³ W.L. Ross & Co., LLC, *Four Rivers Completes Successful Recapitalization of Chongqing Steel*, CISION (Jan. 10, 2018), <https://prn.to/2NteZzR>.
- ¹¹⁴ *Id.*
- ¹¹⁵ Mars Woo, *WL Ross-Backed Four Rivers Takes 23.5% Stake in Chongqing Steel After Recapitalization*, DEAL STREET ASIA (Jan. 12, 2018), <https://bit.ly/2Lj6EkG>.
- ¹¹⁶ Chen Yikan, *China Baowu Steel Group Will Scale Up Production via M & As, Its General Manager Says*, YICAI GLOBAL (Sept. 15, 2017), <https://bit.ly/2LQpQX3>.
- ¹¹⁷ U.S. Office of Gov't Ethics, *Conflicts of Interest Considerations: Assets* (June 22, 2018), <https://bit.ly/2mmG9wv>; see also U.S. Office of Gov't Ethics (1987), <https://bit.ly/2Oqom4m> (OGE Inf. Adv. Op. 87 x 6); Example 1 to 5 C.F.R. § 2640.103(c) (requiring an employee's recusal from a particular matter affecting a company in which the employee's minor child holds stock, without regard to the effect of the particular matter on the stock price); Example 1 to 5 C.F.R. § 2640.202(a) (requiring an employee to recuse from a particular matter in which the employee holds stock, without regard to the effect of the particular matter on the stock price).
- ¹¹⁸ 5 C.F.R. §§ 2640.103(b) (“[T]he term financial interest means the potential for gain or loss to the employee . . .”). Note that, with respect to the ownership of stock, the employee stands in the shoes of the company, and the

issue is the potential for gain or loss to the company. See Example 1 to 5 C.F.R. § 2640.103(c) (requiring an employee’s recusal from a particular matter affecting a company in which the employee’s minor child holds stock, without regard to the effect of the particular matter on the stock price); see also Example 1 to 5 C.F.R. § 2640.202 (a) (requiring an employee to recuse from a particular matter in which the employee holds stock, without regard to the effect of the particular matter on the stock price); U.S. Office of Gov’t Ethics, *Conflicts of Interest Considerations: Assets* 13-14 (June 22, 2018), <https://bit.ly/2mmG9wv> (“Because shares of stock represent an ownership interest in a company, a particular matter that has a direct and predictable effect on the issuing company’s financial interests is treated as having a direct and predictable effect on the financial interests of the shareholders. Therefore, an employee who holds stock in a company is prohibited from participating personally and substantially in any particular matter that the employee knows would have a direct and predictable effect on the issuing company.”).

¹¹⁹ *United States v. Gorman*, 807 F.2d 1299, 1303 (6th Cir. 1986) (citing U.S. Office of Gov’t Ethics Advisory Op. 83 OGE 1 (1983)).

¹²⁰ Information at 9, *U.S. v. Crawford*, No. 1:06-mj-00438-DAR (D.D.C. filed Oct. 16, 2006).

¹²¹ *Id.* at 9-10.

¹²² *Id.* at 10.

¹²³ *Ex-FDA Chief Pleads Guilty to Conflict of Interest*, NBC (Oct. 17, 2006), <https://nbcnews.to/2KbM5lu>.

¹²⁴ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report (OGE Form 278e)* (Dec. 19, 2016), <https://bit.ly/2iv3hJa> (nominee financial disclosure report of Wilbur L. Ross Jr., note Part 2, line 1.5); 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, note “SECTION 2 – POSITIONS AND ASSETS RELATED TO INVESCO”).

¹²⁵ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note endnote to Line 15).

¹²⁶ Invesco’s compensation plan provided for Invesco to deliver shares of stock to its employees upon the vesting of restricted stock grants. See U.S. Sec. & Exch. Comm’n, *Invesco Ltd. 2011 Global Equity Incentive Plan; Restricted Stock Unit Award Agreement - Time Vesting* (2015), <https://bit.ly/2zvOt6G> (“3.2 Conversion and Payment. Unless the RSUs are forfeited before the Vesting Date, the RSUs will be converted into an equal number of Shares and will be delivered as soon as practicable thereafter, but not later than March 15 of the year following the year in which the Vesting Date occurs if you are subject to U.S. federal income tax on such Shares.”).

¹²⁷ 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 9) (June 2, 2017), <https://bit.ly/2tuwXJS>.

¹²⁸ U.S. Office of Gov’t Ethics, *Certification of Ethics Agreement Compliance* (of Wilbur L. Ross Jr.) (June 2; Sept. 5; Nov. 1, 2017) (combined document), <https://bit.ly/2tuwXJS>.

¹²⁹ Letter from Wilbur L. Ross Jr., Sec’y, U.S. Dep’t of Commerce, to David J. Apol, Acting Dir., U.S. Office of Gov’t Ethics (Nov. 16, 2017), <https://bit.ly/2m55omQ> (“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.”).

¹³⁰ Carrie Levine, *Wilbur Ross Stock Holdings Rose in Value During Improper Divestment Delay*, Ctr. for Pub. Integrity (July 5, 2018), <https://bit.ly/2KV5BUF>.

¹³¹ Letter from Wilbur Ross Jr., Sec’y of Dep’t of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement; *Section 2 - Positions and Assets Related to Invesco*).

¹³² U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Apr. 20, 2017), <https://bit.ly/2tUVs38>; U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Apr. 20, 2017), <https://bit.ly/2tQYBk9>; U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Apr. 20, 2017), <https://bit.ly/2yUjf8L>; U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Apr. 24, 2017), <https://bit.ly/2KwXgOz>; U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 12, 2017), <https://bit.ly/2N7LvYK>; U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 16, 2017), <https://bit.ly/2KjNRGI>; U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 17, 2017), <https://bit.ly/2tKvpeK>; U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 17, 2017), <https://bit.ly/2Kryyuv>; U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure*

Report: Periodic Transaction Report (OGE Form 278-T) (May 18, 2017), <https://bit.ly/2KzZ69s>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (May 22, 2017), <https://bit.ly/2KtYt1f>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (May 22, 2017), <https://bit.ly/2Kn4np7>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (May 22, 2017), <https://bit.ly/2tGjAam>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (May 22, 2017), <https://bit.ly/2N9KgYU>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (May 22, 2017), <https://bit.ly/2KxNTX2>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (May 22, 2017), <https://bit.ly/2Kz2chh>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (May 22, 2017), <https://bit.ly/2KiJpYq>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (May 22, 2017), <https://bit.ly/2IGN3wc>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (May 22, 2017), <https://bit.ly/2IBb5C7>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (May 22, 2017), <https://bit.ly/2vXHXW4>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (May 23, 2017), <https://bit.ly/2Kj42DE>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (May 23, 2017), <https://bit.ly/2ICRXUh>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (May 24, 2017), <https://bit.ly/2ICTXM0>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (June 1, 2017), <https://bit.ly/2Kcp325>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (June 2, 2017), <https://bit.ly/2KluLj2>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (June 15, 2018), <https://bit.ly/2IU5ttz>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (July 14, 2017), <https://bit.ly/2tRUkgm>; 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/2Mywx3>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (Nov. 6, 2017), <https://bit.ly/2KiK782>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (Nov. 7, 2017), <https://bit.ly/2tGKsqx>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (Dec. 21, 2017), <https://bit.ly/2lv0XSi>; U.S. Office of Gov't Ethics, Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T) (June 15, 2018), <https://bit.ly/2IU5ttz> (report of Wilbur L. Ross Jr.).

¹³³ U.S. Senate, Roll Call Vote 115th Congress – 1st Session, *On the Nomination (Confirmation) Wilbur L. Ross Jr., of Florida, to be Secretary of Commerce* (Feb. 27, 2017), <https://bit.ly/2mMxyS4>.

¹³⁴ See NYSE, *Trade Holidays and Trading Hours*, <https://bit.ly/2KOIoHM>.

¹³⁵ *Remarks by the Vice President at the Swearing-in Ceremony of Commerce Secretary Ross Jr.*, WHITE HOUSE (Feb. 28, 2017), <https://bit.ly/2NI5YDS>; see also *Commerce Secretary Swearing-In Ceremony*, C-SPAN (Feb. 28, 2017), <https://cs.pn/2NHZ9C0>.

¹³⁶ 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., note Part 1, Line 4).

¹³⁷ James T. Areddy, *Firm Founded by U.S. Commerce Secretary Wilbur Ross to Form China Steel Venture*, WALL STREET JOURNAL (Apr. 4, 2017), <https://on.wsj.com/2KSdHkd>.

¹³⁸ Wang Ying, *New Fund to Help Recast Steel Sector*, CHINA DAILY (Apr. 8, 2017), <https://bit.ly/2msHv90>.

¹³⁹ Carolina Recycling Ass'n, *WL Ross & Co. Among Investors in China Steel Restructuring Fund* (Apr. 10, 2017), <https://bit.ly/2moZMUS>.

¹⁴⁰ James T. Areddy, *Firm Founded by U.S. Commerce Secretary Wilbur Ross to Form China Steel Venture*, WALL STREET JOURNAL (Apr. 4, 2017), <https://on.wsj.com/2KSdHkd>.

¹⁴¹ *WL Ross, Others Put \$1B into Diamond S Shipping*, PE HUB NETWORK (Aug. 1, 2011), <https://bit.ly/2v9OGrt>.

¹⁴² Ana Swanson, *Billionaire Investor Wilbur Ross Confirmed as Trump's Secretary of Commerce*, WASH. POST (Feb. 27, 2017), <https://wapo.st/2uKnQp4>.

¹⁴³ Ben Schreckinger, *Wilbur Ross' Chinese Love Affair*, POLITICO (Jan. 2, 2017), <https://bit.ly/2uDDEOk>.

