

Are Conflicts of Interest at the SEC Shielding Coca-Cola?

After **Ray Rogers**, Director of Corporate Campaign, Inc./Campaign to Stop Killer Coke filed a whistleblower complaint against The Coca-Cola Company with the Securities and Exchange Commission (SEC), he became the target of an intimidating phone call and letter from an SEC lawyer.

Now, Mr. Rogers has to ask – Is that a coincidence or an example of the SEC attempting to shield Coca-Cola from having to reveal the truth about Rogers' whistleblower complaint?

Mr. Rogers filed a [whistleblower complaint](#) against The Coca-Cola Company with the SEC in June 2011 and updated it in June 2012 and May 2013. Mr. Rogers received an intimidating phone call and letter on April 1, 2013 from SEC Senior Special Counsel **Nicholas Panos** of the Office of Mergers & Acquisitions in the Division of Corporate Finance.

In Mr. Rogers' [April 15 letter to the SEC](#), responding to [Mr. Panos' letter](#), he raised the issue of the revolving-door syndrome between the SEC and The Coca-Cola Co. There are influential employees/executives at the SEC who come out of law firms that have Coca-Cola as a significant client.

For example, Mr. Panos' boss, **Mr. Lona Nallengara**, who until he was appointed Chief of Staff of the SEC on May 15, 2013, was deputy director and then acting director of the Division of Corporate Finance of the SEC. Prior to joining the SEC, Mr. Nallengara was a partner in the law firm Shearman & Sterling. On its website, the law firm boasts "The firm's lawyers include former SEC directors and senior staff members."

During Mr. Nallengara's tenure at the law firm, The Coca-Cola Co. was a client of Shearman & Sterling. In fact, the law firm represented The Coca-Cola Co. in the acquisition of Panamerican Beverages, Inc. by Coca-Cola FEMSA, which is presently Coca-Cola's largest bottler and which has been charged with human rights abuses in Colombia. The law firm has also represented Coca-Cola Enterprises.

Keith Higgins, who has been appointed the new director of the Division of Corporate Finance, comes out of the law firm, Ropes & Gray, which has also represented The Coca-Cola Co.

SEC Chair **Mary Jo White** has a long history with the Debevoise & Plimpton law firm. Before becoming head of the SEC, she was chair of the law firm's Litigation Department since 2002. The law firm lists The Coca-Cola Company as a key client.

Ms. White is also a member of the Council on Foreign Relations and, although the Council has many members, it should be noted that eight members of The Coca-Cola Company's board of directors and a former Coca-Cola CEO are also members, and Coca-Cola CEO **Muhtar Kent** is one of 36 members of the Council's board of directors.

SEC Commissioner **Luis Aguilar**, before joining the SEC, was a partner in McKenna Long & Aldridge. The firm lists two of its representative clients as Coca-Cola Enterprises and SunTrust Banks, considered the most important bank linked to Coca-Cola for many years.

There are also numerous former SEC employees who have gone to work at law firms and an auditor connected to Coca-Cola who filed disclosures that they are going to represent their clients at the SEC. These former SEC employees are listed having worked at the SEC from Accounting, Enforcement, Corporate Finance, Compliance Inspections and Examinations, Investment Management, International Affairs, a Branch Chief, Senior Attorneys and an Assistant Director.

The firms that have Coca-Cola as a client and have former SEC employees working for them are: Debevoise & Plimpton, Ernst & Young, Katten Muchin Zavis Rosenman, King & Spalding, McKenna Long & Aldridge, Proskauer & Rose, Ropes & Gray, Shearman & Sterling and White & Case. Has this had an effect on the SEC's hesitancy/refusal to investigate The Coca-Cola Co.?

For the past two years, Coca-Cola's Annual Meeting of Shareowners has become little more than a complete charade and this should be of great concern to the SEC, to shareholders and to any other regulatory and enforcement authorities about the legitimacy of these meetings to serve as a vehicle to seek answers to serious questions and to hold executives, board members and auditors accountable. For example, Mr. Kent, for the second year, did not provide time to allow any questions relating to business agenda item #2 "to ratify the appointment of Ernst & Young LLP as independent auditors of the Company to serve for the 2013 fiscal year."

Is it irrational to think there is a possibility that Ernst & Young is actively hiding or falsifying information to help The Coca-Cola Company maintain a false impression to the investing public that this company has fewer liabilities and is more profitable than facts dictate?

Prior to joining Coca-Cola in 1994, **Gary Fayard** served 19 years with Ernst & Young concluding his services there as a partner, area director of audit services, and area director of manufacturing services. Since 2003, Mr. Fayard has been the Executive Vice President and Chief Financial Officer of The Coca-Cola Company. Mr. Fayard was on the board of Panamerican Beverages when it was acquired by Coca-Cola FEMSA. He then became a board member of Coca-Cola FEMSA. As we mentioned above, SEC's Chief of Staff Lona Nallengara's law firm, Shearman & Sterling represented The Coca-Cola Co. in the acquisition of Panamerican Beverages by Coca-Cola FEMSA.

The Project On Government Oversight's (POGO) report entitled "Dangerous Liaisons: Revolving Door at SEC Creates Risks of Regulatory Capture" issued in February 2013, listed 15 former SEC employees who filed disclosure statements from 2003 to 2011 who went to work for Ernst & Young!

Stockholders at the last two annual meetings wanted to raise serious questions relating to ongoing criminal investigations targeting Ernst & Young and the hundreds of millions of dollars

in fines the company has paid for corrupt activity in the recent past. Shouldn't stockholders have an opportunity to raise such questions?

With respect to The Coca-Cola Company, it seems that the SEC is asleep on the job or that the SEC is acting as a shield for the company.

Here are questions I would like someone at the SEC to answer. Perhaps journalists can get some answers to these questions:

1. Has the SEC done anything with my whistleblower complaint against The Coca-Cola Co. since it was filed two years ago?
2. Has anyone investigated the allegations made in my complaint about The Coca-Cola Co. CEO Muhtar Kent blatantly lying to investors at annual meetings on numerous occasions?
3. Can anyone honestly suggest that my complaint doesn't have enough factual information to warrant an SEC investigation?
4. Can you understand why I would question the objectivity of the SEC regarding The Coca-Cola Co. when I look at the "revolving door syndrome"?
5. What assurances can be given that the SEC is not shielding The Coca-Cola Co.?