



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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May 17, 2021

The Honorable Jim Himes
United States Representative
2137 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 2655, the “Insider Trading Prohibition Act”

Dear Congressman Himes:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),¹ I am writing to express strong support for H.R. 2655, the “Insider Trading Prohibition Act.”

State securities regulators combat securities violations on a daily basis. These violations encompass an array of bad behavior, including insider trading, which erodes retail investor confidence in the markets and market participants and keep much needed investment capital on the sidelines. Therefore, NASAA supports the codification of a clear, appropriate, and effective insider trading definition in the federal statutes.

Insider trading generally refers to buying or selling a security in breach of a fiduciary duty or other relationship of trust and confidence based on material, nonpublic information about the security. Often, it is corporate insiders and the individuals whom they have tipped that commit illegal insider trading. Insider trading can also be executed by others, such as corporate outsiders who misappropriate information they have otherwise legitimately acquired through the services they perform for the company.

Currently, no statute or SEC rule explicitly prohibits insider trading. Rather, insider trading is considered fraud within the broad contours of Exchange Act Section 10(b) and SEC Rule 10b-5.² Under either the classical or misappropriation theories, this conduct “satisfies § 10(b)’s requirement that chargeable conduct involve a ‘deceptive device or contrivance’ used ‘in connection with’ the purchase or sale of securities.”³ The deceptive device in insider trading is feigning fidelity to the source of the information. Case law has attempted to define the precise

¹ The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² *Dirks v. SEC*, 463 U.S. 646 (1983).

³ *United States v. O’Hagan*, 521 U.S. 642, 653 (1997).

boundaries of insider trading over the past four decades; however, meaningful disputes persist as to what is and is not unlawful.⁴

The Insider Trading Prohibition Act would codify much of the existing case law pertaining to prohibit insider trading. The legislation would provide important clarity in regard to practices that up to now have been governed by judicial applications of the Exchange Act's general antifraud provisions. Specifically, the bill would amend the Exchange Act to prohibit any person from trading securities while in possession of related material, nonpublic information by knowingly or recklessly disregarding that the information has been obtained wrongfully; or by engaging in transactions that would constitute a wrongful use of such information.

NASAA supports the codification of a clear, appropriate, and effective insider trading definition for both courts and market participants. We are pleased to support the Insider Trading Prohibition Act, and we urge its passage.

Thank you for your consideration of NASAA's views. Please do not hesitate to contact me, or Michael Canning, NASAA Director of Policy & Government Affairs, at (202) 737-0900, if we may be of any additional assistance.

Sincerely,



Lisa Hopkins
NASAA President
General Counsel and Senior Deputy Commissioner of Securities, West Virginia

CC: The Honorable Maxine Waters
The Honorable Patrick McHenry

⁴ See, e.g., *Salman v. United States*, 137 S. Ct. 420 (2016).