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- ¹⁴⁴ Ronald Orol, *Private Equity Billionaire Wilbur L. Ross: Man ‘Over Board?’*, STREET (June 29, 2015), <https://bit.ly/2uMtreg>.
- ¹⁴⁵ Ylan Q. Mui & Robert Costa, *Trump Expected to Tap Billionaire Investor Wilbur Ross for Commerce Secretary*, WASH. POST (Nov. 24, 2016), <https://wapo.st/2Lqzmgg>.
- ¹⁴⁶ *Id.*
- ¹⁴⁷ Ross continued to hold shares in ArcelorMittal until selling them in March of 2017. See U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Apr. 20, 2017), <https://bit.ly/2tUVs38> (report of Wilbur L. Ross Jr., note Line 2). He was also a director on ArcelorMittal’s board of directors. See 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., note Part 1, Line 12).
- ¹⁴⁸ World Bank, *GDP (Current US\$)*, <https://bit.ly/2v9qapP>.
- ¹⁴⁹ See, e.g., U.S. Dep’t of Commerce, *The Effect of Imports of Steel on the National Security* 6 (2018), <https://bit.ly/2CpTqdp> (report of investigation); Joseph Nasr, *U.S. Considering ‘Broad-Scale’ Measures on Steel Dumping: Ross*, REUTERS (June 27, 2017), <https://reut.rs/2LYSXIW>; U.S. Dep’t. of Commerce, *U.S. Department of Commerce Finds Dumping and Subsidization of Imports of Aluminum Foil from the People’s Republic of China* (Feb. 27, 2018), <https://bit.ly/2FargIV>.
- ¹⁵⁰ Letter from Wilbur Ross Jr., Sec’y of Dep’t of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official 1 (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement).
- ¹⁵¹ *Id.* at 6.
- ¹⁵² *Nomination of Wilbur L. Ross Jr., to Be Secretary of the Department of Commerce: Hearing Before the S. Comm. on Commerce, Sci., & Transp.*, 115th Cong. 43 (2017), <https://bit.ly/2zmnJW2>.
- ¹⁵³ *Id.* at 104.
- ¹⁵⁴ 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 9) (June 2, 2017), <https://bit.ly/2tuwXJS> (“I have completed my initial ethics briefing, pursuant to 5 C.F.R. § 2638.305.”); see also 5 C.F.R. § 2638.305(f)(3) (“The agency ethics official must explain the recusal obligations and other commitments addressed in the individual’s ethics agreement and ensure that the individual understands what is specifically required in order to comply with each of them, including any deadline for compliance.”).
- ¹⁵⁵ 5 C.F.R. § 2638.305(f)(2).
- ¹⁵⁶ 5 C.F.R. § 2638.304(e)(1)(i).
- ¹⁵⁷ 5 C.F.R. § 2638.107(f).
- ¹⁵⁸ U.S. Office of Gov’t Ethics, *Certification of Ethics Agreement Compliance* (of Wilbur L. Ross Jr.), at 3 [pages 3, 6 and 9 of the combined document] (box 6a) (June 2; Sept. 5; Nov. 1, 2017), <https://bit.ly/2tuwXJS>.
- ¹⁵⁹ Ethics Letter from Wilbur Ross Jr., Sec’y of Dep’t of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official 2 (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement).
- ¹⁶⁰ See U.S. Dep’t of Commerce, *The Effect of Imports of Steel on the National Security* 58 (2018), <https://bit.ly/2CpTqdp> (report of investigation).
- ¹⁶¹ *Id.*; see also *Trump Tariffs: US President Imposes Levy on Steel and Aluminium*, BBC (Mar. 8, 2018), <https://bbc.in/2M4Fhbe>; Mark Landler & Jim Tankersley, *Trump Hits China with Stiff Trade Measures*, N.Y. TIMES (Mar. 22, 2018), <https://nyti.ms/2GdoYZU>
- ¹⁶² *Adjusting Imports of Steel into the United States*, Presidential Proclamation 9705 of March 8, 2018, 83 Fed. Reg. 11625, 11627 (Mar. 15, 2018); see also *U.S. Exempts Certain Steel Products of Japan, Four Other Nations from 25% Import Duties*, JAPAN TIMES (June 21, 2018), <https://bit.ly/2A1UlpP>.
- ¹⁶³ U.S. Dep’t of Commerce, *Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel*, 82 Fed. Reg. 19,205 (Apr. 26, 2017), <https://bit.ly/2Nt8i1l>.
- ¹⁶⁴ U.S. Dep’t of Commerce, *Public Hearing on Section 232 Investigation of Steel Imports on National Security*, YOUTUBE (May 24, 2017), <https://bit.ly/2tZ5pgD>.
- ¹⁶⁵ *Adjusting Imports of Steel into the United States*, Presidential Proclamation 9705 of March 8, 2018, 83 Fed. Reg. 11625, 11627 (Mar. 15, 2018); see also *U.S. Exempts Certain Steel Products of Japan, Four Other Nations from 25% Import Duties*, JAPAN TIMES (June 21, 2018), <https://bit.ly/2A1UlpP>.
- ¹⁶⁶ The U.S. Department of Commerce has posted all comments received in response to the April 26, 2017, solicitation at the following website: <https://bit.ly/2LDjJpU> (last visited Aug. 7, 2018).
- ¹⁶⁷ David Lawder, *Lawmakers Say Ross Defers to Trump on U.S. Steel Tariff Timing*, REUTERS (July 27, 2017), <https://reut.rs/2ulP675>.
- ¹⁶⁸ Letter from William A. Furman, Chairman & Chief Exec. Officer, Greenbrier Cos., Inc., to Brad Botwin, Dir., Indus. Studies, Office of Tech. Evaluation, Bureau of Indus. & Sec., U.S. Dep’t of Commerce (May 30, 2017), <https://bit.ly/2uzjnpX>.
- ¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 1, 2017), <https://bit.ly/2Kcp325> (report of Wilbur L. Ross Jr., note Line 2).

¹⁷² 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.).

¹⁷³ 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., note Part 2, Line 10.1.2.2).

¹⁷⁴ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 17, 2017), <https://bit.ly/2tKvpeK> (report of Wilbur L. Ross Jr.); U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 1, 2017), <https://bit.ly/2Kcp325> (report of Wilbur L. Ross Jr.); U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr.).

¹⁷⁵ Dan Alexander, *Wilbur Ross' Calendar Reveals Dozens of Meetings with Companies Tied to His Personal Fortune*, FORBES (July 13, 2018), <https://bit.ly/2uOuv1g>.

¹⁷⁶ *White House Mess*, WHITE HOUSE, <https://bit.ly/1XX7NPI> (last viewed Aug. 10, 2018).

¹⁷⁷ Dan Alexander, *Wilbur Ross' Calendar Reveals Dozens of Meetings with Companies Tied to His Personal Fortune*, FORBES (July 13, 2018), <https://bit.ly/2uOuv1g>.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Letter from William A. Furman, Chairman & Chief Exec. Officer, Greenbrier Cos., Inc., to Brad Botwin, Dir., Indus. Studies, Office of Tech. Evaluation, Bureau of Indus. & Sec., U.S. Dep't of Commerce (May 30, 2017), <https://bit.ly/2uzjnpX>.

¹⁸¹ Dan Alexander, *Wilbur Ross' Calendar Reveals Dozens of Meetings with Companies Tied to His Personal Fortune*, FORBES (July 13, 2018), <https://bit.ly/2uOuv1g>.

¹⁸² *Directors*, Wendy L. Teramoto, Greenbrier Cos. Inc. (GBX), <https://bit.ly/2vme6kY> (last visited Aug. 6, 2018) (Corporate Governance section of the Greenbrier corporate website: "Ms. Teramoto has served as a member of the Board since June 2009.")

¹⁸³ In addition to Greenbrier's board, Teramoto was also on the boards of Navigator Holdings Ltd., Nautical Bulk Holdings, and Diamond S. Shipping, companies in which Ross was invested in 2017 (addressed in this complaint); during this meeting with Furman, she was on the board of at least Navigator Holdings Ltd., and possibly other companies. See Tom Scheck & Maria Curi, *Top Wilbur Ross Aide Played a Role in Trade Deal While on the Board of Shipping Firm Tied to Russia*, APM REPORTS (Nov. 6, 2017), <https://bit.ly/2Ox1Abi>.

¹⁸⁴ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 20, 2017), <https://bit.ly/2Kcp325> (report of Wilbur L. Ross Jr., note Line 2); U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr. note Line 13).

¹⁸⁵ Reuters provides the following summary description of Greenbrier, which issues publicly traded securities (ticker: GBX) and focuses on manufacturing activities that are dependent on steel as a primary material: "The Greenbrier Companies, Inc., incorporated on Oct. 25, 2005, is a designer, manufacturer and marketer of railroad freight car equipment in North America and Europe; a manufacturer and marketer of marine barges in North America; a provider of wheel services, parts, leasing and other services to the railroad and related transportation industries in North America, and a provider of railcar repair, refurbishment and retrofitting services in North America through a joint venture partnership." See *Profile: Greenbrier Companies Inc. (GBX)*, REUTERS, <https://reut.rs/2K9vy2f> (last viewed Aug. 7, 2018).

¹⁸⁶ David Lawder, *Lawmakers Say Ross Defers to Trump on U.S. Steel Tariff Timing*, REUTERS (July 27, 2017), <https://reut.rs/2uIP675>.

¹⁸⁷ Letter from William A. Furman, Chairman & Chief Exec. Officer, The Greenbrier Cos., Inc., to Brad Botwin, Dir., Indus. Studies, Office of Tech. Evaluation, Bureau of Indus. & Sec., U.S. Dep't of Commerce (May 30, 2017), <https://bit.ly/2uzjnpX>.

¹⁸⁸ David Nahass, *Financial Edge Mar. 2018: Steel Tariffs and Increasing Railcar Prices*, Railway Age (Mar. 6, 2018), <https://bit.ly/2MTCVvB>.

¹⁸⁹ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr.).

¹⁹⁰ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 17, 2017), <https://bit.ly/2tKvpeK> (report of Wilbur L. Ross Jr.); U.S.

Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 1, 2017), <https://bit.ly/2Kcp325> (report of Wilbur L. Ross Jr.).

¹⁹¹ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 17, 2017), <https://bit.ly/2tKvpeK>.

¹⁹² U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Jun. 1, 2017), <https://bit.ly/2Kcp325> (report of Wilbur L. Ross Jr.).

¹⁹³ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr.).

¹⁹⁴ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note endnote to Line 13).

¹⁹⁵ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 17, 2017), <https://bit.ly/2tKvpeK>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 1, 2017), <https://bit.ly/2Kcp325> (report of Wilbur L. Ross Jr.).

¹⁹⁶ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr.).

U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 17, 2017), <https://bit.ly/2tKvpeK>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 1, 2017), <https://bit.ly/2Kcp325> (report of Wilbur L. Ross Jr.).

¹⁹⁸ Lori Ann LaRocco & Dan Mangan, *Wilbur Ross Says He Shorted Two More Stocks During His Time as Commerce Secretary*, CNBC (July 2, 2018), <https://cnb.cx/2NgfH3T>.

¹⁹⁹ Letter to Wilbur L. Ross Jr., Sec'y, U.S. Dep't of Commerce, from David J. Apol, Acting Dir. & Gen. Counsel, U.S. Office of Gov't Ethics (July 12, 2018), <https://bit.ly/2v2SDgS>.

