

May 3, 2019

Memorandum

To: Members of the Committee on Financial Services
From: FSC Majority Staff
Subject: May 8, 2019 Full Committee Markup

The Committee on Financial Services will meet to mark up the following measures, in an order to be determined by the Chairwoman, at 2:00 p.m. on Wednesday, May 8th 2019, and subsequent days if necessary, in room 2128 of the Rayburn House Office Building:

Amendment in the Nature of a Substitute to H.R. 2513, the Corporate Transparency Act of 2019 (Maloney)

Summary: The ANS to H.R. 2513, The Corporate Transparency Act of 2019, would require corporations and limited liability corporations (LLCs) to disclose their true “beneficial owners” to the Financial Crime Enforcement Network (FinCEN) at the time the company is formed.

Background: No U.S. state currently requires companies to disclose their beneficial owners. Because anonymous shell companies afford a high level of secrecy, criminals, terrorists, and money launderers make use of them to hide their money and facilitate illegal activities.¹ This lack of information is considered by law enforcement, financial institutions, and anti-corruption organizations to be a primary obstacle to tackling financial crime in the modern era.² The ANS would require the beneficial owner, defined to include all natural persons who exercise substantial control over a company, own 25% or more of the equity interests of a company, or receive substantial economic benefits from the assets of a company, to be disclosed to the FinCEN at the time the company is formed. The FinCEN database of beneficial ownership information would not be publicly available, but instead would be available to law enforcement agencies and, with customer consent, to financial institutions for purposes of complying with the financial institution’s “Know-Your-Customer” regulatory requirements. The ANS exempts entities that are already required by Federal or state law to disclose their beneficial owners, such as SEC-regulated public

¹ “How Anonymous Shell Companies Finance Insurgents, Criminals, and Dictators.” Jodi Vittori, Council on Foreign Relations. September 7, 2017. <https://www.cfr.org/report/how-anonymous-shell-companies-finance-insurgents-criminals-and-dictators>

² “Letter from Fraternal Order of Police to Congress on Corporate Transparency Hearing.” Fraternal Order of Police, FACT Coalition website, March 13, 2019 <https://thefactcoalition.org/letter-from-fraternal-order-of-police-to-congress-on-corporate-transparency-hearing> (Last accessed May 2, 2019)

companies, state-regulated insurance companies, and charitable organizations. It also requires FinCEN to act within a year to remove redundancies with the Customer Due Diligence (CDD) rule.

Requiring the disclosure of a company's beneficial owners would bring the United States in line with other developed countries. The European Union (E.U.), for example, enacted the E.U. Fourth Anti-Money Laundering Directive in 2015,³ requiring all member states to collect and share beneficial ownership information.

The ANS has the support of several organizations: non-governmental organizations, including AFL-CIO, Global Witness, Oxfam America, Polaris, Friends of the Earth US, the Mainstreet Alliance, religious groups, the National Association of Realtors, and technology coalitions.⁴ In addition, financial institutions and their associations, representing entities of all sizes and types such as the Bank Policy Institute (BPI), the National Association of Federally Insured Credit Unions (NAFCU), and the Independent Community Bankers Association (ICBA) support the bill.

However, the American Bar Association and the National Federation of Independent Business have raised concerns that corporate transparency could cause regulatory burdens on lawyers and small business, and the American Civil Liberties Union is concerned that the ANS will criminalize a failure to file paperwork with the federal government.

Amendment in the Nature of a Substitute to H.R. 2514, “Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform Act” or the “COUNTER Act” (Cleaver)

Summary: The ANS to H.R. 2514 amends the Bank Secrecy Act (BSA) to make changes to the Treasury Department and Financial Crime Enforcement Network (FinCEN), including the creation of a Treasury Civil Liberties and Privacy Officer in each financial regulator and an interagency Civil Liberties and Privacy Council through which collaboration on Bank Secrecy Act/Anti-Money Laundering (BSA/AML) issues can occur. The ANS would also make changes to the BSA oversight and compliance regime, including by authorizing financial institutions (FIs) to share BSA data with certain affiliates, and codifying financial regulators' guidance enabling community financial institutions to share training and technology resources. The ANS would also make financial regulators' joint innovation guidance permanent, would require that each financial banking regulator establish an innovation lab, create an inter-regulator innovation council, close existing loopholes in the BSA/AML regime, increase penalties for bad actors, and other changes.

