

C A M P A I G N F O R ACCOUNTABILITY

September 19, 2016

BY FAX: 202-228-0566

The Honorable Robert P. Corker, Jr.
Dirksen Senate Office Building
SD-425
Washington, DC 20510

Dear Senator Corker:

As you know, the U.S. Senate Committee on Banking, Housing and Urban Affairs has scheduled a hearing on September 20, 2016 entitled “An Examination of Wells Fargo’s Unauthorized Accounts and the Regulatory Response.” The hearing follows the recent announcement by the Consumer Financial Protection Bureau that Wells Fargo “opened unauthorized accounts and submitted fraudulent credit card applications in a duplicitous attempt to boost sales figures.”¹ Democrats on the Banking Committee requested that Committee Chairman Richard Shelby convene the hearing, writing “[t]he magnitude of this situation warrants thorough and comprehensive review.”²

Because some of your personal finances appear intricately connected to Wells Fargo, Campaign for Accountability (“CfA”) respectfully requests that you recuse yourself from oversight of any matter related to the bank.

Background

Wells Fargo may have most dramatically affected your financial interests through its backing of a 650,000-square foot shopping center development in Mobile, Alabama called McGowin Park. Your 2015 personal financial disclosure form states that on July 11, 2014, you purchased a stake in McGowin Park, LLC worth between \$1 million and \$5 million.³ The project, one of the largest retail developments in Mobile in decades, is a joint venture by Jones Lang LaSalle, a Chicago-based developer, and The Hutton Company, a construction company based in Chattanooga owned by Karen Hutton, one of your longtime supporters and former CBL executive.⁴ Other CBL executives also joined Hutton.⁵

¹ Letter from Sens. Robert Menendez, Sherrod Brown, Jack Reed, Elizabeth Warren and Jeffrey A. Merkley to Sen. Richard Shelby, September 12, 2016, *available at* <https://www.menendez.senate.gov/imo/media/doc/Letter%20to%20Chairman%20Shelby%20re%20Wells%20Fargo%202016-09-12.pdf>.

² *Id.*

³ Robert P. Corker, *2015 United States Senate Financial Disclosure Report for 2014*, at 88, filed May 14, 2015, *available at* http://pfds.opensecrets.org/N00027441_2014.pdf.

⁴ Gabriel Tynes, *New Retail Complex a ‘Win-Win.’ According to Manager*, *Lagniappe Weekly*, April 9, 2014, *available at* <http://lagniappemobile.com/new-retail-complex-win-win-according-manager/>.

⁵ Bethany McLean, *Sen. Corker’s Relationship with Real Estate Industry Highlighted in Voting Record*, *Yahoo Finance*, December 2, 2015, *available at* <https://finance.yahoo.com/news/sen--corker-s-relationship-with-real-estate-industry-highlighted-in-voting-record-144617523.html>.

Six days after making that investment, McGowin Park LLC made a Uniform Commercial Code (UCC) filing in Alabama disclosing that it had secured a loan from Wells Fargo to finance the project.⁶ No other UCCs have been filed, suggesting that Wells Fargo is the sole source of financing for the massive project – which is projected to generate \$200 million in annual revenues. At a September 19, 2014, Mobile County Commission meeting, a lawyer representing McGowin Park mentioned only Wells Fargo as a source of financing.⁷

The timing of your investment suggests you may have had advance information about the Wells Fargo construction loan, perhaps the single most important factor affecting the project. Given that the completion of a major planned commercial development depends largely on the developers' success in securing the necessary loans and failure to do so means investors may lose their stake, the investment was highly speculative prior to the financing, but much more certain thereafter. Therefore, the value of your stake presumably increased substantially after the loan was secured.

