

Public Law 100-704
100th Congress

An Act

To improve the procedures and remedies for the prevention of insider trading, and for other purposes.

Nov. 19, 1988
[H.R. 5133]

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

Insider Trading and
Securities Fraud
Enforcement
Act of 1988.
15 USC 78a note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Insider Trading and Securities Fraud Enforcement Act of 1988”.

SEC. 2. FINDINGS.

The Congress finds that—

15 USC 78u-1 note.

(1) the rules and regulations of the Securities and Exchange Commission under the Securities Exchange Act of 1934 governing trading while in possession of material, nonpublic information are, as required by such Act, necessary and appropriate in the public interest and for the protection of investors;

(2) the Commission has, within the limits of accepted administrative and judicial construction of such rules and regulations, enforced such rules and regulations vigorously, effectively, and fairly; and

(3) nonetheless, additional methods are appropriate to deter and prosecute violations of such rules and regulations.

SEC. 3. CIVIL PENALTIES OF CONTROLLING PERSONS FOR
ILLEGAL INSIDER TRADING BY CONTROLLED PERSONS.

(a) AMENDMENT.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 21(d)—

(A) by striking out paragraph (2); and

(B) by redesignating subsection (d)(1) as subsection (d);

and

(2) by inserting after section 21 the following new section:

15 USC 78u.

“CIVIL PENALTIES

“SEC. 21A. (a) AUTHORITY TO IMPOSE CIVIL PENALTIES.—

15 USC 78u-1.

“(1) JUDICIAL ACTIONS BY COMMISSION AUTHORIZED.—Whenever it shall appear to the Commission that any person has violated any provision of this title or the rules or regulations thereunder by purchasing or selling a security while in possession of material, nonpublic information in, or has violated any such provision by communicating such information in connection with, a transaction on or through the facilities of a national securities exchange or from or through a broker or dealer, and which is not part of a public offering by an issuer of securities other than standardized options, the Commission—

“(A) may bring an action in a United States district court to seek, and the court shall have the jurisdiction to impose, a

Courts, U.S.

(2) INVESTMENT ADVISERS.—The Investment Advisors Act of 1940 (15 U.S.C. 80b-1 et seq.) is amended by adding after section 204 the following new section:

“PREVENTION OF MISUSE OF NONPUBLIC INFORMATION

15 USC 80b-4a.

“SEC. 204A. Every investment adviser subject to section 204 of this title shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser’s business, to prevent the misuse in violation of this Act or the Securities Exchange Act of 1934, or the rules or regulations thereunder, of material, nonpublic information by such investment adviser or any person associated with such investment adviser. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this Act or the Securities Exchange Act of 1934 (or the rules or regulations thereunder) of material, nonpublic information.”

15 USC 78u-1 note.

(c) COMMISSION RECOMMENDATIONS FOR ADDITIONAL CIVIL PENALTY AUTHORITY REQUIRED.—The Securities and Exchange Commission shall, within 60 days after the date of enactment of this Act, submit to each House of the Congress any recommendations the Commission considers appropriate with respect to the extension of the Commission’s authority to seek civil penalties or impose administrative fines for violations other than those described in section 21A of the Securities Exchange Act of 1934 (as added by this section).

SEC. 4. INCREASES IN CRIMINAL PENALTIES.

Section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a)) is amended—

- (1) by striking “\$100,000” and inserting “\$1,000,000”;
- (2) by striking “five years” and inserting “10 years”;
- (3) by striking “is an exchange” and inserting “is a person other than a natural person”; and
- (4) by striking out “\$500,000” and inserting “\$2,500,000”.

SEC. 5. LIABILITY TO CONTEMPORANEOUS TRADERS FOR INSIDER TRADING.

The Securities Exchange Act of 1934 is amended by inserting after section 20 the following new section:

“LIABILITY TO CONTEMPORANEOUS TRADERS FOR INSIDER TRADING

Classified
information.
15 USC 78t-1.

“SEC. 20A. (a) PRIVATE RIGHTS OF ACTION BASED ON CONTEMPORANEOUS TRADING.—Any person who violates any provision of this title or the rules or regulations thereunder by purchasing or selling a security while in possession of material, nonpublic information shall be liable in an action in any court of competent jurisdiction to any person who, contemporaneously with the purchase or sale of securities that is the subject of such violation, has purchased (where such violation is based on a purchase of securities) securities of the same class.

“(b) LIMITATIONS ON LIABILITY.—

“(1) CONTEMPORANEOUS TRADING ACTIONS LIMITED TO PROFIT GAINED OR LOSS AVOIDED.—The total amount of damages imposed under subsection (a) shall not exceed the profit gained or