³ “Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance)” EUR-Lex, European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L0849>

⁴ Many of these organizations are members of the FACT Coalition or are working in collaboration with the FACT Coalition to advocate for ANS passage. FACT Coalition's website: <https://thefactcoalition.org/>

Background: The BSA defines the roles and responsibilities for agencies and industry to enable defense of national security of our financial system. The last major reforms to the BSA were in 2001 before the rise of lone-actor terrorists, decentralized cryptocurrencies, sophisticated transnational trafficking schemes, and cybercrime. At the same time, innovations in “RegTech”, the use of financial technology (Fintech) to improve compliance with regulations, and other fintech are dramatically changing how both industry and bad actors operate.

Loopholes in Existing BSA Regime

Bad actors like drug traffickers and corrupt kleptocrats frequently use anonymous shell companies and all-cash schemes to buy and sell real estate to hide and clean their dirty money. In 2017, FinCEN acknowledged the magnitude of the U.S. real-estate loophole (which exempts the real estate industry from standard BSA/AML compliance requirements) by issuing a Geographic Targeting Order⁵ (GTO) to require beneficial ownership information to be reported in certain types of area-based, high-end residential transactions. The agency stated at the time that “about 30 percent of the transactions covered by the GTOs involve a beneficial owner or purchaser representative that is also the subject of a previous suspicious activity report” from a financial institution. This transparency problem also extends to commercial real estate. High-profile examples include an Iranian-government-owned skyscraper in New York City⁶ and shares of a luxury hotel purchased with millions in stolen, corrupt assets⁷. To better identify and prevent these cases, the ANS requires FinCEN to issue a GTO to cover similarly anonymous commercial real estate transactions.

Another loophole exists in the art and antiquities trade. According to the Antiquities Coalition, “the United States is the largest destination for archaeological and ethnological objects from around the world.”⁸ Terror groups like the Islamic State have looted and sold these treasures to fund their operations, which the head of UNESCO, the United Nations’ cultural heritage agency, said was worth millions of dollars and conducted at an “industrial scale.”⁹ High-end art purchases can also be used to launder money, including multi-million-

⁵ “Geographic Targeting Order Covering TITLE INSURANCE COMPANY” FinCEN, November 5, 2018. Available at:

https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20GENERIC_111518_FINAL.pdf

⁶ “Jury Finds United States May Seize Iran-Linked Office Tower” Brendan Pierson, Reuters, June 29, 2017. Available at: <https://www.reuters.com/article/us-usa-iran-lawsuit/jury-finds-united-states-may-seize-iran-linked-office-tower-idUSKBN19K2NB>

⁷ “U.S. to Return \$200 Million 1MDB-Linked Funds to Malaysia” Andrea Tan, Edvard Pettersson, and Anisah Shukry, Bloomberg, May 2, 2019. Available at: <https://www.bloomberg.com/news/articles/2019-05-03/u-s-said-to-return-200-million-1mdb-linked-funds-to-malaysia>

⁸ “Antiquities Coalition Policy Note: Taking the First Step Toward Ending Illegal Antiquities Trafficking” Antiquities Coalition website, February 22, 2019. Available at: <https://theantiquitiescoalition.org/antiquities-coalition-policy-note-taking-the-first-step-toward-ending-illegal-antiquities-trafficking/> (last accessed May 3, 2019)

⁹ “Islamic State looting Syrian, Iraqi sites on industrial scale -UNESCO” Andrew Osborn, Reuters, July 2, 2015. <https://uk.reuters.com/article/uk-mideast-crisis-unesco/islamic-state-looting-syrian-iraqi-sites-on-industrial-scale-unesco-idUKKCN0PC1OS20150702>

dollar paintings¹⁰ and collectibles.¹¹ However, today, persons trading or acting as intermediaries in the trade of works of art or antiquities, including advisors, consultants or any other person who engages as a business in the solicitation of the sale of art, are exempt from the BSA. The ANS would amend the BSA to include this industry in the definition of “financial institutions.”

