

December 15, 2020

Chairman Jay Clayton
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C.
20549-5990.

Re: Request for Investigation of Senator Kelly Loeffler

Dear Chairman Clayton,

I respectfully request that the U.S. Securities and Exchange Commission (the “SEC” or the “Commission”) immediately investigate potential violations of federal securities law and SEC regulations by Senator Kelly Loeffler and notify the public of the investigation. Recent transaction reports and company statements demonstrate that United States Senator Kelly Loeffler may have used nonpublic information related to COVID-19 economic relief legislation for her own financial gain in violation of federal law.

Under federal securities law, members of Congress owe a duty “arising from a relationship of trust . . . to the Congress, the United States Government, and the citizens of the United States,” with respect to material nonpublic information obtained through a Member’s public service.¹ It is difficult to imagine a more profound violation of the public trust than the use of nonpublic information on Congress’s emergency response to a global pandemic in order to enhance a Senator’s own personal wealth.

Senator Loeffler has been mired in allegations and investigations related to her and her husband’s extraordinarily well-timed financial investments at the start of the pandemic. While her constituents faced an unprecedented threat to their health and welfare, Senator Loeffler profited off the pandemic in the stock market. Recent reports and transactional analysis provide strong evidence to suggest that Senator Loeffler used nonpublic information acquired through her official Senate duties to inform financial security transactions that she personally benefited from. I respectfully request that the Commission immediately investigate these allegations and take appropriate action against Senator Loeffler.

FACTUAL BACKGROUND

Senator Kelly Loeffler was appointed to serve as United States Senator for the state of Georgia in January 2020.² Sen. Loeffler is “by far” the wealthiest member of Congress; she and her husband’s combined net worth is about \$500 million.³ Senator Loeffler’s husband, Jeffrey

¹ 15 USC § 78u–1(g)(1).

² Kelly Loeffler, “About Kelly,” <https://www.loeffler.senate.gov/about-kelly>.

³ Dan Mangan, “SEC Warns on Coronavirus Insider Trading After Stock Sales by NYSE Chair, His Wife Sen. Loeffler, 3 Other Senators,” CNBC (Mar. 23, 2020) <https://www.cnbc.com/2020/03/23/coronavirus-sec-warns-on-insider-trading-after-loeffler-sales.html>.

Sprecher, is the founder, chairman, and CEO of Intercontinental Exchange, and chairman of the New York Stock Exchange.⁴

On March 19, 2020, Senate Majority Leader Mitch McConnell (R-KY) introduced the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act” or the “Act”).⁵ This two trillion dollar economic relief package was designed to lessen the unprecedented threat that the COVID-19 pandemic posed to the health and economic wellbeing of the American people.⁶ On March 27, 2020, the CARES Act was signed into law by President Trump.⁷

One of the most significant economic relief measures of the CARES Act was the change to the tax treatment of corporate net operating losses. The Act allows a company to use net operating losses in 2018, 2019 or 2020 and apply that loss (or “carryback” the loss) to any of the five preceding years and claim a retroactive tax benefit.⁸ Since the carryback period dates as far back as the Obama administration, when corporate tax rates were 67% higher, a company could use the new carryover benefit to substantially reduce a previous year’s tax liability and create a significant, one-time tax refund.⁹

The benefactors of this carryback provision skew toward industries prone to big losses or gains dependent on cyclical markets. Such boom-and-bust sectors that were set to benefit from the CARES Act’s passage included the energy sector due to the price of oil collapsing in 2019, the troubled airline industry, and the insurance sector (an inherently volatile industry tied to unpredictable disasters).¹⁰

Between March 16, 2020 and March 18, 2020 — the period preceding the introduction of the CARES Act on March 19, 2020 — Treasury Secretary Steven Mnuchin met twice with Senate Republicans privately to discuss the legislation’s particulars, and Senate Republicans held a private lunch to brief their members on specific provisions.¹¹ The Act included the carryback tax provisions when introduced on March 19th and such provisions were included in the final version of the Act that became law.¹²

At the time leading up to the Act’s introduction, Senator Loeffler and her husband invested in individual stocks through outside financial advisers at Morgan Stanley, Goldman Sachs, Sepio

⁴ Stephen Gandel, “NYSE boss sold his own stock ahead of coronavirus market meltdown,” CBS News (March 20, 2020) <https://www.cbsnews.com/news/nyse-jeffrey-c-sprecher-kelly-loeffler-sold-company-stock-ahead-of-coronavirus-market-meltdown/>.

⁵ S. 3548, 116th Cong. (2020), available at <https://www.congress.gov/bill/116th-congress/senate-bill/3548/text>.

