United States Senate
WASHINGTON, DC 20510

June 6, 2018

The Honorable J. Christopher Giancarlo
Chairman
Commodities Futures Trading Commission
Three Lafayette Centre
1155 21 51 St. NW
Washington, DC 20581

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549

Dear Chairman Giancarlo and Chairman Clayton:

We write to express our concern over President Donald Trump's June 1, 2018 violation of federal guidelines restricting government officials from disclosing market-moving economic data prior to their scheduled release and commenting publicly on those data in the immediate aftermath of their release. We ask that your agencies conduct an investigation to identify whether any individual or corporate entity was able to obtain and use market-moving information – either on June 1, 2018 or before – provided to the White House before its official release.

Typically on the first Friday of each month, the Bureau of Labor Statistics (BLS) releases its monthly report on the Employment Situation.[1] The Chairman of the Council of Economic Advisers receives the data the day before they are released by the Department of Labor and briefs an extremely limited number of senior leaders on the report's findings. All Executive Branch employees, including the officials who had access to the data before the release are prohibited from publicly commenting on the contents of the report until an hour after its release.[2]

The purpose of this policy directive, as stated by the Office of Management and Budget (OMB) on September 25, 1985, was to "preserve the distinction between the policy-neutral release of data by statistical agencies and their interpretation by policy officials," and to avoid affecting

[1] Bureau of Labor Statistics, "Schedule of Releases for the Employment Situation," https://www.bls.gov/schedule/news_release/empsit.htm
[2] Federal Register, "Statistical Policy Directive on Compilation, Release, and Evaluation of Principal Federal Economic Indicators," September 25, 1985, Office of Management and Budget, https://www.bea.gov/about/pdf/federalregister09251985.pdf

"financial and commodity markets."[3] The rules – later codified by the policy directive – were implemented in the wake of the Nixon Administration's attempt to politicize government data.[4]

On June 1, 2018 at 7:21am, President Donald Trump violated this policy directive by tweeting "Looking forward to seeing the employment numbers at 8:30 this morning."[5] President Trump's remark clearly implied that the employment numbers were positive for the administration and surpassed market expectations. The market reacted immediately – yields on the 10-year Treasury note[6], the dollar index[7], and stock futures[8] all increased following the President's tweet.

This is not the first time that this long-standing federal rule has been violated during President Trump's presidency. Last year, President Trump and former White House press secretary Sean Spicer both violated the policy directive by tweeting about a jobs report on March 10, 2017 during the mandatory one-hour cooling off period after the BLS officially released the report.[9] President Trump violated the cooling-off requirement once again in August 2017.[10]

The unemployment report is not the only market-moving data provided to the Chairman of the Council of Economic Advisers before its public prerelease. The Bureau of Labor Statistics, Bureau of Economic Analysis (BEA), Census Bureau, and other federal statistical agencies also provide the White House with periodic economic data, such as the U.S. International Trade in Goods and Services report and Gross Domestic Product report.[11] The White House is required to follow the same policy directive with respect to these reports.[12] Advance notice of any of these indicators would undoubtedly provide an advantage to an investor or an investment company.

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[3] Federal Register, "Statistical Policy Directive on Compilation, Release, and Evaluation of Principal Federal Economic Indicators," September 25, 1985, Office of Management and Budget, https://www.bea.gov/about/pdf/federalregister09251985.pdf

[4] Los Angeles Times, "Spicer broke a federal rule when he hailed jobs report too soon after its release," Jim Puzzanghera, March 10, 2017, http://www.latimes.com/politics/washington/la-na-essential-washington-updates-spicer-broke-a-federal-rule-when-he-1489164146-htmlstory.html

[5] Tweet by Donald J. Trump, June 1, 2018, https://twitter.com/realDonaldTrump/status/1002510522032541701

[6] Market Watch, "Trump's jobs report tweet in advance of release appears to have violated federal rules," Steve Goldstein and Robert Schroeder, June 1, 2018, https://www.marketwatch.com/story/trumps-jobs-report-tweet-in-advance-of-release-appears-to-have-violated-federal-rules-2018-06-01

Note: The yield on the 10-year TMUBMUSD10Y increased +2.07% after the tweet

[7] Wall Street Journal, "Dollar Rises on Strong Jobs Report," Ira Iosebashvili, June 1, 2018, https://www.wsj.com/articles/dollar-rises-on-strong-jobs-report-1527864196?mod=article_inline

[8] Reuters, "Trump tweet before U.S. payrolls report raises eyebrows," June 1, 2018, https://www.reuters.com/article/us-usa-economy-trump/trump-tweet-before-u-s-payrolls-report-raises-eyebrows-idUSKCN1IX5HG