Trade-based money laundering, in which criminals disguise illicit funds by engaging in legitimate trades, has been identified as one of the most difficult forms of money laundering.¹² TBML is estimated to generate billions of dollars in profits for bad actors while facilitating transnational crime and draining national treasuries of legitimate tax and custom revenues.¹³ However, the enormous volumes of trade, complexity in trades and other reasons make detecting TBML challenging for financial institutions and law enforcement.¹⁴ The ANS would direct the Treasury to develop a government-wide strategy to combat TBML.

The ANS also requires a review to better understand other emerging money laundering threats, including how it is used by China in the international narcotics trade (including fentanyl, other opioids, and methamphetamine precursors¹⁵), intellectual property theft, and natural resources trafficking.

BSA Collaboration

Today, illicit financial flows (IFFs) are estimated to comprise 20 percent of developing country trade with advanced economies.¹⁶ One witness testified before the Committee that good networks of public and private partners to combat the bad is vital to ensure that all entities are focused on the same threats and solutions.¹⁷ Another witness suggested that Treasury’s ability to connect with foreign governments and international organization allies

¹⁰ “UK Art Dealer Matthew Green Charged in a \$9 Million Picasso Money-Laundering Scheme” Anti-Corruption Digest, March 8, 2018. <https://anticorruptiondigest.com/anti-corruption-news/2018/03/08/uk-art-dealer-matthew-green-charged-in-a-9-million-picasso-money-laundering-scheme/#axzz5muUDakx5>

¹¹ “Michael Jackson Glove: US Fights Dictator's Son” Sky News August 17, 2013. <https://news.sky.com/story/michael-jackson-glove-us-fights-dictators-son-10437068>

¹² U.S. Department of the Treasury, *National Money Laundering Risk Assessment*, June 12, 2015, p. 29, at <https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Money%20Laundering%20Risk%20Assessment%20%E2%80%93%2006-12-2015.pdf>.

¹³ “Trade-Based Money Laundering: Overview and Policy Issues” Rena S. Miller, Liana W. Rosen, and James K. Jackson, Congressional Research Service, June 22, 2016.

<https://www.crs.gov/Reports/R44541?source=search&guid=a5448051a0784485862246efc3d49649&index=2>

¹⁴ “Trade-Based Money Laundering” ACAMS website <https://www.acams.org/aml-resources/trade-based-money-laundering/> (last accessed May 2, 2019)

¹⁵ “Evolution of the U.S. Overdose Crisis Understanding China’s Role in the Production and Supply of Synthetic Opioids” Bryce Pardo, RAND, Testimony presented before the House Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, September 6, 2018. https://www.rand.org/content/dam/rand/pubs/testimonies/CT400/CT497/RAND_CT497.pdf

¹⁶ *Id.*

¹⁷ “Communicating, Cooperating and Collaborating through Public-Private Partnerships to Counter the Financing of Terrorism and Crime” Testimony of Celina B. Realuyo Before the Task Force to Investigate Terrorism Financing, Committee on Financial Services, U.S. House of Representatives, June 23, 2016.

https://financialservices.house.gov/uploadedfiles/06.23.2016_celena_realuyo_testimony.pdf

in developing and executing policy and program priorities could be enhanced by increasing its presence overseas through international liaisons.¹⁸ He also suggested that by creating domestic liaisons collaboration could be improved in the U.S. and help FinCEN identify region-specific illicit finance risks, and potentially issue regional or industry-specific advisories or GTOs.¹⁹ The ANS would create these international and domestic liaisons, and codify the FinCEN Exchange, a voluntary public-private information-sharing partnership among law enforcement, financial institutions (FIs), and FinCEN.²⁰