⁶ *The CARES Act Works for All Americans*, U.S. Dep’t of Treasury, <https://home.treasury.gov/policy-issues/cares>.

⁷ *Id.*

⁸ *Frequently Asked Questions about Carrybacks of NOLs for Taxpayers Who have had Section 965 Inclusions*, Internal Revenue Service, <https://www.irs.gov/newsroom/frequently-asked-questions-about-carrybacks-of-nols-for-taxpayers-who-have-had-section-965-inclusions> (last visited Dec. 11, 2020).

⁹ Molly Redden, *Sen. Kelly Loeffler’s Husband Bought Stock in Sectors Set to Benefit from Then-Secret Bill*, HuffPost (updated Dec. 10, 2020), https://www.huffpost.com/entry/kelly-loeffler-stocks-ethics-cares-act_n_5fcfa349c5b6787f2a9b15bf?bub.

¹⁰ *Id.*; Desmond Butler, Steven Mufson, and Douglas MacMillan, *How The Cares Act Gave Millions to Energy Companies with No Strings Attached*, Wash. Post (Oct. 6, 2020), <https://www.washingtonpost.com/climate-environment/2020/10/06/cares-act-money-companies/>.

¹¹ Redden, *supra* note 9.

¹² *Id.*

Capital and Wells Fargo.¹³ On March 18, 2020, the day before the Act was introduced, Senator Loeffler's husband, Jeffrey Sprecher, purchased between \$250,000 - \$500,000 worth of stock in Assurant, Inc. [AIZ], a large insurance company.¹⁴ Shortly after the enactment of the CARES Act, Assurant reported in its 2020 Q1 earnings report that it received a one-time \$79 million tax refund associated with the carryback of losses in 2018 to five years prior.¹⁵ Sprecher appears to have sold his Assurant shares at a profit when the couple divested their holdings in individual stocks, though the exact transaction prices are not disclosed.¹⁶

On March 16, 2020, on the same day Senator Loeffler was being privately briefed on the provisions of the CARES Act and a mere three days before its introduction, Sprecher bought up to \$250,000 in Chevron [CVX], the multinational energy corporation.¹⁷ Similarly, Sprecher made three major investments on March 16 and 17, 2020 in insurance and airline companies: (1) up to \$100,000 in American International Group, Inc. [AIG]; (2) up to \$50,000 in Prudential Financial, Inc. [PRU]; and (3) up to \$100,000 in Delta Airlines, Inc. [DAL].¹⁸ These investments came after a two month period of the couple predominantly engaging in a major sell-off of stocks.¹⁹ Notably, this stock sell-off triggered its own investigation by the Department of Justice on whether the Senator profited from nonpublic information about the severity of the fledgling pandemic.²⁰

LEGAL ANALYSIS

United States Senators are subject to insider trading prohibitions in federal securities law, including the Stop Trading on Congressional Knowledge Act of 2012 (“STOCK Act”), which specifically prohibits members of Congress from trading on material, non-public information obtained through their official duties.

Section 10(b) of the Securities Exchange Act of 1934 (the “Act”) makes it illegal to “use or employ, in connection with the purchase or sale of any security registered on a national securities exchange . . . any manipulative or deceptive device or contrivance” in violation of the rules promulgated by the Securities and Exchange Commission.²¹ The manipulative or deceptive devices prohibited under Section 10(b) include the “purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, in breach of a duty of

¹³ Nicholas Fandos, *Under Fire for Trades, Kelly Loeffler Says She Will Divest from Individual Stocks*, N.Y. Times (updated July 10, 2020), <https://www.nytimes.com/2020/04/08/us/politics/kelly-loeffler-coronavirus-stock-trades.html>.

¹⁴ *Kelly Loeffler: Periodic Transaction Report for 05/01/2020*, Sec. and Exchange Commission, <https://sec.report/Senate-Stock-Disclosures/Loeffler/Kelly/2b47d301-0318-4604-bd14-a0b9c1b8437f> [hereinafter “SEC, Loeffler Reports”].

¹⁵ *Assurant Inc (AIZ) Q1 2020 Earnings Call Transcript*, Motley Fool (May 6, 2020), <https://www.fool.com/earnings/call-transcripts/2020/05/06/assurant-inc-aiz-q1-2020-earnings-call-transcript.aspx>.

¹⁶ Redden, *supra* note 9.

¹⁷ SEC, *Loeffler Reports*, *supra* note 14.

¹⁸ *Id.*

¹⁹ *See Kelly Loeffler: Senate Financial Disclosure*, Sec. and Exchange Commission, <https://sec.report/Senate-Stock-Disclosures/Loeffler/Kelly/8d87d0d9-8094-4891-a29c-c0e0435acb1a>.

