



Republican frustrations grow as SEC chair proves frequent ally of Democrats

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Republicans are starting to wonder if they accidentally picked a Democrat to run the country's top securities regulator.

Jay Clayton was appointed by the Trump administration to chair the U.S. Securities and Exchange Commission (SEC) with a partisan mandate to help public companies by relaxing rules and enforcement. But the SEC chair - an independent - has moved cautiously on rule-changes and sided with Democrats on more than a third of decisive votes since he came to office.

A bipartisan consensus-builder in his 20 months leading the SEC, Clayton has emerged as a surprising source of frustration among Republican lawmakers and some business groups.

While the former Wall Street lawyer represents a step to the right from his Democrat-picked predecessor, many Republicans and industry lobbyists say he is not being aggressive enough in pursuing President Donald Trump's business-friendly agenda.

"The relationship...hasn't been one where we're exactly on the same page, but we're communicating," said Republican Representative Bill Huizenga, who chairs the House of Representatives subcommittee overseeing capital markets and meets with Clayton regularly.

"Could he have personally done more? Could the SEC have done more? Maybe," he said, adding he did not believe Clayton had a political agenda.

Clayton is one of several financial regulatory appointees recruited by former White House economic advisor and Democrat Gary Cohn who are proving to be far more moderate than anticipated by Republicans and industry groups. Others steering a cautious course on financial rules include Federal Reserve Vice Chair Randal Quarles, the Federal Deposit Insurance Corporation's head Jelena McWilliams, and Chris Giancarlo, chair of the Commodity Futures Trading Commission.

Representatives for Giancarlo, Quarles and McWilliams declined to comment. A representative for Cohn did not respond to a request for comment.

Republicans are pushing Clayton both publicly and privately to act faster on measures recommended by the U.S. Treasury in October 2017 to promote public company listings and boost private company access to capital.

Of more than 30 recommendations, including overhauling crowdfunding rules, modernizing shareholder voting rules, and opening up private companies to more investors, the SEC has so far made progress on just a handful.

Diego Zuluaga, policy analyst at the libertarian Cato Institute, said the current SEC lacks the “vision of market-driven change” that many conservatives had hoped to see on issues such as trading, capital formation, cryptocurrencies and emerging technologies.

“One might expect more active leadership from regulators who have said that this will not be business as usual.”

Clayton’s voting record on rule-makings and enforcement actions has also raised eyebrows in conservative circles.

At full strength, the SEC has two Democratic and two Republican commissioners, with the chairman typically casting a deciding vote.

A Reuters analysis of Clayton’s voting record through the end of November shows that of the 75 votes split down party lines, Clayton sided with Democratic commissioners on 37 percent. By comparison his predecessor Mary Jo White voted with Republicans just 15 percent of the time, according to an analysis of the last 20 months of her tenure.

The SEC is most frequently divided on enforcement actions, with Democrats typically backing harsher penalties and Republicans preferring a softer touch. Clayton has sided with Democrats on levying penalties against Merrill Lynch, Citigroup and TD Ameritrade, among others. The SEC declined to comment, but Clayton told the Senate last week the SEC had taken “meaningful” steps toward his goals of creating an innovative and responsive agency, and facilitating capital formation.

“Under Chairman Clayton’s leadership, the SEC has been a critical partner in working with the Treasury Department to advance the President’s core principles for financial regulation,” said a Treasury spokesman.

NO “GUNSLINGER”

Clayton’s record so far reflects his management style of gathering feedback and feeling out areas of consensus, say those who have dealt with him.

The SEC chair is ready to defer to division heads, takes advice from his staff, and is willing to listen to all sides, said lobbyists and lawmakers.

“I have not seen him be a gunslinger. Even in private meetings I’ve been with him, he’s measured, he’s thoughtful,” said Huizenga.

Clayton has also refrained from ramming through an agenda with just Republican backing, as some conservatives would prefer.

“Sometimes the party in the majority just rolls the party in the minority, and that’s not happening here,” said Chris Iacovella, chief executive officer of the American Securities Association. “He’s not a partisan operative.”

One key issue on which Clayton has parted ways with his Republican colleagues is the oversight of cryptocurrencies.

The SEC chair has led a crackdown on firms offering investments and trading in digital tokens due to worries retail investors may be hurt by scammers and market manipulation.

Earlier this year, he voted with Democrats to reject a bitcoin exchange traded fund product, a decision the Cato Institute's Zuluaga described as "most disappointing".

Free-market conservatives and many industry advocates called for Clayton to be more accommodating to the emerging digital token industry.

"Jay Clayton has shown the industry that he lives in an ivory tower with his resistance to approve registration statements for token offerings. It is frustrating," said Anthony Tu-Sekine, head of the Blockchain and Cryptocurrency Group at law firm Seward & Kissel.

Clayton also has gone slow on Republican pet projects, opposed by Democrats, to force shareholders into arbitration and to review rules requiring companies to disclose if they use minerals from conflict-ridden parts of the world. In October, he politely rebuffed calls by President Trump to drop quarterly reporting for big companies.

Much to the chagrin of some in the financial industry, the SEC chair has also taken a surprisingly tough stance on stock exchange trading data reporting and trading fee pricing, leading some lobbyists to privately question why the pro-business administration picked him.

"How did we end up with this guy?" said one lobbyist. "We can't get anything out of him."

Some observers say Clayton's careful approach promises a productive 2019, and he may become more aggressive with the departure of Obama-era Democratic commissioner Kara Stein. They expect the SEC to move on shareholder voting rules and provide greater clarity on cryptocurrencies.

"I think a lot of people would like things to move more quickly, but that's the system," said Paul Atkins, a former Republican SEC commissioner who advised the Trump administration on staffing the financial regulators.

"In the new year you'll see a lot of these seeds he's planted will start to germinate."