²⁰⁰ As of Aug. 7, 2018, Ross has filed 30 periodic transaction reports. None of them mentions a short sale of Greenbrier. See U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Apr. 20, 2017), <https://bit.ly/2tUVs38>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Apr. 20, 2017), <https://bit.ly/2tQYBk9>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Apr. 20, 2017), <https://bit.ly/2vUjf8L>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Apr. 24, 2017), <https://bit.ly/2KwxgOz>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 12, 2017), <https://bit.ly/2N7LvYK>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 16, 2017), <https://bit.ly/2KjNRGI>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 17, 2017), <https://bit.ly/2tKvpeK>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 17, 2017), <https://bit.ly/2Kryyuy>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 18, 2017), <https://bit.ly/2KzZ69s>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2KtYt1f>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2KKn4np7>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2tGjAam>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2N9KgYU>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2KxNTX2>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2Kz2chh>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2KiJpYq>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2lGN3wc>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2lBb5C7>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2vXHxW4>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2vXHxW4>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 22, 2017), <https://bit.ly/2vXHxW4>.

(OGE Form 278-T) (May 23, 2017), <https://bit.ly/2Kj42DE>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 23, 2017), <https://bit.ly/2ICRXUb>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (May 24, 2017), <https://bit.ly/2ICTXMQ>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 1, 2017), <https://bit.ly/2Kcp325>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 2, 2017), <https://bit.ly/2KluLj2>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 15, 2018), <https://bit.ly/2IU5ttz>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (July 14, 2017), <https://bit.ly/2tRUKgm>; 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>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Nov. 6, 2017), <https://bit.ly/2KiK782>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Nov. 7, 2017), <https://bit.ly/2tGKsqx>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi>; U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 15, 2018), <https://bit.ly/2IU5ttz> (report of Wilbur L. Ross Jr.).

²⁰¹ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note endnote to line 13 (“Upon realizing that unrestricted shares remained credited to me on the books of Greenbrier, I promptly arranged for the [transfer] agent to transfer those share interests to a personal account, after which I quickly sold them.”)).

²⁰² U.S. Dep’t of Commerce, *Public Hearing on Section 232 Investigation of Steel Imports on National Security*, YOUTUBE (May 24, 2017), <https://bit.ly/2tZ>.

²⁰³ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 1, 2017), <https://bit.ly/2Kcp325> (report of Wilbur L. Ross Jr.).

²⁰⁴ Letter from Wilbur Ross Jr., Sec’y of Dep’t of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official 1 (Jan. 15, 2017), <https://bit.ly/2KdIlZD> (ethics agreement).

²⁰⁵ See 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 9) (June 2, 2017), <https://bit.ly/2tawXJS> (“I have completed my initial ethics briefing, pursuant to 5 C.F.R. § 2638.305.”); see also 5 C.F.R. § 2638.305(f)(3) (“The agency ethics official must explain the recusal obligations and other commitments addressed in the individual's ethics agreement and ensure that the individual understands what is specifically required in order to comply with each of them, including any deadline for compliance.”).

²⁰⁶ 5 C.F.R. § 2638.305(f)(2).

²⁰⁷ 5 C.F.R. § 2638.304

²⁰⁸ 5 C.F.R. § 2638.304(e)(1)(i).

²⁰⁹ 5 C.F.R. § 2638.107(f).

²¹⁰ Greg Miller, *Shipowner poised to take the helm at Trump’s Commerce Department*, Fairplay, IHS Markit Maritime Portal; HIS Markit, Ltd. (Nov. 30, 2016), <https://bit.ly/2uFH6Uo>.

²¹¹ Peter Navarro & Wilbur L. Ross Jr., *Scoring the Trump Economic Plan: Trade, Regulatory, & Energy Policy Impacts* (2016), <https://bit.ly/2daD7H3>.

²¹² Prof. Patricia Shapley, *Hydrocarbons*, Univ. of Ill., <https://bit.ly/2OkRGbx> (last viewed Aug. 7, 2018).

²¹³ Peter Navarro & Wilbur L. Ross Jr., *Scoring the Trump Economic Plan: Trade, Regulatory, & Energy Policy Impacts* 21 (2016), <https://bit.ly/2daD7H3>.

²¹⁴ In the section below regarding Ross’ financial interests in Navigator (see section IV), we discuss his ownership of a total of 14 discrete financial interests. He acquired the last of these on October 31, 2017. See U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Nov. 7, 2017), <https://bit.ly/2tGKsqx> (report of Wilbur L. Ross Jr.). In the spring of 2017, Ross held 13 discrete financial interests. See U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report (OGE Form 278e)* (Dec. 19, 2016), <https://bit.ly/2iv3hJa> (nominee financial disclosure report of Wilbur L. Ross Jr., note Part 2); U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 1, 2017), <https://bit.ly/2Kcp325> (report of Wilbur L. Ross Jr., note Line 4).

²¹⁵ Press Release, *JOINT RELEASE: Initial Results of the 100-Day Action Plan of the U.S.-China Comprehensive Economic Dialogue*, U.S. Dep’t of Commerce (May 11, 2017), <https://bit.ly/2q7g0oA>.

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- ²¹⁶ Tom DiChristopher, *Trump Just Gave China a ‘Sledgehammer’ to Smash the LNG Monopoly*, CNBC (May 19, 2017), <https://cnb.cx/2vwdyJv>.
- ²¹⁷ Associated Press, *Commerce Secretary Ross Calls the New U.S.-China Trade Deal a ‘Herculean Accomplishment’*, FORTUNE (May 21, 2017), <https://for.tn/2OEHN9J>; see also Press Release, *Trade with China Continues Trend While Comprehensive Economic Dialogue Hopes to Balance Deficits*, U.S. Dep’t Commerce (June 2, 2017), <https://bit.ly/2AvJX8C>.
- ²¹⁸ Peter Behr & Jenny Mandel, *White House: LNG, a Test Case for Trump’s Energy ‘Dominance,’* E&E NEWS (July 6, 2017) (emphasis added), <https://bit.ly/2M7uKjE>.
- ²¹⁹ 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).
- ²²⁰ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Nov. 7, 2017), <https://bit.ly/2tGKsqx> (report of Wilbur L. Ross Jr.).
- ²²¹ Heather Timmons & Eshe Nelson, *Decoding What the Trump Administration Wants on Trade*, QUARTZ (Feb. 11, 2018), <https://bit.ly/2LYVOAw>.
- ²²² Ryan Collins, Scarlet Fu, & Julia Chatterley, *Wilbur Ross to China: Import More U.S. Gas to Cut Trade Gap*, BLOOMBERG (Mar. 22, 2018), <https://bloom.bg/2ILTiJE>.
- ²²³ Staff Report, *American Ethane Co. in New Orleans Signing \$26 Billion China Export Deal*, New Orleans Advocate (Nov. 8, 2017), <https://bit.ly/2AAAb02R>.
- ²²⁴ Press Release, *U.S. Secretary of Commerce Wilbur Ross Announces Hundreds of Billions in Deals Between U.S. Companies and Chinese Entities*, U.S. Dep’t of Commerce (Nov. 9, 2017), <https://bit.ly/2zu5mxa>.
- ²²⁵ U.S. Dep’t of Commerce, *U.S. - China Business Exchange Nov. 8-9, 2017*, <https://bit.ly/2N8KDIU> (last viewed Aug. 7, 2018).
- ²²⁶ *Id.*
- ²²⁷ U.S. Dep’t of Commerce, *The Effect of Imports of Steel on the National Security* (2018), <https://bit.ly/2CpTqdp> (report of investigation; see Cover Page and app. B).
- ²²⁸ *Id.* at 58; see also *Trump Tariffs: US President Imposes Levy on Steel and Aluminium*, BBC (Mar. 8, 2018), <https://bbc.in/2M4Fhbe>; Mark Landler & Jim Tankersley, *Trump Hits China with Stiff Trade Measures*, N.Y. TIMES (Mar. 22, 2018), <https://nyti.ms/2GdoYZU>.
- ²²⁹ *Adjusting Imports of Steel into the United States*, Presidential Proclamation 9705 of March 8, 2018, 83 Fed. Reg. 11625, 11627 (Mar. 15, 2018); see also *U.S. Exempts Certain Steel Products of Japan, Four Other Nations from 25% Import Duties*, JAPAN TIMES (June 21, 2018), <https://bit.ly/2AlUlp>.
- ²³⁰ 5 C.F.R. § 2640.103(a)(1).
- ²³¹ See Example 3 to 5 C.F.R. § 2640.103(a)(1) (illustrating that an industry is a discrete and identifiable class of persons).
- ²³² 5 C.F.R. § 2641.201(h)(2).
- ²³³ 5 C.F.R. § 2640.103(a)(1).
- ²³⁴ See Example 8 to 5 C.F.R. § 2641.201(h)(2).
- ²³⁵ See Example 3 to 5 C.F.R. § 2641.201(h)(2); see also 5 C.F.R. § 2640.103(a)(1).
- ²³⁶ U.S. Dep’t of Commerce, *U.S. - China Business Exchange Nov. 8-9, 2017*, <https://bit.ly/2N8KDIU> (last viewed Aug. 7, 2018); see also Example 3 to 5 C.F.R. § 2640.103(a)(1).
- ²³⁷ 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., note Part 1, Line 41).
- ²³⁸ 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., note Part 1, Line 4); see also Letter from Wilbur Ross Jr., Sec’y of Dep’t of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official 1 (Sec. 2, Item 6) (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement, pledge to resign from W.L. Ross & Co. LLC); *Commerce Secretary Swearing-In Ceremony*, C-SPAN (Feb. 28, 2017), <https://cs.pn/2NHZ9C0>; U.S. Office of Gov’t Ethics, *Certification of Ethics Agreement Compliance* (of Wilbur L. Ross Jr.), at 1 [page 7 of the combined document] (box 2) (June 2, 2017), <https://bit.ly/2tuwXJS> (certification that he completed all resignations required in his ethics agreement).
- ²³⁹ Jake Simpson, *WL Ross Drops \$110M for Majority Stake in Gas Shipping Co.*, LAW 360 (Aug. 10, 2012), <https://www.law360.com/articles/368845>.
- ²⁴⁰ 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., note Part 2, Lines 1.4 & 1.5).
- ²⁴¹ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Nov. 7, 2017), <https://bit.ly/2tGKsqx> (report of Wilbur L. Ross Jr.).

²⁴² U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note Line 14).

²⁴³ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 1, 2017), <https://bit.ly/2Kcp325> (report of Wilbur L. Ross Jr., note Line 4).

