

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

August 5, 2020

VIA ELECTRONIC MAIL

The Honorable Jay Clayton
Chairman
US Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Dear Chair Clayton:

We are writing to express our growing concern regarding insider trading, during the coronavirus disease 2019 (COVID-19) pandemic. As Americans navigate through the COVID-19 pandemic, information about which publicly traded companies are affected by the pandemic; how they are affected; information about aid, loans or grants provided to these companies; and other nonpublic information, is more likely to be considered material, particularly when it comes to investors making investment decisions. Further, some bad actors may take advantage of these difficult times and unlawfully trade on this material, nonpublic information, harming market stability and the investing public. The US Securities and Exchange Commission (SEC or Commission) must remain vigilant in enforcing laws against insider trading.

Our concerns regarding insider trading during the COVID-19 pandemic have only been heightened by our serious concerns arising from a series of securities transactions engaged in by Eastman Kodak Company (Kodak), its executive officers and its board members. These transactions seem to have taken place at, or around, the time Kodak learned it could be eligible to receive a \$765 million loan under the Defense Production Act of 1950 (DPA). Notably, the loan was awarded to Kodak to manufacture generic drugs in the United States, despite Kodak's limited experience in the pharmaceutical industry.

In its 2019 annual report, Kodak explained that: "If Kodak is unable to generate positive cash flow from operations in the future or to adequately supplement such cash flow from operations with proceeds from monetization transactions, its ability to continue as a going concern could be impaired or limited."¹ On May 1, 2020, the adjusted closing price for Kodak stock was \$2.20. The Trump administration's announcement that Kodak would receive the DPA loan caused the, then-failing, manufacturing company's share price to increase to \$33.20, on July 29, 2020 - the day after President Trump announced the DPA loan.² That amount is over fifteen times the stock's May 1, 2020 value and provides a tremendous incentive for those who knew about the DPA loan to capitalize on that information before it became public.

¹ See Eastman Kodak Company 2019 Annual Report on Form 10-K and Notice of 2020 Annual Meeting and Proxy Statement, available at https://www.annualreports.com/HostedData/AnnualReports/PDF/NASDAQ_KODK_2019.pdf.

² See Kodak's stock tumbles again, after disclosure that investors have converted debt into nearly 30 million common shares, Marketwatch.com, Aug. 3, 2020, available at <https://www.marketwatch.com/story/kodaks-stock-tumbles-again-after-disclosing-investors-have-converted-debt-into-nearly-30-million-common-shares-2020-08-03> (as of Aug. 4, 2020).

Along those lines, around the same time the DPA loan was announced to the public, Kodak's board, reportedly, issued 1.75 million in stock options to Jim Continenza, the company's Executive Chairman and Chief Executive Officer.³ Those options allow Continenza to purchase Kodak shares at prices ranging from \$3.03 to \$12⁴ which, according to media reports, could net Continenza a \$50 million profit.⁵ Further, the options were issued under unusual circumstances in terms of the timing in that they were, reportedly, based on some peculiar and unwritten "understanding" between Continenza and the company.⁶ Media reports, and SEC filings, further indicate that Continenza and Philippe Katz, a Kodak board member, bought 46,737 and 5,000 Kodak shares, respectively, on June 23, 2020.⁷ At the time of these purchases, Kodak's stock price was \$2.22⁸ but, as indicated above, would significantly increase in value after the DPA was announced. Most concerningly, it appears these purchases were made prior to the DPA loan becoming public information, but while Kodak was in discussions regarding the loan.

We urge the SEC to investigate these transactions and, during the course of that investigation, encourage it to consider the following:

1. The facts, circumstances and terms under which Kodak issued, or re-issued, stock options to its executive officers or other company personnel between January 1, 2020 and August 1, 2020.
2. Whether Kodak's issuance, or re-issuance, of stock options to any executive officer or company personnel, violated Kodak's policies, including its *Executive Compensation Committee Board of Directors Eastman Kodak Company Policy on Equity Awards*. The policy, among other things, prohibits manipulating the timing of any public release of "material information or of any Equity Award with the intent of benefiting a grantee under an Equity Award."⁹
3. The date on which discussions, whether formal or informal, regarding the DPA loan commenced.
4. The identities of all Kodak executives, officers and major shareholders who were aware that Kodak may receive the DPA loan, and the dates on which they became aware of this information.
5. Steps, if any, taken by Kodak to prohibit and/or monitor trading of Kodak stock by Kodak's executives, directors and major shareholders.
6. Transactions engaged in by Kodak executives, officers or major shareholders between the date the DPA loan discussions first commenced and the date the DPA loan was publicly announced (Transactions).
7. Profit, if any, derived from the Transactions.

