

July 28, 2017

Dave Apol
Acting Director
Office of Government Ethics
Suite 500
1201 New York Avenue, N.W.
Washington, D.C. 20005

Re: Certificate of Divestiture for Anthony Scaramucci/SkyBridge Capital

Dear Mr. Apol:

Recent news reports assert that incoming White House Communications Director Anthony Scaramucci is seeking to obtain a certificate of divestiture for the sale of his equity interest in hedge fund firm SkyBridge Capital.¹ If granted, a certificate of divestiture would allow Mr. Scaramucci to defer the capital gains tax that would normally result from the sale of his interest in SkyBridge. The undersigned strongly urge you to deny any such request for a certificate of divestiture for SkyBridge and related assets. Granting a certificate of divestiture to Mr. Scaramucci for SkyBridge would violate applicable laws and regulations and result in a significant abuse of the legal authority under which certificates of divestiture are granted.

In his public financial disclosure report filed on June 23, 2017, Mr. Scaramucci reported a 43.8% ownership interest in SkyBridge, valued at more than \$50 million.² He also disclosed receiving more than \$10 million combined in salary, business income, interest, capital gains, and dividend income from SkyBridge in 2016 and 2017 to date.³

News reports of Mr. Scaramucci's efforts to sell SkyBridge first appeared in December 2016.⁴ In January 2017, *Bloomberg* reported that SkyBridge entered into an agreement to sell a majority interest of the company, including the SkyBridge Alternatives Conference ("SALT"), to HNA Group Co. and RON Transatlantic EG.⁵ In his public financial disclosure, Mr. Scaramucci

¹ Bill Allison and Simone Foxman, Scaramucci Is Said to Seek Federal Tax Break on SkyBridge Sale, *Bloomberg*, July 26, 2017, available at <https://www.bloombergquint.com/business/2017/07/25/scaramucci-is-said-to-seek-federal-tax-break-on-skybridge-sale>.

² Lorraine Woellert, Scaramucci still stands to profit from SkyBridge from the White House, *Politico*, July 27, 2017, available at http://www.politico.com/story/2017/07/26/scaramucci-trump-skybridge-profits-241006?lo=ap_a1. Mr. Scaramucci's public financial disclosure report was filed with the Export-Import Bank on June 23, 2017 and publicly released to *Politico*. See <http://static.politico.com/b5/f6/d60960f143d4b81b2925e4f3679e/scaramucci-financial-disclosure.pdf>.

³ *Id.*

⁴ Lawrence Delevigne, Interested in serving Trump, Scaramucci looks to sell SkyBridge, *Reuters*, Dec. 14, 2016, available at <http://www.reuters.com/article/us-hedgefunds-skybridge-idUSKBN1432Z5>; Carleton English, Anthony Scaramucci looking to sell SkyBridge Capital, *New York Post*, Dec. 13, 2016, available at <http://nypost.com/2016/12/13/anthony-scaramucci-looking-to-sell-skybridge-capital/>.

⁵ Simone Foxman and Greg Farrell, Scaramucci's SkyBridge to Be Sold to HNA, RON Transatlantic, *Bloomberg*, Jan. 17, 2017, available at <https://www.bloomberg.com/news/articles/2017-01-17/skybridge-capital-agrees-to-sale-to-ron-transatlantic-hna-group>. Mr. Scaramucci's public financial disclosure further states that the sale includes Mr.

reported that the sales agreement for SkyBridge was entered into on January 17, 2017 and asserted it would be closing in the third quarter of 2017, at which time Mr. Scaramucci “will receive the agreed upon purchase price for his share of the sale proceeds.”⁶ Mr. Scaramucci also reported that he resigned from his managing partner position with SkyBridge in June 2017, five months after entering into a purchase and sale agreement for SkyBridge.⁷

The deal reportedly is worth \$250 million and could earn Mr. Scaramucci between \$62.5 million and \$125 million from the sale.⁸ Several investment bankers, consultants, and managers of similar funds have viewed SkyBridge’s \$180 million valuation as high, particularly for a fund that has seen client withdrawals,⁹ and *Bloomberg* reported that Mr. Scaramucci made the deal “as the industry bleeds assets and he prepares to work for President-elect Donald Trump.”¹⁰

At the time of the agreement, Mr. Scaramucci also was under consideration to be Assistant to the President and Director of the Office of Public Engagement, the liaison between the White House and the business community.¹¹ After this job did not materialize, Mr. Scaramucci was “eager to take another government post partly because he wants to defer the capital-gains tax on the SkyBridge sale,” *Bloomberg* reported.¹² Subsequently, he was under consideration for appointment to be Ambassador of the Organization for Economic Co-operation and Development (“OECD”) headquartered in Paris, which also failed to materialize.¹³ In June 2017, Mr. Scaramucci joined the Export-Import Bank as Senior Vice President and Chief Strategy Office,¹⁴ but has been on unpaid leave from the Export-Import Bank since the day he started.¹⁵ Last week, the White House announced his appointment to be White House Communications Director.¹⁶

Scaramucci’s 78.9% ownership in broker-dealer affiliate Hastings Capital LLC. See <http://static.politico.com/b5/f6/d60960f143d4b81b2925e4f3679e/scaramucci-financial-disclosure.pdf>.

⁶ *Id.*

⁷ *Id.*

⁸ Kate O’Keeffe and Michael C. Bender, Scaramucci’s White House Role Raises Questions for Planned Sale of His Investment Firm, *Wall Street Journal*, July 24, 2017, available at <https://www.wsj.com/articles/scaramuccis-white-house-role-raises-questions-on-u-s-review-of-deal-1500938880>.