²⁴⁴ In a short sale, an investor borrows a certain number of shares of stock from a broker, sells the stock and acquires new shares of the stock (ideally, at a lower price than what the investor was able to sell the borrowed stock), and delivers the new shares to the broker in order to close the open position by a specified deadline. See U.S. Office of Gov't Ethics, *Conflicts of Interest Considerations: Assets* 12 (June 22, 2018), <https://bit.ly/2mmG9wv>.

²⁴⁵ Dan Mangan, *Commerce Chief Wilbur Ross' Financial Holdings Get New Scrutiny in Report that Highlights Short Sale of Russian-Linked Shipping Firm*, CNBC (June 19, 2018), <https://cnb.cx/2I1T0g6>.

²⁴⁶ Terrence Dopp, *Commerce's Ross Says Navigator Divestment Not Typical Short Sale*, BLOOMBERG (June 21 2018), <https://bloom.bg/2uPPPrpJ> (relevant portion of the video begins at approximately 0:00:28); Mike McIntire, *Commerce Secretary Shorted Stock as Negative Coverage Loomed*, N.Y. Times (June 19, 2018), <https://nyti.ms/2MFTFHr> (“In a separate statement, Mr. Ross, 80, said 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. He said because the shares were in ‘electronic form’ he could not access them right away.”); see also

U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note Line 14).

²⁴⁷ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report (OGE Form 278e)* (Dec. 19, 2016), <https://bit.ly/2iv3hJa> (nominee financial disclosure report of Wilbur L. Ross Jr., note Part 1, Line 41).

²⁴⁸ *Id.* at Part 2, Line 10.

²⁴⁹ *Id.* at Part 2, Line 19.

²⁵⁰ *Id.* at Part 2, Line 11

²⁵¹ *Id.* at Part 2, Line 24.

²⁵² U.S. Office of Gov't Ethics, *Public Financial Disclosure Reports*, <https://bit.ly/2nkr8fp> (last viewed Aug. 7, 2018) (list of all executive branch personnel financial disclosure reports filed by Wilbur L. Ross Jr., with hyperlinks).

²⁵³ U.S. Office of Gov't Ethics, *All Certificates of Divestiture Issued by OGE*, <https://bit.ly/2Jfn3l2> (certificate of divestiture for Wilbur L. Ross Jr., Dep't of Commerce, OGE-2017-073, at 3-4).

²⁵⁴ U.S. Office of Gov't Ethics, *Certificate of Divestiture Fact Sheet* (2016) (Sept. 2, 2016), <https://bit.ly/2uJnK0U>.

²⁵⁵ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note Line 14).

²⁵⁶ See, e.g., U.S. Office of Gov't Ethics, *LA-14-05: Financial Disclosure Requirements for Pooled Investment Funds* 1 (Sept. 30, 2014), <https://bit.ly/2Avk8pm> (“Under the Ethics in Government Act (EIGA), a PAS nominee needs to report a financial arrangement, including a pooled investment fund, if the PAS nominee’s interest exceeds the dollar threshold for value or income. See 5 U.S.C. app. §§ 102(a)(1), (a)(3); 102(e)(1); 102(f)(1). Section 102(f) of the EIGA also requires the PAS nominee to report the holdings of the financial arrangement, unless it qualifies for one of several exceptions in paragraph 2 of that section. 5 U.S.C. app. § 102(f)(1).”).

²⁵⁷ 18 U.S.C. § 208(a) (conflicting financial interests of an outside employer are imputed to the executive branch employee); see also U.S. Office of Gov't Ethics, *Conflicts of Interest Considerations: Private Investment Funds and Employment with an Investment Fund* (June 22, 2018), <https://bit.ly/2OKkPxZ> (noting that 5 U.S.C. app. § 502 and 5 C.F.R. pt. 2636 “bar a covered noncareer employee from receiving compensation for affiliating with or being employed by an entity that provides professional services involving a fiduciary relationship, which includes fund management”).

²⁵⁸ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr.).

²⁵⁹ See U.S. Dep't of Commerce, *U.S. - China Business Exchange Nov. 8-9, 2017*, <https://bit.ly/2N8KDIU> (last viewed Aug. 7, 2018).

²⁶⁰ U.S. Office of Gov't Ethics, *Conflicts of Interest Considerations: Private Investment Funds and Employment with an Investment Fund* 4 (June 22, 2018), <https://bit.ly/2M78odV> (“The carried interest in the fund is treated the same as an equity interest in the fund for purposes of analyzing any conflict of interest under 18 U.S.C. § 208.”).

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- ²⁶¹ 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., note Part 2, Line 11.1.1).
- ²⁶² Terrence Dopp, *Commerce's Ross Says Navigator Divestment Not Typical Short Sale*, BLOOMBERG (June 21, 2018), <https://bloom.bg/2uPPrpJ>.
- ²⁶³ *What You Need to Know About Wilbur Ross' Many Conflicts — "Trump, Inc."*, PROPUBLICA (June 22, 2018), <https://bit.ly/2KhvRYd>.
- ²⁶⁴ Kirkland & Ellis, LLP, *Transferring Carried Interests* (2005), <https://bit.ly/2v33GGJ>.
- ²⁶⁵ Ross would have to pay a percentage on the net capital gain of the fund. See *What Is Carried Interest, and How Should It Be Taxed?*, TAX POLICY CTR., <https://tpc.io/2OdcyBI> (last viewed Aug. 7, 2018) ("Carried interest is a contractual right that entitles the general partner of a private investment fund (often a private equity fund) to share in the fund's profits []. A fund typically uses the carried interest to pass through its net capital gains to the general partner which, in turn, passes the gains on to the investment managers. The managers pay a federal personal income tax on these gains at a rate of 23.8 percent (20 percent tax on net capital gains plus 3.8 percent investment tax).")
- ²⁶⁶ The Tax Policy Center, *Briefing Book* (see "Key Elements of the U.S. Tax System" and specifically "What is a carried interest, and how should it be taxed"), <https://tpc.io/2OdcyBI>.
- ²⁶⁷ Lindsay Hill, *How to Transfer Carried Interest*, RSM VALUATION SERVICES (2016), <https://rsm.us/2A9KkW7>.
- ²⁶⁸ *Id.*
- ²⁶⁹ U.S. Office of Gov't Ethics, *Public Financial Disclosure Reports*, <https://bit.ly/2nkr8fp> (last viewed Aug. 7, 2018) (list of all executive branch personnel financial disclosure reports filed by Wilbur L. Ross Jr., with hyperlinks).
- ²⁷⁰ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Nov. 7, 2017), <https://bit.ly/2tGKsqx> (report of Wilbur L. Ross Jr.).
- ²⁷¹ Steven Mufson, *Government Ethics Office Scolds Wilbur Ross Over Stock Sales*, WASH. POST (July 12, 2018), <https://wapo.st/2OgDtg4> ("Ross said that once he learned of the holdings he opened short positions — normally a way for sophisticated investors to bet a stock price will fall by selling borrowed shares. Ross said he took short positions to offset stock holdings that couldn't be sold right away because they needed to be moved to his brokerage account.")
- ²⁷² See 5 C.F.R. §§ 2638.304(e)(2)(iv), 2638.305(f)(4); see also 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 9) (June 2, 2017), <https://bit.ly/2tuwXJS>.
- ²⁷³ Dan Mangan, *Commerce Chief Wilbur Ross' Financial Holdings Get New Scrutiny in Report that Highlights Short Sale of Russian-Linked Shipping Firm*, CNBC (June 19, 2018), <https://cnb.cx/211T0g6>.
- ²⁷⁴ See U.S. Office of Gov't Ethics, *Certification of Ethics Agreement Compliance* (of Wilbur L. Ross Jr.), at 1 [page 7 of the combined document] (box 3a) (June 2, 2017), <https://bit.ly/2tuwXJS>.
- ²⁷⁵ Letter to Wilbur L. Ross Jr., Sec'y, U.S. Dep't of Commerce, from David J. Apol, Acting Dir. & Gen. Counsel, U.S. Office of Gov't Ethics (July 12, 2018), <https://bit.ly/2v2SDgS>.
- ²⁷⁶ Dan Mangan, *Commerce Chief Wilbur Ross' Financial Holdings Get New Scrutiny in Report that Highlights Short Sale of Russian-Linked Shipping Firm*, CNBC (June 19, 2018), <https://cnb.cx/211T0g6>.
- ²⁷⁷ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note endnotes to Lines 4 and 6).
- ²⁷⁸ Memorandum from Marilyn L. Glynn, Gen. Counsel, U.S. Office of Gov't Ethics, to Designated Agency Ethics Officials, OGE DO-02-015 (June 11, 2002), <https://bit.ly/2OvzMTF>.
- ²⁷⁹ 18 U.S.C. § 208(a); see also U.S. Office of Gov't Ethics, *Conflicts of Interest Considerations: Legal Entities that Hold Assets* 8 (June 22, 2018), <https://bit.ly/2v389dq> ("An irrevocable trust is a trust from which assets cannot be removed, except as described in the trust document. Employees who have a vested beneficial interest in an irrevocable trust or who pay the taxes for an irrevocable trust have a financial interest in particular matters affecting the trust and its holdings for the purposes of 18 U.S.C. § 208.")
- ²⁸⁰ Memorandum from Robert I. Cusick, Dir., U.S. Office of Gov't Ethics, to Designated Agency Ethics Officials, OGE DO-08-024 (Aug. 6, 2008), <https://bit.ly/2LlkVrY>; see also U.S. Dep't of Commerce, *Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel*, 82 Fed. Reg. 19,205 (Apr. 26, 2017), <https://bit.ly/2Nt8i1l>.
- ²⁸¹ 18 U.S.C. § 208(a); see also U.S. Office of Gov't Ethics, Inf. Advisory Op. 01 OGE 12 (2001), <https://bit.ly/2OvAr7B>.
- ²⁸² 18 U.S.C. § 208(a); see also U.S. Office of Gov't Ethics, *Conflicts of Interest Considerations: Legal Entities that Hold Assets* 9 (June 22, 2018), <https://bit.ly/2v389dq> (discussing the analogous circumstance of trustee fees tied to the performance of trust assets).

²⁸³ 18 U.S.C. § 208(a); *see also* U.S. Office of Gov't Ethics, *Conflicts of Interest Considerations: Legal Entities that Hold Assets* 8 (June 22, 2018), <https://bit.ly/2v389dq> (“An irrevocable trust is a trust from which assets cannot be removed, except as described in the trust document. Employees who have a vested beneficial interest in an irrevocable trust or who pay the taxes for an irrevocable trust have a financial interest in particular matters affecting the trust and its holdings for the purposes of 18 U.S.C. § 208.”).

