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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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ban Conflicted Trading Act''.

SEC. 2. DEFINITIONS.

In this Act—

(1) the term ''commodity'' has the meaning given the term in section 1a of the Commodity Exchange Act (7 U.S.C. 1a);

(2) the term ''covered investment''—

(A) means investment in a security, a commodity, or a future, or any comparable economic interest acquired through synthetic means such as the use of a derivative; and

(B) does not include—

(i) a widely held investment fund described in section 102(f)(8) of the Ethics in Government Act of 1978 (5 U.S.C. App.); or

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

(3) the term ''covered person'' means—

(A) a sitting Member of Congress; and

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

(4) the term ''future'' means a financial contract obligating the buyer to purchase an asset or the seller to sell an asset, such as a physical commodity or a financial instrument, at a predetermined future date and price; and

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

SEC. 3. PROHIBITIONS.

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

(1) purchase or sell any covered investment; or

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

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

SEC. 4. EXCEPTIONS.

(a) INVESTMENTS HELD BEFORE TAKING OFFICE.—

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

(2) PROHIBITION ON PURCHASING OR SELLING.—A covered person may not buy or sell any investment described in paragraph (1) except in the case of—

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

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

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

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

(2) the date of enactment of this Act.

SEC. 5. TRUSTS.

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

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

SEC. 6. ADMINISTRATION AND ENFORCEMENT.

(a) ADMINISTRATION.—

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

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

(2) GUIDANCE.—The Select Committee on Ethics of the Senate and the Committee on Ethics of the House of Representatives are authorized to issue guidance on any matter contained in this Act, including—

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

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

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

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