In addition, Wells Fargo is a major lender to CBL & Associates, a Chattanooga real estate investment trust with which you have a well-documented long and close relationship and in which you have traded heavily and to your significant personal financial benefit. News reports indicate that your trades in CBL stock are under federal investigation.⁸

CBL executives have regularly referred to their firm's special relationship with Wells Fargo. One recent annual report referred to Wells Fargo as the firm's "lead bank."⁹ In a 2011 interview with the *Chattanooga Times Free Press*, CBL chairman Charles B. Lebovitz singled out Wells Fargo for helping prop up the firm during the recent financial crisis.¹⁰ In a 2009 conference call, CBL's chief financial officer said Wells Fargo "has been our lead bank since 1978 . . . it's totally a relationship driven business."¹¹ The former head of the bank's commercial real estate business joined CBL's board in August 2013.¹²

Over the last two decades Wells Fargo has provided CBL with financing worth several billion dollars. The earliest loan uncovered to date came in August 1994, when CBL completed a

⁶ Alabama Secretary of State, UCC Records, available at <http://arc-sos.state.al.us/cgi/uccdetail.mbr/detail?ucc=14-0293530&page=name>.

⁷ Mobile County Commission, Notes at 4, September 19, 2014, available at http://www.mobilecountyal.gov/pdf/meetings/agendas/september_19_2014.pdf.

⁸ John Bresnahan and Anna Palmer, Feds Scrutinizing Corker's Finances, *Politico*, May 24, 2016, available at <http://www.politico.com/story/2016/05/bob-corker-finances-223544>.

⁹ CBL & Associates, 2008 Annual Report at 3, available at <http://www.sn1.com/interactive/lookandfeel/103092/CBL2008Annual.pdf>.

¹⁰ Kathy Gilbert, Mall Men, *Times Free Press*, January 2, 2011, available at <http://www.timesfreepress.com/news/chatter/story/2011/jan/02/mall-men/38027/>.

¹¹ McLean, *Yahoo Finance*, Dec. 2, 2015.

¹² *Id.*

\$75 million credit facility led by Wells Fargo Real Estate Group.¹³ Since then the bank has awarded loans to CBL worth up to \$1.26 billion. Most recently, on October 16, 2015, Wells Fargo helped CBL secure a credit facility of \$1 billion and close a new \$350 million term loan.¹⁴ The bank has also served as the underwriter of least ten CBL stock and securities offerings, the first in 2002 and the most recent in September of 2015.¹⁵

Congressional Rules

Paragraph 4 of Rule 37 prohibits members of the Senate and Senate staff from using their legislative power to advance their personal financial interests.¹⁶

Senate precedents largely favor allowing members to vote on legislation that may impact their personal economic interests out of concern over disenfranchising their constituents.¹⁷ As a result, members may vote on questions when they are part of a class of those affected as opposed to affected individually.¹⁸

While the Senate Ethics Manual does not offer detailed guidance regarding actions a senator might take beyond voting, the House manual is more instructive. House rules provide that members may not engage in other official actions, such as sponsoring legislation, advocating or participating in a committee proceeding, or contacting an executive branch agency, when their financial interests are at issue.¹⁹

¹³ Wells Leads \$75M Credit for Tennessee REIT, *American Banker*, August 2, 1994, summary available at <https://www.highbeam.com/doc/1G1-15622617.html>.

¹⁴ CBL & Associates Properties Inc., SEC Form 8-K, October 16, 2015, available at http://www.sec.gov/Archives/edgar/data/910612/000091061215000070/form8-klocandtermloan_oct2.htm.