²⁸⁴ A side agreement to return the asset would vitiate the divestiture. Relinquishing an asset subject to a promise that it be returned in the future is not a divestiture at all; at best, it represents only a loan of the asset to another person. *See, e.g.*, U.S. Office of Gov't Ethics, Inf Advisory Op. 79 OGE 4 (1979), <https://bit.ly/2KeSrK0> (discussing the somewhat analogous circumstance of a right to future employment and explaining that the right constitutes a financial interest for purposes of 18 U.S.C. § 208); U.S. Office of Gov't Ethics, *Conflicts of Interest Considerations: Assets* 11 (June 22, 2018), <https://bit.ly/2vqrdl9> (discussing the analogous circumstance of a stock option, which gives the holder the right but not the obligation to buy or sell an asset in the future, and explaining that an unexercised, unexpired stock option is a present financial interest for purposes of 18 U.S.C. § 208).

²⁸⁵ Eric Hahn, *NGL: Natural Gas Liquids (NGLs) What is NGL?*, ELGAS: LPG GAS BLOG (July 5, 2018), <https://bit.ly/2NkSmG> (last viewed Aug. 7, 2018).

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ Eric Hahn, *NGL: Natural Gas Liquids (NGLs) What is NGL?*, ELGAS: LPG GAS BLOG (July 5, 2018), <https://bit.ly/2NkSmG> (last viewed Aug. 7, 2018); *see also* Glossary, U.S. ENERGY INF. ADMIN., <https://bit.ly/2ITHa8x> (last viewed Aug. 7, 2018).

²⁹⁰ Eric Hahn, *NGL: Natural Gas Liquids (NGLs) What is NGL?*, ELGAS: LPG GAS BLOG (July 5, 2018), <https://bit.ly/2NkSmG> (last viewed Aug. 7, 2018).

²⁹¹ *Id.*

²⁹² Liquefied Petroleum Gas (LPG) in Transport, ClimateTechWiki, <https://bit.ly/2JwglqN> (last viewed Aug. 7, 2018).

²⁹³ Eric Hahn, *NGL: Natural Gas Liquids (NGLs) What is NGL?*, ELGAS: LPG GAS BLOG (July 5, 2018), <https://bit.ly/2NkSmG> (last viewed Aug. 7, 2018); *see also* Eric Hahn, *What is LPG? Liquefied Petroleum Gas – Propane*, ELGAS: LPG GAS BLOG (July 5, 2018), <https://bit.ly/2mqbJMM> (last viewed Aug. 7, 2018); Glossary, U.S. ENERGY INF. ADMIN., <https://bit.ly/2ITHa8x> (last viewed Aug. 7, 2018).

²⁹⁴ Eric Hahn, *What is LPG? Liquefied Petroleum Gas – Propane*, ELGAS: LPG GAS BLOG (July 5, 2018), <https://bit.ly/2mqbJMM> (last viewed Aug. 7, 2018).

²⁹⁵ U.S. Dep't Energy, *Natural Gas Liquids Primer, with a Focus on the Appalachian Region* 3 (June 2018), <https://bit.ly/2O0zvbM>.

²⁹⁶ Karan Chopra, *Specifications and Requirements for LPG and LNG Ships to Sail in International Waters*, Marine Insight (July 21, 2016), <https://bit.ly/2LiUSX2> (last viewed Aug. 7, 2018).

²⁹⁷ U.S. Sec. & Exch. Comm., *Report of Foreign Private Issuer Pursuant To Rule 13a-16 or 15d-16 Under the Securities Exchange Act of 1934 (SEC Form 6-K), Navigator Holdings Ltd.* (July 12, 2017), <https://bit.ly/2sTP8H9> (press release attached, titled “Enterprise and Navigator Gas to Develop Ethylene Marine Export Terminal”); *see also* Navigator Gas, *Navigator Gas and Enterprise to Develop Ethylene Marine Export Terminal* (July 12, 2017), <https://bit.ly/2OFsVYD> (last viewed Aug. 7, 2018).

²⁹⁸ *Liquefied Petroleum Gas (LPG) in Transport*, CLIMATETECHWIKI, <https://bit.ly/2JwglqN> (last viewed Aug. 7, 2018).

²⁹⁹ U.S. Dep't Energy, *Natural Gas Liquids Primer, with a Focus on the Appalachian Region* 5 (June 2018), <https://bit.ly/2O0zvbM>.

³⁰⁰ U.S. Sec. & Exch. Comm., Navigator Holdings Ltd., (*Form 20-F*), at 68, Item 5(D) (Mar. 3, 2016), <https://bit.ly/2JxDiKp> (last viewed Aug. 7, 2018).

³⁰¹ Suzy Khimm, *Trump's Chinese Gas Deal Raises Ethics Issues for Wilbur Ross*, NBC NEWS (Nov. 8, 2017), <https://nbcnews.to/2hhi4oz>.

³⁰² Clifford Krauss, *Boom in American Liquefied Natural Gas Is Shaking Up the Energy World*, N.Y. TIMES (Oct. 26, 2017), <https://nyti.ms/2gnggNX>.

³⁰³ U.S. Dep't Energy, *Natural Gas Liquids Primer, with a Focus on the Appalachian Region* 1 (June 2018), <https://bit.ly/2O0zvbM>.

³⁰⁴ *Id.*

³⁰⁵ U.S. Sec. & Exch. Comm., *Amendment No. 3 to Form F-1: Registration Statement Under the Securities Act of 1933, Navigator Holdings, Ltd.* (Nov. 6, 2013), <https://bit.ly/2Ngmfzy>.

³⁰⁶ *United States v. Gorman*, 807 F.2d 1299, 1303 (6th Cir. 1986) (citing Office of Gov't Ethics Inf. Advisory Op. 83 OGE 1 (1983)).

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- ³⁰⁷ Eric Hahn, *What is LPG? Liquefied Petroleum Gas – Propane*, ELGAS: LPG GAS BLOG (July 5, 2018), <https://bit.ly/2mqbJMM> (last viewed Aug. 7, 2018).
- ³⁰⁸ U.S. Sec. & Exch. Comm., *Exhibit 99.1 to Form 6-K: Enterprise and Navigator Announce Location of Ethylene Export Terminal; Begin Construction, Navigator Holdings, Ltd. & Enterprise Products Partners L.P.* (June 1, 2018) (press release), <https://bit.ly/2AJtkX0>.
- ³⁰⁹ U.S. Dep’t of Commerce, *U.S. - China Business Exchange Nov. 8-9, 2017*, <https://bit.ly/2N8KDIU> (last viewed Aug. 7, 2018).
- ³¹⁰ Honeywell Int’l Inc., *China’s Largest Propane Dehydrogenation Unit Using Honeywell UOP Technology* (May 3, 2017), <https://bit.ly/2uwy0dk> (last visited Aug. 7, 2018).
- ³¹¹ Bassam Fattouh, *The US Shale Revolution and the Changes in LPG Trade Dynamics: A Threat to the GCC?*, Oxford Inst. for Energy Studies, Univ. of Oxford (July 2014), <https://bit.ly/2LdygHZ>; see also U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report (OGE Form 278e)* (Dec. 19, 2016), <https://bit.ly/2iv3hJa> (nominee financial disclosure report of Wilbur L. Ross Jr., note Part 1, Line 41, resignation from Navigator in November 2014).
- ³¹² Eric Hahn, *Is There a Difference Between Propane vs LPG?*, ELGAS: LPG GAS BLOG (May 5, 2018), <https://bit.ly/2LYhOfH> (“Propane is classified as LPG, along with butane, isobutane and mixtures of these gases.”).
- ³¹³ U.S. Sec. & Exch. Comm., Report of Foreign Private Issuer Pursuant To Rule 13a-16 or 15d-16 Under the Securities Exchange Act of 1934 (SEC Form 6-K), NAVIGATOR HOLDINGS LTD. (Aug. 7, 2014), <https://bit.ly/2vgsL1V>.
- ³¹⁴ Navigator Holdings, Ltd., *Stifel Presentation, Navigator Gas* (Aug. 2017), <https://bit.ly/2OsUDXJ> (last viewed Aug. 10, 2018).
- ³¹⁵ *Id.*
- ³¹⁶ U.S. Energy Info. Admin., *Petroleum & Other Liquids*, (July 31, 2018), <https://bit.ly/2NIXqBG> (last viewed Aug. 10, 2018).
- ³¹⁷ Carolyn Davis, *Gulf Coast Exporters Talk Up LNG, Ethane Sales to China*, NATURAL GAS INTELLIGENCE (Nov. 10, 2017), <https://bit.ly/2n7whaj>.
- ³¹⁸ U.S. Dep’t of Commerce, *U.S. - China Business Exchange Nov. 8-9, 2017*, <https://bit.ly/2N8KDIU> (last viewed Aug. 7, 2018).
- ³¹⁹ *Id.*
- ³²⁰ 5 C.F.R. § 2640.103(b) (“[T]he term financial interest means the potential for gain or loss to the employee”). Note that, with respect to the ownership of stock, the employee stands in the shoes of the company, and the issue is the potential for gain or loss to the company. See Example 1 to 5 C.F.R. § 2640.103(c) (requiring an employee’s recusal from a particular matter affecting a company in which the employee’s minor child holds stock, without regard to the effect of the particular matter on the stock price); see also Example 1 to 5 C.F.R. § 2640.202(a) (requiring an employee to recuse from a particular matter in which the employee holds stock, without regard to the effect of the particular matter on the stock price); U.S. Office of Gov’t Ethics, *Conflicts of Interest Considerations: Assets 13-14* (June 22, 2018), <https://bit.ly/2mmG9wy> (“Because shares of stock represent an ownership interest in a company, a particular matter that has a direct and predictable effect on the issuing company’s financial interests is treated as having a direct and predictable effect on the financial interests of the shareholders. Therefore, an employee who holds stock in a company is prohibited from participating personally and substantially in any particular matter that the employee knows would have a direct and predictable effect on the issuing company.”).
- ³²¹ 5 C.F.R. § 2640.103(a)(3)(ii).
- ³²² Ferrostaal Indus. Projects, *Olefins*, <https://bit.ly/2uJFM2Q> (last viewed Aug. 7, 2018).
- ³²³ U.S. Sec. & Exch. Comm., Report of Foreign Private Issuer Pursuant To Rule 13a-16 or 15d-16 Under the Securities Exchange Act of 1934 (SEC Form 6-K), NAVIGATOR HOLDINGS LTD. (July 12, 2017), <https://bit.ly/2sTP8H9>.
- ³²⁴ ICIS, *Ethylene Production and Manufacturing Process* (Nov. 5, 2007), <https://bit.ly/2jUynZG> (last viewed Aug. 7, 2018).
- ³²⁵ See Ctr. for Indus. Educ. Collaboration, Univ. of York, *Cracking and Related Refinery Processes*, <https://bit.ly/2fUk4ly> (last viewed Aug. 7, 2018); U.S. Dep’t Energy, *Natural Gas Liquids Primer, with a Focus on the Appalachian Region* 33 (2018), <https://bit.ly/2O0zvbM> (the American process involves feeding ethane into a hydrocracker “that, under high temperature and pressure and in combination with steam, ‘cracks’ or transforms the ethane (C₂H₆) molecule into primarily ethylene (C₂H₄), as well as co-products such as methane, hydrogen, and other molecules.”).
- ³²⁶ U.S. Sec. & Exch. Comm., Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (Form 20-F), NAVIGATOR HOLDINGS LTD., at 71 (Item 5(D)) (Mar. 5, 2018), <https://bit.ly/2Nic3GE>.

