

115TH CONGRESS
2D SESSION

S. 3718

To prohibit Members of Congress from purchasing or selling certain investments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2018

Mr. MERKLEY (for himself and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To prohibit Members of Congress from purchasing or selling certain investments, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ban Conflicted Trad-
5 ing Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “commodity” has the meaning
9 given the term in section 1a of the Commodity Ex-
10 change Act (7 U.S.C. 1a);

1 (2) the term “covered investment”—

2 (A) means investment in a security, a com-
3 modity, or a future, or any comparable eco-
4 nomic interest acquired through synthetic
5 means such as the use of a derivative; and

6 (B) does not include—

7 (i) a widely held investment fund de-
8 scribed in section 102(f)(8) of the Ethics
9 in Government Act of 1978 (5 U.S.C.
10 App.); or

11 (ii) a United States Treasury bill,
12 note, or bond;

13 (3) the term “covered person” means—

14 (A) a sitting Member of Congress; and

15 (B) an individual employed as an officer or
16 employee of Congress required to file a report
17 under the Ethics in Government Act of 1978 (5
18 U.S.C. App.);

19 (4) the term “future” means a financial con-
20 tract obligating the buyer to purchase an asset or
21 the seller to sell an asset, such as a physical com-
22 modity or a financial instrument, at a predetermined
23 future date and price; and

1 (5) the term “security” has the meaning given
2 the term in section 3(a) of the Securities Exchange
3 Act of 1934 (15 U.S.C. 78c(a)).

4 **SEC. 3. PROHIBITIONS.**

5 (a) TRANSACTIONS.—Except as provided in sections
6 4 and 5, no covered person may—

7 (1) purchase or sell any covered investment; or

8 (2) enter into a transaction that creates a net
9 short position in any security.

10 (b) POSITIONS.—A covered person may not serve as
11 an officer or member of any board of any for-profit asso-
12 ciation, corporation, or other entity.

13 **SEC. 4. EXCEPTIONS.**

14 (a) INVESTMENTS HELD BEFORE TAKING OF-
15 FICE.—

16 (1) IN GENERAL.—A covered person may have
17 control over or knowledge of the management of any
18 covered investment held by the covered person as of
19 the day before the date on which the covered person
20 took office.

21 (2) PROHIBITION ON PURCHASING OR SELL-
22 ING.—A covered person may not buy or sell any in-
23 vestment described in paragraph (1) except in the
24 case of—

1 (A) placing the investment in a qualified
2 blind trust described in section 5; or

3 (B) divesting themselves of any investment
4 under subsection (b).

5 (b) DIVESTITURE.—A covered person may sell a cov-
6 ered investment during the 6-month period beginning
7 on—

8 (1) the date on which the covered person takes
9 office or begins employment, as applicable; or

10 (2) the date of enactment of this Act.

11 **SEC. 5. TRUSTS.**

12 (a) IN GENERAL.—On a case-by-case basis, the Se-
13 lect Committee on Ethics may authorize a covered person
14 to place their securities holdings in a qualified blind trust
15 approved by the committee under section 102(f) of the
16 Ethics in Government Act of 1978 (5 U.S.C. App.).

17 (b) BLIND TRUST.—A blind trust permitted under
18 this subsection shall meet the criteria in section
19 102(f)(4)(B) of the Ethics in Government Act of 1978 (5
20 U.S.C. App.), unless an alternative arrangement is ap-
21 proved by the Select Committee on Ethics.

22 **SEC. 6. ADMINISTRATION AND ENFORCEMENT.**

23 (a) ADMINISTRATION.—

24 (1) IN GENERAL.—The provisions of this Act
25 shall be administered by the Select Committee on

1 Ethics of the Senate and the Committee on Ethics
2 of the House of Representatives.

3 (2) GUIDANCE.—The Select Committee on Eth-
4 ics of the Senate and the Committee on Ethics of
5 the House of Representatives are authorized to issue
6 guidance on any matter contained in this Act, in-
7 cluding—

8 (A) whether a covered person may hold an
9 employee stock option, or similar instrument,
10 that had not vested before the date on which
11 the covered person was elected; and

12 (B) the process and timeline for when a
13 covered person shall no longer serve as an offi-
14 cer or member of any board of any for-profit
15 association, corporation, or other entity.

16 (b) ENFORCEMENT.—Whoever knowingly fails to
17 comply with this Act shall be subject to a civil penalty
18 of not less than 10 percent of the value of the covered
19 investment that was purchased or sold or the security in
20 which a net short position was created in violation of this
21 Act, as applicable.

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