

3. *Will you be coordinating with the Department of Labor as you evaluate and define these standards?*

**Any actions taken by the SEC or the Department of Labor in this space are going to have an effect on the areas overseen by the other agency, and it is my intent that we continue to coordinate with our colleagues at the Department of Labor.**

4. *Do you foresee the SEC and DOL reaching a definition that will be a unified industry standard?*

**At this stage, the range of potential actions suggested to the SEC is broad. We are still evaluating potential options in this area and have not yet reached a particular conclusion. I am hopeful that the public comments submitted in response to the June Statement can help us evaluate potential regulatory actions in light of current market activities and risks. As I stated in the June Statement, clarity and consistency – and, in areas overseen by more than one regulatory body, coordination – are, in my view, of vital importance.**

#### **QUESTIONS FOR RECORD FOR SEC CHAIRMAN JAY CLAYTON**

##### **SUBMITTED BY SENATOR RICHARD J. DURBIN**

1. On May 12, 2015, the Securities and Exchange Commission filed suit against ITT Educational Services, Inc., Kevin Modany, and Daniel Fitzpatrick for securities fraud. In 2016, the company collapsed under the weight of its own misconduct and subsequently filed bankruptcy. While ITT students were left with tens of thousands of dollars in student loan debt, company executives, including Mr. Modany and Mr. Fitzpatrick, absconded with millions of dollars in compensation and bonuses despite orchestrating one of the largest frauds in U.S. higher education history.
  - a. Please provide an update on what steps the SEC is taking to hold ITT executives accountable.
  - b. How many attorneys are currently assigned to the ITT matter?
  - c. Has the SEC determined whether or not a criminal referral is appropriate in this matter?
  - d. Is the SEC working with the Department of Justice and state Attorneys General to share investigative information to determine whether additional charges are warranted?

**The SEC is committed to rooting out fraud and shady practices in our markets wherever they exist and to holding wrongdoers accountable where appropriate. The SEC's case against ITT Educational Services, Inc.'s (ITT's) CEO, Kevin Modany, and its CFO, Daniel Fitzpatrick, is ongoing. As a general matter, the SEC does not comment on ongoing**

litigation, so the information provided below is based on publicly filed documents in the SEC's litigation against ITT, Modany and Fitzpatrick.

The SEC filed its Complaint against ITT, Modany, and Fitzpatrick in the U.S. District Court for the Southern District of Indiana on May 12, 2015.<sup>1</sup> The Complaint alleged that ITT, Modany and Fitzpatrick engaged in a fraudulent scheme and made false and misleading statements to hide the magnitude of ITT's obligations related to two student loan programs from ITT's investors.<sup>2</sup> The Complaint included claims for violations of the anti-fraud, books and records, and reporting provisions of the federal securities laws. The parties actively litigated the case and engaged in extensive discovery in the litigation, including taking dozens of fact and expert witness depositions. On September 12, 2016, ITT filed for bankruptcy under Chapter 7 of the bankruptcy code in the U.S. Bankruptcy Court for the Southern District of Indiana. On October 10, 2016, the bankruptcy trustee filed an adversary complaint in the Bankruptcy Court which sought to, among other things, stay the SEC's litigation against ITT. The SEC entered an appearance in the bankruptcy proceedings, and the SEC and ITT ultimately reached a settlement that was approved by the Bankruptcy Court and the District Court. As a result of the settlement, on June 30, 2017 the District Court entered a Final Judgment against ITT permanently enjoining it from violating the anti-fraud, books and records, and reporting provisions of the federal securities laws charged in the Complaint.

While the settlement with ITT was being negotiated and approved, the SEC continued to litigate its case against Modany and Fitzpatrick. During a court-ordered settlement conference, Modany and Fitzpatrick made settlement offers in the case filed against them. If approved by the Commission, the settlements will be submitted to the District Court for approval and entry of final judgments against Modany and Fitzpatrick.

The SEC conducts investigations on a confidential basis and does not disclose whether or not it is working with other authorities or has made a criminal referral in a specific case. However, as a general matter, the SEC staff often works closely with other law enforcement authorities and agencies in our investigations and may refer matters to the criminal authorities in appropriate circumstances. This is an area in which I have taken a particular interest, as I am hopeful that working with criminal authorities can help keep bad actors, particularly recidivists, away from our markets and investors who rely on the integrity of our markets.

2. In May 2016, Bridgepoint Education reported that it had received a second subpoena from the SEC, regarding the Company's scholarship and student loan programs, among other topics. Like the now-defunct ITT, Bridgepoint has been the subject of multiple federal and state investigations and lawsuits for its student loan practices. In September

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<sup>1</sup> See Press Release 2015-86, SEC Announces Fraud Charges Against ITT Education Services (May 12, 2015), available at <https://www.sec.gov/news/pressrelease/2015-86.html>.

<sup>2</sup> A copy of the SEC's Complaint is available at <https://www.sec.gov/litigation/complaints/2015/comp-pr2015-86.pdf>.

2016, the Consumer Financial Protection Bureau required Bridgepoint to pay more than \$30 million in student refunds and civil penalties for its predatory private student lending practices. To the extent that the facts revealed by the investigation allow, the SEC's pursuit of executive accountability is critical to preventing further abuses across the for-profit college industry.

- a. As part of its investigation, has the SEC interviewed or examined Mr. Robert Eitel, a former top compliance executive at Bridgepoint, who now serves in senior leadership at the U.S. Department of Education?
- b. Has Mr. Eitel communicated with any Commissioner or the SEC staff on behalf of himself or Bridgepoint since the SEC began its investigation?
- c. What mechanisms are in place to ensure that Mr. Eitel does not use his current government position to influence the SEC's investigation of his former employer?
- d. Is the SEC sharing information through a formal agreement with the U.S. Department of Education with respect to this investigation? Is the U.S. Department of Education providing any assistance to the SEC?
- e. When does the SEC expect to conclude its investigation and make a determination on whether to pursue charges?

**As a matter of policy, the Commission conducts investigations on a confidential basis and generally does not acknowledge the existence or non-existence of any investigation unless or until charges are filed. We do so in order to protect the integrity of our investigations, safeguard the privacy of witnesses, and avoid damaging the reputation of persons who may not be charged. Similarly, as explained above, the SEC generally does not disclose whether or not it is working with other authorities or has made a criminal referral in a specific case. Accordingly, I cannot comment specifically on the matter raised in the question.**

3. Please provide a list of all publicly-traded for-profit institutions of higher education that are currently under investigation or facing current litigation by the SEC.

**As explained above, the Commission conducts investigations on a confidential basis and does not acknowledge the existence or non-existence of any investigation unless or until charges are filed. Accordingly, I cannot comment on the existence of any SEC investigations related to publicly-traded for-profit institutions of higher education.**