- ³²⁷ Bus. Wire, *United States Ethylene Export Report 2016-2020 - Research and Markets* (Jan. 3, 2017), <https://bit.ly/2n9YnBX>; see also IHS Chem., *Global Ethylene Logistics Review Ready to Be Waterborne?* 3 (2015), <https://bit.ly/2AF1hrU> (“Rapid increases in US LPG and ethane supply has outpaced growth in domestic end uses, leading increased exports. Most of the potential for exporting ethane, ethylene and other liquefied gases involves waterborne shipments to markets overseas. . . . The pressure from rising ethane supply availability is contributing to lower US prices, making US exports to foreign markets competitive with local supplies.”).
- ³²⁸ Bus. Wire, *Enterprise and Navigator Gas to Develop Ethylene Marine Export Terminal* (July 12, 2017), <https://bit.ly/2vCCS0g>.
- ³²⁹ *Id.*; see also Navigator Gas, *Enterprise and Navigator Announce Location of Ethylene Export Terminal; Begin Construction* (May 29, 2018), <https://bit.ly/2M0sh9B>; Navigator Gas, *Enterprise and Navigator Gas to Develop Ethylene Marine Export Terminal* (July 12, 2017), <https://bit.ly/2vCCS0g>.
- ³³⁰ U.S. Sec. & Exch. Comm., Report of Foreign Private Issuer Pursuant To Rule 13a-16 or 15d-16 Under the Securities Exchange Act of 1934 (SEC Form 6-K), NAVIGATOR HOLDINGS LTD. (July 12, 2017), <https://bit.ly/2sTP8H9>; see also Bus. Wire, *Enterprise and Navigator Gas to Develop Ethylene Marine Export Terminal* (July 12, 2017), <https://bit.ly/2vCCS0g>.
- ³³¹ Mike McIntire, Sasha Chavkin & Martha M. Hamilton, *Commerce Secretary’s Offshore Ties to Putin ‘Cronies’*, N.Y. TIMES (Nov. 5, 2017), <https://nyti.ms/2h1Oqci>.
- ³³² Palak Puri & Uday Turaga, *Key Issues for U.S. Ethylene Exports*, ADI Analytics, <https://bit.ly/2AAtnEw> (last viewed Aug. 7, 2018).
- ³³³ Heather Timmons, *The Company Linking Wilbur Ross to Putin Cronies Has a Key Role in Trump’s Energy Plan*, QUARTZ (Nov. 6, 2017), <https://bit.ly/2zibGJI>.
- ³³⁴ U.S. Sec. & Exch. Comm., *Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (Form 20-F)*, Navigator Holdings Ltd., at 10 (Item 3(D)) (Mar. 1, 2017), <https://bit.ly/2nZ1NXm>.
- ³³⁵ U.S. Dep’t of Commerce, *U.S. - China Business Exchange Nov. 8-9, 2017*, <https://bit.ly/2N8KDIU> (last viewed Aug. 7, 2018).
- ³³⁶ Reuters, *China Energy Investment Signs MOU for \$83.7 Billion in West Virginia Projects* (Nov. 9, 2017), <https://reut.rs/2mhBSxf>.
- ³³⁷ American Ethane, *U.S. Ethane Will Go to China, Company CEO John Houghtaling*, <https://bit.ly/2vs9UBc> (last viewed Aug. 7, 2018); see also Casey Junkins, *U.S. Ethane Will Go To China*, INTELLIGENCER (Nov. 13, 2017), <https://bit.ly/2M3UeOZ>.
- ³³⁸ U.S. Dep’t of Commerce, *U.S. - China Business Exchange Nov. 8-9, 2017*, <https://bit.ly/2N8KDIU> (last viewed Aug. 7, 2018).
- ³³⁹ 5 C.F.R. § 2640.103(b) (“[T]he term financial interest means the potential for gain or loss to the employee”). Note that, with respect to the ownership of stock, the employee stands in the shoes of the company, and the issue is the potential for gain or loss to the company. See Example 1 to 5 C.F.R. § 2640.103(c) (requiring an employee’s recusal from a particular matter affecting a company in which the employee’s minor child holds stock, without regard to the effect of the particular matter on the stock price); see also Example 1 to 5 C.F.R. § 2640.202 (a) (requiring an employee to recuse from a particular matter in which the employee holds stock, without regard to the effect of the particular matter on the stock price); U.S. Office of Gov’t Ethics, *Conflicts of Interest Considerations: Assets* 13-14 (June 22, 2018), <https://bit.ly/2mmG9wv> (“Because shares of stock represent an ownership interest in a company, a particular matter that has a direct and predictable effect on the issuing company’s financial interests is treated as having a direct and predictable effect on the financial interests of the shareholders. Therefore, an employee who holds stock in a company is prohibited from participating personally and substantially in any particular matter that the employee knows would have a direct and predictable effect on the issuing company.”).
- ³⁴⁰ 5 C.F.R. § 2640.103(a)(3)(ii).
- ³⁴¹ Bus. Wire, *Enterprise and Navigator Gas to Develop Ethylene Marine Export Terminal* (July 12, 2017), <https://bit.ly/2vCCS0g>; see also Navigator Gas, *Enterprise and Navigator Announce Location of Ethylene Export Terminal; Begin Construction* (May 29, 2018), <https://bit.ly/2M0sh9B>.
- ³⁴² Alexander H. Tullo, *Clearing the Gulf Coast’s Chemicals Logjam*, CHEM. & ENG’G NEWS (Aug. 28, 2017), <https://bit.ly/2vLTOlg>.
- ³⁴³ Alexander H. Tullo, *Chemical Industry Slams Trump Steel Tariffs*, CHEM. & ENG’G NEWS (Mar. 2, 2018), <https://bit.ly/2LYGhBR>.
- ³⁴⁴ Press Release, Am. Petroleum Inst., *API: Department Of Commerce’s Steel Tariffs Exclusion Process Must Demonstrate Clarity and Flexibility* (Mar. 19, 2018), <https://bit.ly/2M31NoY> (last viewed Aug. 7, 2018).
- ³⁴⁵ Bruce Thompson, *Steel tariffs Will Harm U.S. Energy Production and American Consumers*, HILL (June 20, 2018), <https://bit.ly/2M0WS82>.
- ³⁴⁶ Dino Grandoni, *The Energy 202: This is how pipeline companies will seek a pass on Trump tariffs*, WASH. POST (Mar. 12, 2018), <https://wapo.st/2Or8HAZ>.

³⁴⁷ Letter from Fred H. Hutchison, President & CEO, LNG Allies, to Wilbur Ross Jr., Sec’y, Dep’t of Commerce (Mar. 14, 2018), <https://bit.ly/2ONQ0sa> (last visited Aug. 7, 2018).

³⁴⁸ U.S. Sec. & Exch. Comm., *Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (Form 20-F)*, Navigator Holdings Ltd., at 71 (Item 5(D)) (Mar. 5, 2018), <https://bit.ly/2Nic3GE>.

³⁴⁹ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report (OGE Form 278e)* (Dec. 19, 2016), <https://bit.ly/2iv3hJa> (nominee financial disclosure report of Wilbur L. Ross Jr., note Part 1, Line 41).

³⁵⁰ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report (OGE Form 278e)* (Dec. 19, 2016), <https://bit.ly/2iv3hJa> (nominee financial disclosure report of Wilbur L. Ross Jr., note Part 1, Line 4); *see also* Letter from Wilbur Ross Jr., Sec’y of Dep’t of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official 1 (Sec. 2, Item 6) (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement, pledge to resign from W.L. Ross & Co. LLC); *Commerce Secretary Swearing-In Ceremony*, C-SPAN (Feb. 28, 2017), <https://cs.pn/2NHZ9CO>; U.S. Office of Gov’t Ethics, *Certification of Ethics Agreement Compliance* (of Wilbur L. Ross Jr.), at 1 [page 7 of the combined document] (box 2) (June 2, 2017), <https://bit.ly/2tuwXJS> (certification that he completed all resignations required in his ethics agreement).

³⁵¹ Jake Simpson, *WL Ross Drops \$110M for Majority Stake in Gas Shipping Co.*, LAW 360 (Aug. 10, 2012), <https://www.law360.com/articles/368845>.

³⁵² U.S. Sec. & Exch. Comm., *Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (Form 20-F)*, Navigator Holdings Ltd., at 78 (Item 7(A), n.2) (Mar. 3, 2016), <https://bit.ly/2JxDiKp>.

³⁵³ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note Lines 15-16).

³⁵⁴ Letter from Wilbur Ross Jr., Sec’y of Dep’t of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official 6 (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement).

³⁵⁵ *Id.* at 1.

³⁵⁶ *Nomination of Wilbur L. Ross Jr., to Be Secretary of the Department of Commerce: Hearing Before the S. Comm. on Commerce, Sci., & Transp.*, 115th Cong. 43 (2017), <https://bit.ly/2zmnJW2>.

³⁵⁷ *Id.* at 104.

³⁵⁸ 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 9) (June 2, 2017), <https://bit.ly/2tuwXJS> (“I have completed my initial ethics briefing, pursuant to 5 C.F.R. § 2635.305.”).

³⁵⁹ 5 C.F.R. § 2638.305(f)(2).

³⁶⁰ 5 C.F.R. § 2638.304(e)(1)(i).

³⁶¹ 5 C.F.R. § 2638.107(f).

³⁶² U.S. Office of Gov’t Ethics, *Certification of Ethics Agreement Compliance* (of Wilbur L.), at 2 [pages 2, 5 and 8 of the combined document] (box 6a) (June 2; Sept. 5; Nov. 1, 2017), <https://bit.ly/2tuwXJS>.

³⁶³ Letter from Wilbur Ross Jr., Sec’y of Dep’t of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official 1 (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement).