²⁰ Katelyn Burns, *Kelly Loeffler And 2 Other Senators Are No Longer Being Investigated for Insider Trading*, Vox (May 27, 2020), <https://www.vox.com/policy-and-politics/2020/5/27/21271726/kelly-loeffler-senators-investigation-insider-trading>.

²¹ 15 U.S.C. § 78j(b).

trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information.”²²

The Act, as amended by the STOCK Act, makes clear that, “each Member of Congress . . . owes a duty arising from a relationship of trust and confidence to the Congress, the United States Government, and the citizens of the United States with respect to material, nonpublic information derived from such person’s position as a Member of Congress or employee of Congress or gained from the performance of such person’s official responsibilities.”²³

Accordingly, it is illegal under the Act for a U.S. Senator to use material, nonpublic information derived from such person’s position as a Member of Congress as a means for making a private profit through securities purchases. A legal violation occurs whether the Member uses the information themselves or passes it on to a relative who then uses the information in the purchase of stock.²⁴ Knowing or willful violations of the Act can result in criminal conviction resulting in fines up to \$5,000,000, imprisonment of up to 20 years, or both.²⁵

Senator Loeffler, through the performance of her official duties in the Senate, appears to have received nonpublic information on the provisions and timing of the CARES Act during three different occasions before the legislation was introduced in the Senate - two meetings with Treasury Secretary Steven Mnuchin and a lunch meeting of Senate Republicans. At the same time as Senator Loeffler was receiving nonpublic information on the multi-trillion-dollar economic relief legislation, her husband was investing up to \$1,000,000 in companies poised to disproportionately benefit from the tax provisions of that very legislation. It is irrational to believe that the timing of these stock purchases was a coincidence. The perfect timing and selection of companies strongly indicates that, in making the stock purchases, Sprecher was acting on the basis of knowledge that was unavailable to the public — knowledge acquired from Senator Loeffler’s position as a Member of Congress.

While Senator Loeffler has not responded directly to questions about her husband’s purchase of energy, airline and insurance stocks immediately prior to the introduction of the CARES Act, she has claimed that she does not make any investment decisions in her portfolio and such decisions “are made by multiple third-party advisors without [her] or [her] husband's knowledge or involvement.”²⁶ Given the timing of the stock purchases, Senator Loeffler’s defense warrants further investigation. It strains credulity to assume that the couple’s third-party investment advisors had the unilateral foresight to invest in companies that would greatly benefit from a major tax refund opportunity *at the exact same time* Senator Loeffler was being privately briefed on the yet-to-be published CARES Act that would establish the one-time tax refund.

²² 17 C.F.R. § 240.10b5-1(a).

²³ 15 USC § 78u-1(g)(1).

²⁴ *Salman v. U.S.*, 137 S. Ct. 420, 423 (2016) (“A tipper breaches such a fiduciary duty . . . when the tipper discloses the inside information for a personal benefit. . . a jury can infer a personal benefit—and thus a breach of the tipper's duty—where the tipper receives something of value in exchange for the tip or ‘makes a gift of confidential information to a trading relative or friend’”).

²⁵ 15 U.S.C. § 78ff(a).

²⁶ Kelly Loeffler (@KLoeffler), Twitter, (March 20, 2020, 12:25 AM), <https://twitter.com/SenatorLoeffler/status/1240856941435502592>.

Even if one assumes that Senator Loeffler was not personally involved in the decision to sell stock, as she claims, any information that she shared with her husband or their financial advisors based on information learned through her position in the U.S. Senate that contributed to their decisions to sell off stocks would constitute a use of material nonpublic information gained from the performance of Loeffler's official responsibilities for private profit. Indeed, it is difficult to understand why their advisors decided to reverse the sell-off strategy and make major investments in insurance, energy and airline stocks if not for the nonpublic information obtained by Senator Loeffler. In violation of federal securities law, the facts outlined above indicate that Senator Loeffler likely used non-public information obtained from her official position in the Senate to inform her family's financial transactions.

CONCLUSION

The STOCK Act was enacted to provide a clear and absolute prohibition against insider trading by Members of Congress, given their unique access to nonpublic information that may impact the United States economy at large. Even prior to the enactment of the STOCK Act, existing securities laws and regulations clearly barred any use of material nonpublic information gained by Senators in the course of their duties for private gain or personal profit. Notwithstanding these rules, Senator Loeffler appears to demonstrate a blatant disregard for these laws and regulations essential to instilling the public's trust in government.

The investment transactions by her and her husband's advisors are simply too well timed with information Senator Loeffler received in private as a Member of the Senate not to be suspect. The Commission should immediately investigate Senator Loeffler's relationship with these stock purchases and take appropriate remedial action.

Sincerely,

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