Bush picks anti-regulatory hard-liner to head Wall Street oversight board

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On Thursday, President George Bush nominated Christopher Cox, a Republican congressman from southern California, to head the Securities and Exchange Commission (SEC), the main government regulatory agency for Wall Street.

Cox's selection is a brazen move by the Bush administration to shift the SEC toward an even more openly pro-corporate policy. It portends an end to the probes into corporate fraud that have occurred in the wake of Enron, WorldCom and other business scandals, and the effective reversal by administrative means of the limited regulatory reforms put in place over the past three years.

Cox has made a name for himself as a partisan of unfettered capitalism, à la Ayn Rand. He is an unabashed defender of big business and an adamant opponent of corporate regulation and taxation. In Congress, he has pushed for measures to cut back or eliminate taxes on capital gains and dividends, championed the repeal of the estate tax, and opposed the mandatory expensing of stock options. He sponsored a key piece of legislation in the mid-1990s that limited the ability of investors to file lawsuits over corporate malfeasance.

Cox's nomination has been universally hailed by business groups as heralding an end to "regulatory excesses" at the SEC under its outgoing chairman, William Donaldson, also a Bush appointee. Donaldson, a Rockefeller Republican, is considered a turncoat in Republican and corporate circles because he has on numerous occasions sided with the two Democratic members of the five-member SEC in implementing new regulations and fining corporations for wrong-doing.

Marc Lackritz, president of the Securities Industry Association, responded to Bush's announcement by noting that Cox "has a particular sensitivity to costly and unnecessary regulation." Lackritz continued, "He understands that the increased costs of regulation put an unnecessary tax on investors." The *Wall Street Journal* editorial page, which has long championed Cox, declared on Friday, "We assume the appointment marks the end of the era of post-Enron regulatory overkill."

Cox entered politics as a staunch anti-communist in the Reagan administration. He served as a legal adviser for Reagan during the Iran-Contra scandal, and later took a position at the elite corporate law firm of Latham & Watkins, serving clients such as Arthur Andersen and Merrill Lynch. He was elected to the House of Representatives in 1988, and since that time has promoted the interests of his major campaign contributors: Wall Street, the technology giants of Silicon Valley, and the major accounting firms.

More than anything else, his role in pushing through a 1995 bill known as the Private Securities Litigation Reform Act has won him the backing of Wall Street. The act, which was passed with bi-partisan support over the veto of President Clinton, significantly raised the standard of proof required in investor lawsuits against corporations and executives.

The version of the bill that Cox sponsored, which passed the Republican-dominated House but not the Senate, went far beyond the eventual compromise measure and provides an indication of the role he will play as head of the SEC. According to a *Wall Street Journal* article from June 3, Cox's proposal "would have required plaintiffs to prove actual knowledge of an executive or adviser's intent to deceive instead of just proving recklessness." It also would have required, according to the *Journal*,that plaintiffs "allege specific facts demonstrating the state of mind of each defendant at the time the alleged violation occurred."

Perhaps most importantly, Cox's proposal would have required investors who filed lawsuits against corporations to pay legal fees if they lost. Harvey Goldshmid, then a professor at Columbia University's law school and currently a member of the five-person SEC board, circulated a petition at the time saying the bill would "effectively end most federal securities class actions, would generally threaten the viability of all private securities litigation and would, therefore, threaten basic protections for investors and for our capital markets."

William Lerach, one of the chief investment lawyers who fought against the Private Securities Litigation Reform Act, denounced the nomination of Cox, telling the *New York Times* that Cox “will use his authority for an across-the-board assault on investor protection.” He added, “In my experience with him, I found him to be virulently anti-investor and unrestrained in his desire to gut the securities laws...This is a world-class payback to the corporate world.”

Lerach and others have cited the 1995 act as one of the factors that paved the way for the massive corporate corruption of the late 1990s, since it helped undermine any investor oversight of corporate activity.

Cox has been a strong critic of class action lawsuits in general, helping to push the bill passed into law earlier this year that severely limits the ability of ordinary Americans to use this legal mechanism as a way to challenge the actions of big business.

As part of his devotion to Silicon Valley, Cox has played a leading role in congressional attempts to delay or scuttle a ruling by the Federal Accounting Standards Board that would require public companies to expense stock options in their accounting records. Technology companies have traditionally relied heavily on stock options as a form of employee compensation, especially for top executives. As SEC chairman, Cox will be in a position to further delay implementation of the rule.

Cox is expected to reverse a period of mild regulatory actions taken by the SEC under the leadership of Donaldson, who stepped down on June 1. Wall Street has opposed a measure that had been supported by Donaldson and the two Democrats on the commission—Goldshmid and Roel Campos—that would have given shareholders more power over corporate boards of directors.

Hedge funds—the elite investment companies that cater only to wealthy investors—are strongly opposed to a measure proposed by Donaldson that would have required the funds to register their advisors. This was part of an effort to increase the transparency of hedge funds, which are notoriously opaque to investors and regulators.

While Donaldson cited family reasons for his decision to leave the SEC, the fact that his departure was so quickly followed by the Cox nomination is a clear indication that he was pushed out by the Bush administration. In recent months, actions he has proposed have been publicly criticized by Bush administration officials, including Treasury Secretary John Snow and Federal Reserve Chairman Alan Greenspan.

Cox is unlikely to encounter any significant opposition from the Democrats in the Senate in the confirmation process. New York Democrat Charles Schumer, a member of the Senate Banking Committee, responded by stating that the chairman “should be pro-business and pro-regulation. I’m pretty sure he’s pro-business. I’m not sure yet if he’s pro-regulation.” This is said of an individual who has repeatedly demonstrated his opposition to any constraints on the free action of giant corporations.

After the wave of accounting scandals that began three-and-a-half years ago with the collapse of Enron, the Bush administration made a show of implementing measures to curb corporate criminality. These measures included the passage of the Sarbanes-Oxley Act, which requires corporate executives to personally certify the accounting books of their corporations. The administration has also prosecuted a handful of corporations and executives for their role in scandals at Enron, WorldCom, Tyco and elsewhere.

The appointment of Cox is an unmistakable signal that even these limited measures will be rolled back. His appointment comes the same week as a Supreme Court decision overturning the obstruction of justice conviction of accounting firm Arthur Andersen for its role in accounting fraud at Enron. The ruling will likely make it harder to charge companies with obstruction of justice, frequently used against white-collar criminals.

There is a degree of extraordinary recklessness in the Bush administration’s policy, which will eliminate even the minimal forms of accountability that had been put in place. The Democrats and sections of the Republican Party—including Donaldson—have pushed these measures as a means of restoring investor confidence in American corporations, a confidence that was severely undermined by the corporate scandals of 2001 and 2002.

That these measures could be characterized as “regulatory overkill” is an indication of the determination of the administration and its backers to eliminate all constraints on the most wealthy and corrupt sections of the American ruling elite.