³⁶⁴ Letter from Wilbur Ross Jr., Sec’y of Dep’t of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement).

³⁶⁵ *Id.*

³⁶⁶ *Id.* at 8; *see also* 5 C.F.R. § 2634.802(b).

³⁶⁷ Letter from Wilbur Ross Jr., Sec’y of Dep’t of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official 9 (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement).

³⁶⁸ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Apr. 24, 2017), <https://bit.ly/2KwxgOz> (report of Wilbur L. Ross Jr.).

³⁶⁹ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr.).

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr.); *see also* Terrence Dopp, *Commerce’s Ross Says Navigator Divestment Not Typical Short Sale*, BLOOMBERG (June 21 2018), <https://bloom.bg/2uPPPrpJ>; *What You Need to Know About Wilbur Ross’ Many Conflicts — “Trump, Inc.”*, PROPUBLICA (June 22, 2018), <https://bit.ly/2KhvRYd>.

³⁷⁴ Dan Mangan, *Commerce Chief Wilbur Ross’ Financial Holdings Get New Scrutiny in Report that Highlights Short Sale of Russian-Linked Shipping Firm*, CNBC (June 19, 2018), <https://cnb.cx/211T0g6>.

³⁷⁵ U.S. Office of Gov't Ethics, *Certification of Ethics Agreement Compliance* (of Wilbur L. Ross Jr.) (Nov. 1, 2017), <https://bit.ly/2tuwXJS>.

³⁷⁶ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr.).

³⁷⁷ Steven Mufson, *Wilbur Ross Admits to Another Tardy Stock Sale*, WASH. POST (July 9, 2018), <https://wapo.st/2LYZQtF> (“The spokesman said that because Ross ‘was simultaneously short and long, the Secretary had no economic interest in the value of the shares subsequent to the date of the short.’ Ethics experts say, however, that short selling would mean that Ross would continue to have an interest in the stock price. Depending on timing, leverage and basis prices, his short and long interests might not match.”).

³⁷⁸ Memorandum from Marilyn L. Glynn, Gen. Counsel, U.S. Office of Gov't Ethics, to Designated Agency Ethics Officials, OGE DO-02-015 (June 11, 2002), <https://bit.ly/2OyzMTE>.

³⁷⁹ 18 U.S.C. § 208(a); see also U.S. Office of Gov't Ethics, *Conflicts of Interest Considerations: Legal Entities that Hold Assets* 8 (June 22, 2018), <https://bit.ly/2v389dq> (“An irrevocable trust is a trust from which assets cannot be removed, except as described in the trust document. Employees who have a vested beneficial interest in an irrevocable trust or who pay the taxes for an irrevocable trust have a financial interest in particular matters affecting the trust and its holdings for the purposes of 18 U.S.C. § 208.”).

³⁸⁰ Memorandum from Robert I. Cusick, Dir., U.S. Office of Gov't Ethics, to Designated Agency Ethics Officials, OGE DO-08-024 (Aug. 6, 2008), <https://bit.ly/2LlkVrY>; see also Request for Public Input on the Application of the Criminal Conflict of Interest Prohibition to Certain Beneficial Interests in Discretionary Trusts, U.S. Office of Gov't Ethics, 82 Fed Reg. 122 (Jan. 3, 2017), <https://bit.ly/2hOKnNO>.

³⁸¹ 18 U.S.C. § 208(a); see also Office of Gov't Ethics, Inf. Advisory Op. 01 OGE 12 (2001), <https://bit.ly/2OyAr7B>.

³⁸² 18 U.S.C. § 208(a); see also U.S. Office of Gov't Ethics, *Conflicts of Interest Considerations: Legal Entities that Hold Assets* 9 (June 22, 2018), <https://bit.ly/2v389dq> (discussing the analogous circumstance of trustee fees tied to the performance of trust assets).

³⁸³ 18 U.S.C. § 208(a); see also U.S. Office of Gov't Ethics, *Conflicts of Interest Considerations: Legal Entities that Hold Assets* 8 (June 22, 2018), <https://bit.ly/2v389dq> (“An irrevocable trust is a trust from which assets cannot be removed, except as described in the trust document. Employees who have a vested beneficial interest in an irrevocable trust or who pay the taxes for an irrevocable trust have a financial interest in particular matters affecting the trust and its holdings for the purposes of 18 U.S.C. § 208.”).

³⁸⁴ A side agreement to return the asset would vitiate the divestiture. Relinquishing an asset subject to a promise that it be returned in the future is not a divestiture at all; at best, it represents only a loan of the asset to another person. See, e.g., U.S. Office of Gov't Ethics, Advisory Op. 79 OGE 4 (1979) <https://bit.ly/2KeSrko> (discussing the somewhat analogous circumstance of a right to future employment and explaining that the right constitutes a financial interest for purposes of 18 U.S.C. § 208); U.S. Office of Gov't Ethics, *Conflicts of Interest Considerations: Assets* 11 (June 22, 2018), <https://bit.ly/2mmG9wv> (discussing the analogous circumstance of a stock option, which gives the holder the right, but not the obligation, to buy or sell an asset in the future, and explaining that an unexercised, unexpired stock option is a present financial interest for purposes of 18 U.S.C. § 208).

³⁸⁵ The OGE defines a carried interest, also known as a profit interest, as “an arrangement that stipulates the right to future payments based on the performance of an investment fund or business.” U.S. Office of Gov't Ethics, *Public Financial Disclosure Guide*, <https://bit.ly/2AMaXRr> (definition of *Carried Interest*) (last viewed Aug. 10, 2018). Ross's ethics agreement promised to divest *all* financial interests in the entities listed and carved out no exceptions for carried interests. See Letter from Wilbur Ross Jr., Sec'y of Dep't of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official (Jan. 15, 2017), <https://bit.ly/2KdiiZD> (ethics agreement).

³⁸⁶ See 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., note Part 2, Lines 10.1.1; 10.2.2; 10.6.4; 10.7.6; 10.7.7; 10.7.8; 10.8.2; 10.9.1.1.1; 10.10.1; 10.11.1; 10.12.1.6; 10.12.1.7; 10.13.1; 11.1.1; 12.8; 13.2; 16.1.1; 17.2; 17.3.2; 17.4.1; 18.1; 19.2; 21.1; 24.1.2; 25.1).

³⁸⁷ See, e.g., 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., note Part 2, Lines 10.2.2, 10.7.6, 10.7.7, 10.7.8, 10.8.2, 10.9.1.1.1, 10.11.1, 10.12.1.6, 10.12.1.7, 10.13.1, 11.1.1, 13.2, 16.1.1, 24.1.2, 25.1).

³⁸⁸ Kirkland & Ellis, LLP, *Transferring Carried Interests* (2005), <https://bit.ly/2v33GGJ>.

³⁸⁹ Ross would have to pay a percentage on the net capital gain of the fund. See *What Is Carried Interest, and How Should It Be Taxed?*, TAX POLICY CTR., <https://tpc.io/2OdcyBI> (last viewed Aug. 7, 2018) (“Carried interest is a contractual right that entitles the general partner of a private investment fund (often a private equity fund) to share in the fund's profits []. A fund typically uses the carried interest to pass through its net capital gains to the general partner which, in turn, passes the gains on to the investment managers. The managers pay a

federal personal income tax on these gains at a rate of 23.8 percent (20 percent tax on net capital gains plus 3.8 percent investment tax).”

³⁹⁰ The Tax Policy Center, *Briefing Book* (see “Key Elements of the U.S. Tax System” and specifically “What is a carried interest, and how should it be taxed”), <https://tpc.io/2OdcvBI>.

³⁹¹ Mike McIntire, *Commerce Secretary Shorted Stock as Negative Coverage Loomed*, N.Y. TIMES (June 19, 2018), <https://nyti.ms/2MFTFHR>.

³⁹² 5 C.F.R. §§ 2638.304(e)(2)(iv), 2638.305(f)(4); see also 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 9) (June 2, 2017), <https://bit.ly/2tuwXJS>.

³⁹³ Dan Mangan, *Commerce Chief Wilbur Ross’ Financial Holdings Get New Scrutiny in Report that Highlights Short Sale of Russian-Linked Shipping Firm*, CNBC (June 19, 2018), <https://cnb.cx/2I1T0g6>.

³⁹⁴ U.S. Office of Gov’t Ethics, *Certification of Ethics Agreement Compliance* (of Wilbur L. Ross Jr.), at 1 [page 7 of the combined document] (box 3a) (June 2, 2017), <https://bit.ly/2tuwXJS>.

³⁹⁵ Letter to Wilbur L. Ross Jr., Sec’y, U.S. Dep’t of Commerce, from David J. Apol, Acting Dir. & Gen. Counsel, U.S. Office of Gov’t Ethics (July 12, 2018), <https://bit.ly/2v2SDgS>.

³⁹⁶ Dan Mangan, *Commerce Chief Wilbur Ross’ Financial Holdings Get New Scrutiny in Report that Highlights Short Sale of Russian-Linked Shipping Firm*, CNBC (June 19, 2018), <https://cnb.cx/2I1T0g6>.

³⁹⁷ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 1, 2017), <https://bit.ly/2Kcp325> (report of Wilbur L. Ross Jr., note Line 1); U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 15, 2018), <https://bit.ly/2IU5ttz> (report of Wilbur L. Ross Jr., note Line 1).

³⁹⁸ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 15, 2018), <https://bit.ly/2IU5ttz> (report of Wilbur L. Ross Jr., note Line 1).

³⁹⁹ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 1, 2017), <https://bit.ly/2Kcp325> (report of Wilbur L. Ross Jr., note Line 3); 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., note Line 2).

⁴⁰⁰ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note Lines 11-12); Wilbur L. Ross Jr., *Periodic Transaction Report (OGE Form 278-T)*, at 6 (Nov. 6, 2017), <https://bit.ly/2KiK782>

⁴⁰¹ Tom Scheck & Maria Curi, *Criticized for Ship Holdings, Ross Owns More than Previously Known and the Deals Continue*, APM REPORTS (Nov. 8, 2017), <https://bit.ly/2vEq4GQ>.

⁴⁰² *Id.*

⁴⁰³ Dan Alexander, *Wilbur Ross’ Calendar Reveals Dozens of Meetings with Companies Tied to His Personal Fortune*, FORBES (July 13, 2018), <https://bit.ly/2uOuv1g>.

⁴⁰⁴ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note endnote to Line 12).

⁴⁰⁵ Letter from Wilbur Ross Jr., Sec’y of Dep’t of Commerce Nominee, to David Maggi, Alternate Designated Agency Ethics Official 2, 8 (Jan. 15, 2017), <https://bit.ly/2KdilZD> (ethics agreement).