BSA/AML Compliance Tools

The BSA/AML framework heavily relies on FIs taking steps to only provide financial services to legitimate actors and report suspicious activity to law enforcement.²¹ To do this, banks are required to know who their customers are,²² monitor transactions, conduct enhanced due diligence, report suspicious activity, and coordinate with industry and government partners to understand and detect ongoing and emerging threats. Today, however, there are certain statutory and regulatory limitations that limit how FIs may share information. For example, FIs cannot share illicit-finance information with foreign affiliates. In addition, FinCEN discontinued its “SARs Activity Review,” which afforded industry with federal-government analysis of financial crime trends and patterns²³ and was used, especially by smaller banks which do not have large, in-house intelligence units, to train staff, tune risk controls, and to better understand potential threats to institutions. The ANS would permit limited information sharing between FIs and certain foreign affiliates, reinstate the SARS Activity Review, and make permanent guidance that permits financial institutions to share compliance resources,²⁴ such as training for FI employees or a multi-bank BSA officer.

Enforcement Mechanisms

Despite ongoing efforts to improve FI compliance with the law, regulators and law enforcement continue to bring civil and criminal BSA-violations.²⁵ The ANS would create incentives for whistleblowers to report BSA violations by establishing a Treasury-based rewards program for those who come forward with significant information that leads to an

¹⁸ “Promoting Corporate Transparency: Examining Legislative Proposals to Detect and Deter Financial Crimes” Testimony of Jacob Cohen Before the United States House of Representatives Committee on Financial Services Subcommittee on National Security, International Development, and Monetary Policy, March 13, 2019. <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba10-wstate-cohenj-20190313-u1.pdf>

¹⁹ *Ibid.*

²⁰ “FinCEN Exchange Questions and Answers” FinCEN Website. <https://www.fincen.gov/resources/fin-exchange/fincen-exchange-frequently-asked-questions> (Last accessed May 2, 2019)

²¹ “The First Line of Defense and Financial Crime” Speech by Michael Held at the 1LoD Summit, Federal Reserve Bank of New York, April 2, 2019. <https://www.newyorkfed.org/newsevents/speeches/2019/hel190402>

²² “Special Contributor Report: A Complete Guide to Understanding AML KYC Compliance.” Deepak Amirtha Raj, ACFCS Website, September 8, 2017. <https://www.acfcs.org/news/362763/Special-Contributor-Report-The-Complete-Guide-to-Understanding-AML-KYC-requirements.htm> (last accessed on May 3, 2019)

²³ “Index to Topics for The SAR Activity Review Volumes 1-23” FinCEN website. <https://www.fincen.gov/index-topics-sar-activity-review-volumes-1-23> (Last accessed May 2, 2019)

²⁴ Interagency Statement on Sharing Bank Secrecy Act Resources, FinCEN (October 03, 2018), <https://www.fincen.gov/news/news-releases/interagency-statement-sharing-bank-secrecy-act-resources>.

²⁵ “BSA-AML Civil Money Penalties” BankersOnline.com <https://www.bankersonline.com/penalty/penalty-type/bsa-aml-civil-money-penalties> (last accessed May 3, 2019)

enforcement action. The ANS would also heighten penalties for BSA violators by preventing the return of profits or bonuses for those convicted of crimes, and by authorizing Treasury to impose treble damages for repeat BSA offenders.

Encouraging BSA/AML Innovation

The financial industry is adopting increasingly advanced tools to improve data quality and analysis and to conserve limited resources.²⁶ This innovation can contribute to better detection as well as more comprehensive investigations which, in turn, may lead to timelier and more useful SARs for law enforcement. The industry is also adopting or adapting to new products and services in the marketplace, such as cryptocurrencies, payments platforms, and blockchain technologies. Bad actors are also seeking opportunities to leverage these tools. One witness at a hearing before the Committee testified that regulators need to understand this changing environment and to regulate in a manner that encourages innovation while limiting negative impacts to our financial system and national security.²⁷ The ANS would establish Innovation Labs in FinCEN and the federal financial regulators to streamline agency comprehension of new technology and to serve as a one-stop shop for FI and industry BSA/AML innovation-related questions and concerns. The ANS would also codify the regulators' joint innovation statement of December 2018, which encourages financial institutions to responsibly explore and invest in new BSA/AML technologies.²⁸ The ANS further requires regulators to define the criteria for FIs to discard outdated BSA/AML technologies, allowing them to fully shift resources to newer and more effective options.

