

108TH CONGRESS
2D SESSION

H. R. 5290

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide a reasonable correction period for certain security and commodity transactions under the prohibited transaction rules.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 8, 2004

Mr. SAM JOHNSON of Texas (for himself, Mr. BOEHNER, Mr. GEORGE MILLER of California, Mr. PORTMAN, and Mr. ANDREWS) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide a reasonable correction period for certain security and commodity transactions under the prohibited transaction rules.

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

1 **SECTION 1. CORRECTION PERIOD FOR CERTAIN TRANS-**
2 **ACTIONS INVOLVING SECURITIES AND COM-**
3 **MODITIES.**

4 (a) AMENDMENT OF EMPLOYEE RETIREMENT IN-
5 COME SECURITY ACT OF 1974.—Section 408(b) of the
6 Employee Retirement Income Security Act of 1974 (29
7 U.S.C. 1108(b)) is amended by adding at the end the fol-
8 lowing new paragraph:

9 “(14)(A) Except as provided in subparagraphs
10 (B) and (C), a transaction described in section
11 406(a) in connection with the acquisition, holding,
12 or disposition of any security or commodity, if the
13 transaction is corrected before the end of the correc-
14 tion period.

15 “(B) Subparagraph (A) does not apply to any
16 transaction between a plan and a plan sponsor or its
17 affiliates that involves the acquisition or sale of an
18 employer security (as defined in section 407(d)(1))
19 or the acquisition, sale, or lease of employer real
20 property (as defined in section 407(d)(2)).

21 “(C) In the case of any fiduciary or other party
22 in interest (or any other person knowingly partici-
23 pating in such transaction), subparagraph (A) does
24 not apply to any transaction if, at the time the
25 transaction occurs, such fiduciary or party in inter-
26 est (or other person) knew (or reasonably should

1 have known) that the transaction would (without re-
2 gard to this paragraph) constitute a violation of sec-
3 tion 406(a).

4 “(D) For purposes of this paragraph, the term
5 ‘correction period’ means, in connection with a fidu-
6 ciary or party in interest (or other person knowingly
7 participating in the transaction), the 14-day period
8 beginning on the date on which such fiduciary or
9 party in interest (or other person) discovers, or rea-
10 sonably should have discovered, that the transaction
11 would (without regard to this paragraph) constitute
12 a violation of section 406(a).

13 “(E) For purposes of this paragraph—

14 “(i) The term ‘security’ has the meaning
15 given such term by section 475(c)(2) of the In-
16 ternal Revenue Code of 1986 (without regard to
17 subparagraph (F)(iii) and the last sentence
18 thereof).

19 “(ii) The term ‘commodity’ has the mean-
20 ing given such term by section 475(e)(2) of
21 such Code (without regard to subparagraph
22 (D)(iii) thereof).

23 “(iii) The term ‘correct’ means, with re-
24 spect to a transaction, to undo the transaction
25 to the extent possible, but in any case to make

1 good to the plan or affected account any losses
2 resulting from the transaction and to restore to
3 the plan or affected account any profits made
4 through the use of assets of the plan.”.

5 (b) AMENDMENT OF INTERNAL REVENUE CODE OF
6 1986.—

7 (1) IN GENERAL.—Subsection (d) of section
8 4975 of the Internal Revenue Code of 1986 (relating
9 to exemptions) is amended by striking “or” at the
10 end of paragraph (14), by striking the period at the
11 end of paragraph (15) and inserting “, or”, and by
12 adding at the end the following new paragraph:

13 “(16) except as provided in subsection (f)(7), a
14 transaction described in subparagraph (A), (B), (C),
15 or (D) of subsection (c)(1) in connection with the
16 acquisition, holding, or disposition of any security or
17 commodity, if the transaction is corrected before the
18 end of the correction period.”.

19 (2) SPECIAL RULES RELATING TO CORRECTION
20 PERIOD.—Subsection (f) of section 4975 of such
21 Code (relating to other definitions and special rules)
22 is amended by adding at the end the following new
23 paragraph:

24 “(7) CORRECTION PERIOD.—

1 “(A) IN GENERAL.—For purposes of sub-
2 section (d)(16), the term ‘correction period’
3 means the 14-day period beginning on the date
4 on which the disqualified person discovers, or
5 reasonably should have discovered, that the
6 transaction would (without regard to this para-
7 graph and subsection (d)(16)) constitute a pro-
8 hibited transaction.

9 “(B) EXCEPTIONS.—

10 “(i) EMPLOYER SECURITIES.—Sub-
11 section (d)(16) does not apply to any
12 transaction between a plan and a plan
13 sponsor or its affiliates that involves the
14 acquisition or sale of an employer security
15 (as defined in section 407(d)(1)) or the ac-
16 quisition, sale, or lease of employer real
17 property (as defined in section 407(d)(2)).

18 “(ii) KNOWING PROHIBITED TRANS-
19 ACTION.—In the case of any disqualified
20 person, subsection (d)(16) does not apply
21 to a transaction if, at the time the trans-
22 action is entered into, the disqualified per-
23 son knew (or reasonably should have
24 known) that the transaction would (with-

1 out regard to this paragraph) constitute a
2 prohibited transaction.

3 “(C) ABATEMENT OF TAX WHERE THERE
4 IS A CORRECTION.—If a transaction is not
5 treated as a prohibited transaction by reason of
6 subsection (d)(16), then no tax under sub-
7 section (a) and (b) shall be assessed with re-
8 spect to such transaction, and if assessed the
9 assessment shall be abated, and if collected
10 shall be credited or refunded as an overpay-
11 ment.

12 “(D) DEFINITIONS.—For purposes of this
13 paragraph and subsection (d)(16)—

14 “(i) SECURITY.—The term ‘security’
15 has the meaning given such term by sec-
16 tion 475(c)(2) (without regard to subpara-
17 graph (F)(iii) and the last sentence there-
18 of).

19 “(ii) COMMODITY.—The term ‘com-
20 modity’ has the meaning given such term
21 by section 475(e)(2) (without regard to
22 subparagraph (D)(iii) thereof).

23 “(iii) CORRECT.—The term ‘correct’
24 means, with respect to a transaction, to
25 undo the transaction to the extent possible,

1 but in any case to make good to the plan
2 or affected account any losses resulting
3 from the transaction and to restore to the
4 plan or affected account any profits made
5 through the use of assets of the plan.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to any transaction which the fidu-
8 ciary or disqualified person discovers, or reasonably should
9 have discovered, after the date of the enactment of this
10 Act constitutes a prohibited transaction.

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