⁴⁰⁶ U.S. Office of Gov’t Ethics, *Certification of Ethics Agreement Compliance* (of Wilbur L. Ross Jr.), at 1 (box 3a) (Nov. 1, 2017), <https://bit.ly/2tuwXJS>.

⁴⁰⁷ *Id.*

⁴⁰⁸ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr. note Lines 11-12, 15-16); see also Dan Alexander, *Wilbur Ross Admits He Kept Stock In (Another) Company He Previously Claimed He Divested*, FORBES (July 6, 2018), <https://bit.ly/2O98dzt> (“On federal filings, Ross said he held stock in Invesco and Air Lease that he did not realize he owned and believed he retained stock in Sun Bancorp that he had already sold.”).

⁴⁰⁹ U.S. Office of Gov’t Ethics, *Certification of Ethics Agreement Compliance* (of Wilbur L. Ross Jr.), at 1 (box 3a) (Nov. 1, 2017), <https://bit.ly/2tuwXJS>.

⁴¹⁰ *Id.*

⁴¹¹ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note Line 11).

⁴¹² U.S. Office of Gov't Ethics, *Public Financial Disclosure Guide* 247 (2018), <https://bit.ly/2LWcxVc> (“[F]ilers are required to report transactions within 30 days of notification.”).

⁴¹³ See U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note endnote to Line 12 (“I sold my few shares of Sun Bancorp, Inc. on Mar. 24, 2017. Through an oversight, I did not include the sale in Transaction Reports that I filed in Apr. covering other divestments and later mistakenly thought that the shares had not been sold. To remedy this, I 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.”)); see also Lori Ann LaRocco and Dan Mangan, *Wilbur Ross says he shorted two more stocks during his time as Commerce secretary*, CNBC (Jul. 3, 2018) (“These transactions are not profit-seeking short sales,” Ross told CNBC. “These shorts are technical ways of disposing the stocks.”), <https://cnb.cx/2NgfH3T>.

⁴¹⁴ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note Line 12 (the short position was closed on Dec. 12, 2017)).

⁴¹⁵ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Nov. 6, 2017), <https://bit.ly/2KiK782> (report of Wilbur L. Ross Jr.).

⁴¹⁶ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Nov. 7, 2017), <https://bit.ly/2tGKsqx> (report of Wilbur L. Ross Jr.).

⁴¹⁷ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Nov. 7, 2017), <https://bit.ly/2tGKsqx> (report of Wilbur L. Ross Jr., note Line 1); U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note Line 11).

⁴¹⁸ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Nov. 7, 2017), <https://bit.ly/2tGKsqx> (report of Wilbur L. Ross Jr., note Line 1); U.S. Office of Gov't Ethics, *Certification of Ethics Agreement Compliance* (of Wilbur L. Ross Jr.) (Nov. 1, 2017), <https://bit.ly/2tuwXJS>.

⁴¹⁹ See, e.g., Heather Timmons, *The Company Linking Wilbur Ross to Putin Cronies Has a Key Role in Trump's Energy Plan*, QUARTZ (Nov. 6, 2017), <https://bit.ly/2zibGII>; *Commerce Secretary Ross Under Scrutiny for Business Link to Russia*, NPR: MORNING EDITION (Nov. 6, 2017), <https://n.pr/2OlpdNY>; David Dayen, *The Wilbur Ross Scandal Isn't About Russia, It's About Corruption*, INTERCEPT (Nov. 8, 2017), <https://bit.ly/2AuAWZy>; Louis Nelson, *Wilbur Ross: Accusations that I Failed to Disclose Russia-Linked Investments Are 'Evil'*, POLITICO (Nov. 6, 2017), <https://politi.co/2zgCJUL>; Mike McIntire, Sasha Chavkin & Martha M. Hamilton, *Commerce Secretary's Offshore Ties to Putin 'Cronies'*, N.Y. TIMES (Nov. 5, 2017), <https://nyti.ms/2hIOqci>.

⁴²⁰ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note Lines 11-12).

⁴²¹ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr., note Lines 15-16; endnote to Line 15 (Ross did not complete the divestiture of his Invesco interests until Dec. 20, 2017)).

⁴²² *Id.*

⁴²³ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 15, 2018), <https://bit.ly/2lU5ttz> (report of Wilbur L. Ross Jr., note Line 1 (disclosing his retained interest in Air Corporation throughout his tenure as Commerce secretary)); see also U.S. Office of Gov't Ethics, *Certification of Ethics Agreement Compliance* (of Wilbur L. Ross Jr.) (Nov. 1, 2017), <https://bit.ly/2tuwXJS>.

⁴²⁴ Lori Ann LaRocco & Dan Mangan, *Wilbur Ross Says He Shorted Two More Stocks During His Timesays he shorted two more stocks during his time as Commerce Secretary*, CNBC (July 2, 2018), <https://cnb.cx/2NgfH3T> (“Ross disclosed to CNBC that in May 2017 he shorted the stock of both Air Lease and Ocwen Financial Corporation.”).

⁴²⁵ U.S. Office of Gov't Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (June 15, 2018), <https://bit.ly/2lU5ttz> (report of Wilbur L. Ross Jr., note Line 1).

⁴²⁶ Tara Bahrapour, *Commerce Secretary Suggested Citizenship Question to Justice Dept., According to Memo, Contradicting His Congressional Testimony*, WASH. POST (June 22, 2018), <https://wapo.st/2LUVt9f>.

⁴²⁷ Paul Waldman, *Opinion, The Trump Administration's Deception on the Census Should Be a Major Scandal*, WASH. POST (July 25, 2018), <https://wapo.st/2OM6uB2>.

⁴²⁸ Ross said that he was taking the inclusion of the citizenship question very seriously because it came “from the Department of Justice,” and the administration’s stated reason for including the question is for enforcement of the Voting Rights Act. Tara Bahrapour, *Commerce Secretary Suggested Citizenship Question to Justice Dept., According to Memo, Contradicting His Congressional Testimony*, WASH. POST (June 22, 2018), <https://wapo.st/2LUVT9f>.

⁴²⁹ Hansi Lo Wang, *Commerce Secretary Grew Impatient Over Census Citizenship Question, Emails Reveal*, NPR (July 24, 2018), <https://n.pr/2LHQBxb>.

⁴³⁰ *Id.* (“It now appears that the idea of adding the citizenship question originated with Secretary Ross, not the Department of Justice, and that its origins long predated the December 2017 letter from the Justice Department,” Judge Jesse Furman said in Manhattan federal court during a hearing on Jul. 3, when he ordered the Commerce Department and Justice Department to release more internal documents about the citizenship question.”).

⁴³¹ Hansi Lo Wang, *Commerce Secretary Grew Impatient Over Census Citizenship Question, Emails Reveal*, NPR (July 24, 2018), <https://n.pr/2LHQBxb>.

⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ Michael Wines, *New Emails Show Push by Trump Officials to Add Citizenship Question to Census*, N.Y. TIMES (July 24, 2018), <https://nyti.ms/2AWBZpu> (“We will get that in place,” Earl Comstock, the Commerce Department director of policy and strategic planning, responded. “We need to work with Justice to get them to request that citizenship be added back as a census question.”).

⁴³⁵ U.S. Dep’t of Commerce, *Supplemental Memorandum by Secretary of Commerce Wilbur Ross Regarding the Administrative Record in Census Litigation* (June 21, 2018), <https://bit.ly/2KxkZFv>.

⁴³⁶ Lori Ann LaRocco & Dan Mangan, *Wilbur Ross Says He Shorted Two More Stocks During His Time as Commerce Secretary*, CNBC (July 2, 2018), <https://cnb.cx/2NgfH3T>.

⁴³⁷ Letter to Wilbur L. Ross Jr., Sec’y, U.S. Dep’t of Commerce, from David J. Apol, Acting Dir. & Gen. Counsel, U.S. Office of Gov’t Ethics (July 12, 2018), <https://bit.ly/2v2SDgS>.

⁴³⁸ Lori Ann LaRocco & Dan Mangan, *Wilbur Ross Says He Shorted Two More Stocks During His Time as Commerce Secretary*, CNBC (July 2, 2018), <https://cnb.cx/2NgfH3T>.

⁴³⁹ U.S. Office of Gov’t Ethics, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2lv0XSi> (report of Wilbur L. Ross Jr.).

⁴⁴⁰ Letter to Wilbur L. Ross Jr., Sec’y, U.S. Dep’t of Commerce, from David J. Apol, Acting Dir. & Gen. Counsel, U.S. Office of Gov’t Ethics (July 12, 2018), <https://bit.ly/2v2SDgS>.

⁴⁴¹ Bill Allison & Margaret Talev, *Ross Says He’ll ‘Probably’ Sell Stake in Putin-Linked Company*, BLOOMBERG (Nov. 5, 2017), <https://bloom.bg/2zkdqQG> (relevant part of video starts at approximately 0:00:54).

⁴⁴² *See, e.g.*, 5 C.F.R. § 2638.104 (Government ethics responsibilities of agency ethics officials); U.S. Office of Gov’t Ethics, *DAEO List* (Aug. 6, 2018), <https://bit.ly/2OhXjYm> (last viewed Aug. 10, 2018); U.S. Office of Gov’t Ethics, *Congressional Budget Justification, Annual Performance Plan and Performance Report, Fiscal Year 2018*, at 21 (2017), <https://bit.ly/2AHYY7i> (“One key to the continuing success of the decentralized executive branch ethics program that OGE leads is a highly trained community of ethics officials.”); U.S. Office of Gov’t Ethics, *Mission and Responsibilities*, <https://bit.ly/2LWIFch> (*see The Executive Branch Ethics Program: Roles and Responsibilities*) (last viewed Aug. 6, 2018); U.S. Office of Gov’t Ethics, *Agency Profile: Preventing Conflicts of Interest 7*, <https://bit.ly/2AHZYby> (undated publication; last viewed Aug. 6, 2018) (“OGE is the supervising ethics office for the decentralized ethics program established by the Ethics in Government Act. While the statute does not give OGE direct supervisory control over the approximately 4,500 agency ethics officials working in the more than 130 executive branch agencies, OGE issues ethics regulations and interpretive guidance that define the contours of their work.”).

⁴⁴³ Tom Kludt, *Forbes Drops Bombshell on Wilbur Ross — and Its Own Reporting*, CNN (Nov. 7, 2017), <https://cnnmon.ie/2LUzk4y>.

⁴⁴⁴ Dan Alexander, *Lies, China and Putin: Solving the Mystery of Wilbur Ross’ Missing Fortune*, FORBES (June 18, 2018), <https://bit.ly/2vHBGsK>.