Privacy

The BSA/AML regime is a balance between the protection of civil liberties and privacy and efforts to secure the nation and our financial system. Civil liberties and privacy advocacy groups, however, have raised concerns that as efforts to combat diverse threats grow, so does the government's monitoring of private individuals' economic activities. The ANS would require the FinCEN and each financial regulator to hire a dedicated Civil Liberties and Privacy Officer, who would engage on the development and review of BSA/AML regulation and provide input on program-level information-sharing activities (government-to-government, government-to-private-sector, and private-sector-to-private-sector), especially where there may be access to personally identifiable information. The ANS also establishes a standing Civil Liberties and Privacy Council across the agencies to facilitate the sharing of best practices and discussion of these issues in context of joint agency activities.

FinCEN reforms

In addition to making changes to the ways FinCEN collaborates with international and domestic partners, a witness testified before the Committee that "one of the greatest

²⁶ "How Fintech is Changing the Compliance Landscape" Carol Stabile, ACAMS Today, March 6, 2017. <https://www.acamstoday.org/how-fintech-is-changing-the-compliance-landscape/>

²⁷ Amit Sharma, March 13, 2019. Available at: <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba10-wstate-sharmaa-20190313.pdf>

²⁸ Treasury's FinCEN and Federal Banking Agencies Issue Joint Statement Encouraging Innovative Industry Approaches to AML Compliance, FinCEN (December 03, 2018), <https://www.fincen.gov/news/news-releases/treasurys-fincen-and-federal-banking-agencies-issue-joint-statement-encouraging>.

challenges for FinCEN has been its ability to hire and retain mission critical staff.”²⁹ The agency competes with other banking regulators that compensate their employees on a different and higher pay scale. The ANS would change the pay-scale of FinCEN employees to be comparable to other federal financial regulators.

Amendment in the Nature of a Substitute to HR 1988, The Protect Affordable Mortgages for Veterans Act of 2019 (Scott/Zeldin)

Summary: H.R. 1988 is a slightly modified version of H.R. 6737 from last Congress that would address the unintended consequences of Section 309 of the “Economic Growth, Regulatory Relief, and Consumer Protection Act,” (S. 2155). Specifically, Section 309 placed new requirements on VA loan refinances to help protect borrowers and address other negative impacts of a trend of rapid refinances of VA loans. Under Section 309, refinanced VA loans that did not meet new requirements were not allowed to be pooled into Ginnie Mae securities. Unfortunately, there were an estimated 2,500 loans that were either already in the process of being refinanced or had already been originated but not yet securitized when the bill passed and that did not meet the new requirements of the law and were therefore ineligible for Ginnie Mae securities. H.R. 1988 would allow this subset of loans to be grandfathered into eligibility for Ginnie Mae securities. H.R. 1988 also adds language that was not included in H.R. 6737 to address an additional technical issue related to the tolling of the loan seasoning period.

Background: The “Protecting Veterans from Predatory Lending Act of 2018,” (S. 2304), was included as Section 309 of S. 2155. It was introduced by Senators Tillis and Warren in response to a concerning trend of rapid refinances of VA loans, often through aggressive and deceptive marketing tactics that pushed veteran borrowers into refinancing their loans under unfavorable terms.³⁰ For example, some borrowers reported that they ended up at the closing table with a much higher interest rate than they expected.³¹

To address this, S. 2304 placed new requirements on VA loan refinances, including loan seasoning requirements (i.e. a required waiting period before a borrower can refinance their loan). Specifically, under Section 309 of S. 2155, a VA refinanced loan may not be guaranteed or insured until 210 days after the first monthly payment was made, or after six monthly payments had been made, whichever is later. This requirement was very similar to loan seasoning requirements that Ginnie Mae already had in place. Those requirements only allowed refinanced loans to be included in Ginnie Mae securities if the first payment due date of the refinanced loan occurred no earlier than 210 days after the first payment due date of the initial loan, and the borrower had made at least six consecutive monthly payments on the initial loan. The key difference is that under Ginnie Mae’s