³ See Kodak C.E.O. Got Stock Options Day Before News of Loan Sent Stock Soaring, New York Times, July 31, 2020, available at <https://www.nytimes.com/2020/07/31/business/kodak-ceo-stock-options.html> (as of Aug. 4, 2020).

⁴ *Id.*

⁵ *Id.* Kodak's stock price has fallen since the date of this article and, thus, the value of Continenza's options are, currently, lower. The value may, however, increase or decrease over time.

⁶ See Eastman Kodak's Top Executive Reportedly Got Trump Deal Windfall On An 'Understanding,' CNBC, August 3, 2020, available at <https://www.cnbc.com/2020/08/01/eastman-kodaks-top-executive-reportedly-got-trump-deal-windfall-on-an-understanding.html> (as of August 4, 2020).

⁷ See Kodak CEO admits he bought thousands of shares in the fallen photo firm AFTER taking part in secret talks to turn company into pharma giant with \$768M government loan - making \$1.5m personal profit, Daily Mail, July 30, 2020, available at <https://www.dailymail.co.uk/news/article-8576731/Kodak-CEO-admits-talks-turn-photo-giant-pharma-company-began-month-bought-shares.html> (as of Aug. 4, 2020).

⁸ *Id.*

⁹ See *Executive Compensation Committee Board of Directors Eastman Kodak Company Policy on Equity Awards*, at p. 1, available at <https://investor.kodak.com/static-files/c50b6eaa-79c0-4781-8f51-85ec1e6bc416>.

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The capital markets are at their best when transactions are entered into by and between informed buyers and informed sellers. Insider trading undermines public trust in our capital markets and cannot be tolerated, particularly at a time when trust and confidence in the markets are vital to our economy's future recovery.

Sincerely,



The Honorable Maxine Waters
Chairwoman
House Committee on Financial Services



The Honorable Brad Sherman
Chairman
Subcommittee on Investor Protection,
Entrepreneurship and Capital Markets



The Honorable Emanuel Cleaver
Chairman
Subcommittee on National Security,
International Development and Monetary Policy



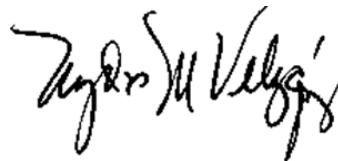
The Honorable Stephen F. Lynch
Chairman
Task Force on Financial Technology



The Honorable Katie Porter
Member of Congress



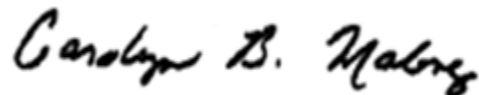
The Honorable Josh Gottheimer
Member of Congress



The Honorable Nydia M. Velázquez
Member of Congress



The Honorable Bill Foster
Chairman
Task Force on Artificial Intelligence



The Honorable Carolyn B. Maloney
Member of Congress



The Honorable Cindy Axne
Member of Congress

The Honorable Jay Clayton

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The Honorable Gregory W. Meeks
Chairman
Subcommittee on Consumer Protection and
Financial Institutions

Cc: The Honorable Patrick McHenry, Ranking Member, House Committee on Financial Services
The Honorable Bill Huizenga, Ranking Member, Subcommittee on Investor Protection,
Entrepreneurship and Capital Markets
The Honorable J. French Hill, Ranking Member, Subcommittee on National Security, International
Development and Monetary Policy
The Honorable Barry Loudermilk, Ranking Member, Task Force on Artificial Intelligence
The Honorable Tom Emmer, Ranking Member, Task Force on Financial Technology
The Honorable Blaine Luetkemeyer, Ranking Member, Subcommittee on Consumer Protection and
Financial Institutions