⁹ Zachary Mider, Katherine Burton, and Simone Foxman, Scaramucci Scores Millions From Buyer With Mystery Investors, *Bloomberg*, Jan. 27, 2017, available at <https://www.bloomberg.com/news/articles/2017-01-27/scaramucci-scores-millions-from-a-buyer-with-mystery-investors>.

¹⁰ Foxman and Farrell, *Bloomberg*, Jan. 17, 2017.

¹¹ *Id.*

¹² Allison and Foxman, *Bloomberg*, July 26, 2017.

¹³ Jennifer Jacobs, Trump Picks Scaramucci to Be Ambassador of OECD, Sources Say, *Bloomberg*, June 8, 2017, available at <https://www.bloomberg.com/news/articles/2017-06-08/trump-said-to-pick-scaramucci-to-be-ambassador-to-oecd>.

¹⁴ Zachary Warmbrodt, Trump fundraiser Scaramucci joins Export-Import Bank, *Politico*, June 27, 2017, available at <http://www.politico.com/story/2017/06/27/anthony-scaramucci-export-import-bank-240019>.

¹⁵ Woellert, *Politico*, July 27, 2017.

¹⁶ See <https://www.whitehouse.gov/the-press-office/2017/07/21/president-donald-j-trump-appoints-anthony-scaramucci-be-white-house>.

The SkyBridge – HNA Group sale is currently pending government review. Because the transaction involves the proposed sale of the controlling interest in a U.S. company to Chinese conglomerate HNA Group, the sale is under review by the Committee on Foreign Investment in the United States (“CFIUS”).¹⁷ CFIUS is an interagency committee chaired by the Secretary of the Treasury that examines the sale of U.S. businesses to foreign persons and determines whether the transaction presents any national security risks.¹⁸ If it finds there are national security risks and that other provisions of the law do not provide adequate authority to address them, CFIUS may impose conditions on the parties to mitigate the risks or refer the case to the President for action.¹⁹

Under 26 U.S.C. § 1043, an executive branch employee may be eligible to defer paying capital gains on property sold to comply with conflict of interest requirements.²⁰ The vehicle used to obtain this tax deferral treatment is a certificate of divestiture, which is issued by the Director of the Office of Government Ethics (“OGE”) based on a determination that divestiture of the property is reasonably necessary to comply with conflict of interest statutes, regulations, or rules.²¹ The purpose of tax deferral treatment on the sale of conflicting assets is to “minimize the burden that would result from paying capital gains tax on the sale of assets to comply with conflict of interest requirements.”²² Minimizing this burden is intended to aid in attracting and retaining highly qualified personnel.²³ However, the OGE Director is barred by regulation from issuing a certificate of divestiture for property that has already been sold.²⁴

Under the present circumstances, the sale of SkyBridge to a group of investors should not be viewed as a transaction eligible for a certificate of divestiture since the sales agreement was entered into several months prior to Mr. Scaramucci receiving his offer to join the White House or the Export-Import Bank. OGE rules contemplate issuance of a certificate of divestiture when it determines divestiture is reasonably necessary to comply with conflict of interest requirements. That is not the case here. There is no evidence that the sales agreement was entered into for purpose of resolving an identifiable conflict of interest for a specific position in the administration. Although Mr. Scaramucci seemingly had a general notion that he would have liked to have joined the administration, the sales agreement entered into by SkyBridge appears to have been primarily motivated by the economic conditions of the market. OGE rules further prohibit the issuance of the certificate of divestiture after a sale has taken place. The sale between SkyBridge and HNA Group appears to be binding between the parties, and its final execution is subject only to CFIUS approval.

¹⁷ *Id.*

¹⁸ See <https://www.treasury.gov/resource-center/international/Pages/Committee-on-Foreign-Investment-in-US.aspx>.

¹⁹ *Id.*

²⁰ 5 C.F.R. § 2634.1001(a).

²¹ 5 C.F.R. § 2634.1004(a)(1).

²² 5 C.F.R. § 2634.1001(b).

²³ *Id.*

²⁴ 5 C.F.R. § 2634.1004(b).

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By contrast, if Mr. Scaramucci had entered into a binding sales agreement on behalf of SkyBridge after having received an offer to join the White House as Communications Director (or as the Chief Strategy Officer of the Export-Import Bank), and after having been directed to divest his SkyBridge holdings to address an identifiable conflict of interest, a request for a certificate of divestiture would be appropriate. Those are not, however, the circumstances here. More concerning, Mr. Scaramucci's unpaid leave of absence from the Export-Import Bank suggests that he may have taken this position at least in part to become eligible for a certificate of divestiture.

We request that OGE deny any request made by or on behalf of Mr. Scaramucci for a certificate of divestiture related to the sale of his interest in SkyBridge. The sales agreement between SkyBridge and its group of investors appears to have been made final and binding months prior to Mr. Scaramucci being offered the specific positions he ultimately took with the administration. The sale also appears to have been made based on economic conditions of the market. As a result, the sales transaction should not reasonably be viewed as a divestiture "reasonably necessary to comply with 18 U.S.C. § 208, or any other Federal conflict of interest statute, regulation rule or Executive order." If OGE were to determine otherwise, it would constitute an abuse of this legal authority and could be retroactively applied to any manner of sales transactions in the future. Any request on or behalf of Mr. Scaramucci for a certificate of divestiture for the sale of SkyBridge should be denied.

Sincerely,

Austin Evers
Executive Director
American Oversight

Karen Hobert Flynn
President
Common Cause

David Donnelly
President and CEO
Every Voice

Josh Silver
Director
Represent.Us

Robert Weissman
President
Public Citizen

Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in
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Fred Wertheimer
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Democracy 21

Danielle Brian
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Project on Government Oversight (POGO)

Jeff Hauser
Director
Revolving Door Project

Norman J. Ornstein