²⁹ “Promoting Corporate Transparency: Examining Legislative Proposals to Detect and Deter Financial Crimes” Testimony of Jacob Cohen Before the United States House of Representatives Committee on Financial Services Subcommittee on National Security, International Development, and Monetary Policy, March 13, 2019. <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba10-wstate-cohenj-20190313-u1.pdf>

³⁰ See e.g. CFPB, “A Snapshot of Servicemember Complaints,” November 2016, available at: https://files.consumerfinance.gov/f/documents/112016_cfpb_OSA_VA_refinance_snapshot.pdf

³¹ *Id.*

previous requirements, the 210-day clock began on the due date of the first payment of the initial loan. For Section 309, the 210-day clock begins on the date the borrower makes the first payment on the initial loan, which may be earlier than the due date. This has created some administrative difficulties because the lender providing a refinance loan does not necessarily have access to information about the first payment date, only the due date of such payment.

There were an estimated 2,500 loans that met Ginnie Mae's existing loan seasoning requirements but did not meet the new loan seasoning requirements under Section 309 and were in the process of being refinanced or had already been originated but not yet securitized when S. 2155 was passed into law, rendering them ineligible for Ginnie Mae securities. H.R. 1988 would allow this small subset of loans to be grandfathered into eligibility for Ginnie Mae securities. Without H.R. 1988, lenders would likely be forced to keep these loans on their own books. H.R. 1988 also adds language not previously included in H.R. 6737 that ensures that the 210-day seasoning period begins on the first payment due date rather than the actual date of payment to avoid the administrative problems described above.

Senators Warren and Tillis weighed in with Ginnie Mae on June 11, 2018, stating that "it was not our intention to 'orphan' those loans, and we urge Ginnie and the VA to work with lenders and other federal agencies to attempt to ensure that those loans are not adversely affected by the enactment of the Act." The Mortgage Bankers Association and the Community Home Lenders Association weighed in in support of this bill when it was considered last Congress when the Committee and House passed it on voice vote.

H.R. 2409, Expanding Access to Capital for Rural Job Creators Act (Axne/Mooney)

Summary This bill would require the Advocate for Small Business Capital Formation at the SEC to identify unique challenges facing rural-area small businesses in securing access to capital, and in its annual report to Congress, to identify the most serious issues encountered by rural-area small businesses and their investors.

Background: The SEC Small Business Advocate Act, signed into law on December 10, 2016, created an Office of the Advocate for Small Business Capital Formation ("Advocate") and a Small Business Advisory Committee at the SEC. The Advocate is tasked with helping small businesses and their investors resolve significant problems with the SEC or self-regulatory organizations (SRO) and with identifying issues and proposing changes to statutes, regulations, and rules to benefit small businesses and their investors. Each year the Advocate must submit a report to Congress on its activities, which must contain, among other things, a summary of the most serious issues encountered by small businesses and small business investors, including any unique issues encountered by minority- and women-owned small businesses and their investors.

H.R. 4281, which is a nearly identical bill to H.R. 2409 passed the Committee unanimously last Congress and was included in S488, JOBS and Investor Confidence Act of 2018, a package of capital markets related bills that passed the House last Congress by a vote of 406 – 4.

Amendment in the Nature of a Substitute to H.R.XXXX, Insider Trading Prohibition Act (Himes)

Summary: The Insider Trading Prohibition Act codifies the definition of illegal insider trading under the securities laws, creating a clear, consistent standard for both courts and market participants to follow.

Background: The law of insider trading has developed by the courts over several decades, and insider trading is prosecuted under the general securities fraud section of the Securities Exchange Act of 1934.³² Insider trading refers to undisclosed trading on material, nonpublic corporate information by individuals who are under a duty of trust and confidence that prohibits them from using such information for their own personal gain.³³ Individuals who are subject to this duty also may not disclose (or “tip”) the information to outsiders (known as “tippees”), who then trade on the information themselves even though they know the information was wrongfully obtained. In this case, both the tipper and tippee may be liable. An insider’s tip of confidential information to an outsider is a breach of the insider’s duty if the insider “personally will benefit, directly or indirectly, from his disclosure.”³⁴

In 2014 the Second Circuit held that even though a tippee may know that the information was wrongfully disclosed, the government must also prove that they knew about the specific *personal benefit* that the insiders received.³⁵ This holding has made it significantly more difficult for the government to successfully prosecute insider trading cases. The bill would overturn this controversial court requirement.