¹⁵ Letter from CBL & Associates Properties, Inc. to Bear, Stearns & Co., June 10, 2002, available at <https://www.sec.gov/Archives/edgar/data/910612/000089914002000428/cba1057197.txt>; Letter from CBL & Associates Properties, Inc. to Bear, Stearns & Co., August 6, 2003, available at <http://www.sec.gov/Archives/edgar/data/910612/000119312503042206/dex12.htm>; CBL & Associates Properties, Inc., SEC Form 8-K, August 22, 2006, available at <https://www.sec.gov/Archives/edgar/data/910612/000091061206000163/forms8k.htm>; CBL & Associates Properties, Inc. SEC Schedule 14A Proxy Statement, September 2009, available at https://www.sec.gov/Archives/edgar/data/910612/000091061209000034/defa14a_pressrelease.htm, Letter from Husch Blackwell Sanders, LLP to CBL & Associates Properties, Inc., February 24, 2010, available at <https://www.sec.gov/Archives/edgar/data/910612/000091061210000006/exhibit52.htm>; CBL & Associates Properties, Inc., SEC Rule 433 Issuer Free Writing Prospectus, October 13, 2010, available at https://www.sec.gov/Archives/edgar/data/910612/000110465910052157/a10-19272_3fwp.htm; CBL & Associates Properties, Inc., SEC Form 8-K, September 28, 2012, available at <https://www.sec.gov/Archives/edgar/data/910612/000091061212000048/form8-kseptember282012.htm>; CBL & Associates Ltd Partnership, SEC Rule 433 Issuer Free Writing Prospectus, November 21, 2013, available at https://www.sec.gov/Archives/edgar/data/915140/000110465913086437/a13-21437_4fwp.htm; CBL & Associates Properties, Inc., SEC Form 8-K, October 1, 2014, available at <https://www.sec.gov/Archives/edgar/data/910612/000091061214000048/form8-kcblbondofferingoct2.htm>; CBL & Associates Limited Partnership, SEC Rule 424(b)(5) Prospectus Supplement, September 28, 2015, available at <https://www.sec.gov/Archives/edgar/data/910612/000104746915007574/a2226050z424b5.htm>.

¹⁶ U.S. Senate Select Committee on Ethics, Senate Ethics Manual, at 69 (108th Cong. 1st Sess., 2003 ed).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ House Comm. on Standards of Official Conduct, House Ethics Manual, at 237 (110th Cong., 2^d Sess., 2008 ed.).

As the House Ethics Manual notes, “such actions entail a degree of advocacy above and beyond that involved in voting,” meaning a member’s “decision on whether to take any such action on a matter that may affect his or her personal financial interests may implicate the rules and standards . . . that prohibit the use of one’s official position for personal gain.”²⁰ Further, even when no specific rule applies, members are advised to avoid situations “in which even an inference might be drawn suggesting improper conduct.”²¹ Moreover, while House precedent on conflicts indicates disclosure “is the preferred method of regulating possible conflicts of interest,” particularly when a member’s interests and that of his constituents intersect, “such disclosure must be full and complete, and even if complete, does not always alleviate a conflict or permit a [m]ember to act.”²²

Like the House, Senate rules also warn against conduct that creates the appearance of impropriety. The Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as “improper conduct which may reflect upon the Senate.”²³ This rule is intended to protect the integrity and reputation of the Senate as a whole.²⁴ The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules. . . .”²⁵

²⁰ *Id.*

²¹ *Id.* at 186; House Rule 23, cl. 2.

²² House Comm. on Ethics, *In the Matter of Allegations Relating to Representative Shelley Berkley*, H. Rep. No. 112-716, 112th Cong., 2nd Sess. (Dec. 13, 2012), Appendix A, Report of the Investigative Subcommittee at 46, *citing House Ethics Manual* at 251 (hereinafter “ISC Report”).

²³ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

²⁴ *Id.*

²⁵ *Id.* at 433; *see also* fn. 10 citing a 1964 investigation into the activities of Bobby Baker, then Secretary to the Majority of the Senate, the Committee on Rules and Administration, which stated, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88th Cong., 2d Sess. 5 (1964).

Conclusion

In light of your long and fruitful relationship with Wells Fargo over the years, any defense of the bank you might make in the course of the Senate exercising its oversight jurisdiction might create the appearance of impropriety. As a result, CfA respectfully requests that you abstain from attending Tuesday's hearing and from participating in further oversight of Wells Fargo.

Thank you for your consideration.

Sincerely,



Anne Weismann
Executive Director