Note: S&P 500 e-mini futures ESv1 were up about 12 points, or 0.45 percent, before his tweet, then nudged about 1 point higher in the moments afterward

[9] New York Times, "Sean Spicer's Quick Twitter Reaction to Jobs Report May Break a Rule," Patricia Cohen, March 10, 2017, https://www.nytimes.com/2017/03/10/business/february-jobs-report-trump-white-house.html

[10] USA Today, "Trump tweet on jobs report may have breached a 1985 federal directive," Kevin MCoy and Adam Shell, June 1, 2018, https://www.usatoday.com/story/money/2018/06/01/trump-jobs-report-tweet/663233002/

[11] Bureau of Economic Analysis, "2018 News Release Schedule," https://www.bea.gov/newsreleases/news_release_schedule.htm

[12] Federal Register, "Statistical Policy Directive on Compilation, Release, and Evaluation of Principal Federal Economic Indicators," September 25, 1985, Office of Management and Budget, https://www.bea.gov/about/pdf/federalregister09251985.pdf

In fact, reports indicate that strategists and market observers have started to use the President's twitter feed as a way of preparing for economic data updates.[13] This demonstrates a lack of precision in protecting these sensitive data and raises the additional concern that the policy directive may be routinely violated in other ways.

We are concerned in particular that the President or other White House staff may have disclosed the prerelease data beyond the very small group authorized to see them before their official publication. A wider dissemination increases the possibility that this inside information could be used to unlawful advantage in the market. The numerous conflicts of interest in the financial holdings of the President[14] and other high-level White House staffers,[15] and their continued secrecy about these holdings heightens our concern about insiders obtaining or using this information.

Federal investigators are familiar with the risks associated with market actors obtaining an unfair advantage by gaining access to government data before an official release. In 2013, the FBI and the SEC conducted a wide-ranging investigation into whether media companies that serve traders were releasing government data a fraction of a second too early, allowing traders using computer algorithms to gain and unfair advantage.[16] Disclosure of data by White House officials potentially hours before its official release could give an exponentially larger advantage.

Therefore, we are writing to ask that the Commodities Futures Trading Commission (CFTC) and Securities and Exchange Commission (SEC) conduct an investigation into: (1) whether or not any individual or entity was able to obtain information on the employment report prior to its June 1, 2018 release; (2) whether or not any individual or entity was able to get information from the President or any employee of the Executive Office of the President on any earlier statistical report given prior to release, and if so; (3) whether they made trades or took any other action based on that information.

In addition, to help us better understand the impact of the President's violation of federal rules about early release of information from economic reports, we ask that you provide answers to the following questions no later than June 25, 2018.

1. Do the SEC and the CFTC consider the information contained in the Employment Situation Report to be market-moving information?

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[13] New York Times, "Trust Touts Jobs Report Before Official Release, Breaking Protocol," Jim Tankerskey and Matt Phillips, June 1, 2018, https://www.nytimes.com/2018/06/01/us/politics/trump-jobs-twitter.html

[14] The Hill, "Donald Trump's scandalous conflicts of interest still live," Dan Weiner, January 24, 2018, http://thehill.com/opinion/white-house/370488-trumps-scandalous-conflicts-of-interest-live-on; The Sunlight Foundation, "Tracking Trump's Conflicts of Interest," https://sunlightfoundation.com/tracking-trumps-conflicts-of-interest/

[15] The Atlantic, "The Trump Administration's Conflicts of Interest: A Crib Sheet," Jeremy Venook, January 18, 201, https://www.theatlantic.com/business/archive/2017/01/trumps-appointees-conflicts-of-interest-a-crib-sheet/512711/

[16] Wall Street Journal, Media Firms Probed on Data Release, Brody Mullins and Devlin Barrett, January 28, 2013, https://www.wsj.com/articles/SB10001424127887323539804578262280735396300

2. Which categories of data disclosed to the Chairman of the Council of Economic Advisers by the process described in the OMB policy directive do the SEC and the CFTC consider market-moving?

3. Have the SEC and CFTC observed any unusual or unexpected trends in financial markets in the twenty-four hours before the release of reports that statistical agencies disclose to the White House?

4. Is the President subject to SEC and CFTC rules regarding insider trading and market manipulation?

5. Are other White House or executive branch officials subject to these rules?

Sincerely,

Elizabeth Warren
United States Senator

Ron Wyden
United States Senator

Michael F. Bennet
United States Senator