During an April 4, 2019 hearing before the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, Professor John Coffee of Columbia Law School testified that the bill “expands liability in ways that should not be controversial.” Representatives from Public Citizen and North American Securities Administrators Association (NASAA) both testified their strong support for the bill. The U.S. Chamber of Commerce expressed concerns that the bill could create a strict liability standard without any intent on the defendants’ part and that it could “outlaw” the safe harbor for trades conducted through preestablished plans under Rule 10b5-1. The bill, as amended, does not impose strict liability, and instead requires defendants to know or recklessly disregard the fact that insider information was obtained illegally or that the trading would constitute wrongful use of the information. In addition, the bill clarifies that the safe harbor for insider trading plans is not repealed.

Amendment in the Nature of a Substitute to H.R.2515, to Amend the Securities and Exchange Act of 1934 to Amend the Definition of Whistleblower (Green)

³² Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]; 17 C.F.R. § 240.10b-5..

³³ See generally *Chiarella v. United States*, 445 U.S. 222, 226–230 (1980); *Dirks v. SEC*, 463 U.S. 646, 653–654 (1983); *Salman v. United States*, No. 15-628, slip op. at 1 (2016); see also *In re Cady, Roberts & Co.*, 40 S.E.C. 907 (1961).

³⁴ *Dirks*, 463 U.S. at 662.

³⁵ See *Newman*, 773 F.3d at 452.

Summary: This bill would amend section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) to clarify that whistleblowers who report alleged misconduct to their employers, and not to the SEC, are also protected by the anti-retaliation provisions in section 922.

Background: Section 922 of the Dodd-Frank Act created a whistleblower program at the SEC that provides monetary awards to whistleblowers who contribute “original information” that results in monetary sanctions of over \$1 million.³⁶ In addition, section 922 explicitly protects whistleblowers from retaliation by their employers simply for reporting suspected misconduct.³⁷ In 2018, the Supreme Court held in *Digital Reality Trust v. Somers* that whistleblowers who report alleged misconduct internally, but not to the SEC, are not protected by the anti-retaliation provisions of Dodd-Frank.³⁸ By clarifying that whistleblowers who only report alleged misconduct to their employers are also protected by the anti-retaliation provisions in Section 922, this bill would encourage employees to communicate potential securities law violations to their employers without fear of being fired before they are able to report to the SEC.

The bill enjoyed support from Public Citizen and the North American Securities Administrators Association (NASAA) at an April 4, 2019 hearing before the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets. A representative for the U.S. Chamber of Commerce stated that “employees should be able to report any wrongdoing within their compliance departments at their company,” but he expressed concern that expanding the scope of Dodd-Frank’s whistleblower protections may “contribute to frivolous employment litigation as well as excessive internal reporting.”

Resolutions Establishing Two Committee Task Forces

The Committee will also consider two resolutions relating to the organization of the Committee. The first resolution establishes the House Committee on Financial Services Task Force on Financial Technology. The Task Force on Financial Technology shall conduct hearings and investigations relating to financial technology within the Committee’s Rule X jurisdiction and may issue reports to the Committee detailing its findings and recommendations. The Chair of the Task Force will be Representative Lynch, and the Ranking Member will be Representative Hill.

The second resolution establishes a task force to be known as the House Committee on Financial Services Task Force on Artificial Intelligence. The Task Force on Artificial Intelligence shall conduct hearings and investigations relating to artificial intelligence within the Committee’s Rule X jurisdiction and may issue reports to the Committee detailing its findings and recommendations. The Chair of the Task Force will be Representative Foster and the Ranking Member will be Representative Hill.

Resolution Electing a Vice Chair for the Committee

³⁶ 15 U.S.C. § 78u-6.

³⁷ *Id.* at § 78u-6(h).

³⁸ *Digital Reality Trust, Inc. v. Somers*, No. 16-1276, slip op. at 2 (2018).

The Chair will also designate Representative San Nicolas to be Vice-Chair of the Committee on Financial Services.