

AMENDMENT NO.\_\_\_\_\_

Calendar No.\_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—112th Cong., 2d Sess.**

**S. 2038**

To prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

**AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. REID**

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

**3 SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stop Trading on Con-  
5 gressional Knowledge Act of 2012” or the “STOCK Act”.

**6 SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) MEMBER OF CONGRESS.—The term “Mem-  
9 ber of Congress” means a member of the Senate or  
10 House of Representatives, a Delegate to the House

1       of Representatives, and the Resident Commissioner  
2       from Puerto Rico.

3                     (2) EMPLOYEE OF CONGRESS.—The term “em-  
4       ployee of Congress” means—

5                         (A) an employee of the Senate; or  
6                         (B) an employee of the House of Rep-  
7       resentatives.

8                     (3) EXECUTIVE BRANCH EMPLOYEE.—The  
9       term “executive branch employee”—

10                         (A) has the meaning given the term “em-  
11       ployee” under section 2105 of title 5, United  
12       States Code; and

13                         (B) includes—  
14                             (i) the President;  
15                             (ii) the Vice President; and  
16                             (iii) an employee of the United States  
17       Postal Service or the Postal Regulatory  
18       Commission.

19                     (4) JUDICIAL OFFICER.—The term “judicial of-  
20       ficer” has the meaning given that term under sec-  
21       tion 109(10) of the Ethics in Government Act of  
22       1978.

**1 SEC. 3. PROHIBITION OF THE USE OF NONPUBLIC INFOR-****2 MATION FOR PRIVATE PROFIT.**

3       The Select Committee on Ethics of the Senate and  
4 the Committee on Standards of Official Conduct of the  
5 House of Representatives shall issue interpretive guidance  
6 of the relevant rules of each chamber, including rules on  
7 conflicts of interest and gifts, clarifying that a Member  
8 of Congress and an employee of Congress may not use  
9 nonpublic information derived from such person's position  
10 as a Member of Congress or employee of Congress or  
11 gained from the performance of such person's official re-  
12 sponsibilities as a means for making a private profit.

**13 SEC. 4. PROHIBITION OF INSIDER TRADING.**

14       (a) AFFIRMATION OF NON-EXEMPTION.—Members of  
15 Congress and employees of Congress are not exempt from  
16 the insider trading prohibitions arising under the securi-  
17 ties laws, including section 10(b) of the Securities Ex-  
18 change Act of 1934 and Rule 10b-5 thereunder.

19       (b) DUTY.—

20           (1) PURPOSE.—The purpose of the amendment  
21 made by this subsection is to affirm a duty arising  
22 from a relationship of trust and confidence owed by  
23 each Member of Congress and each employee of  
24 Congress.

1                             (2) AMENDMENT.—Section 21A of the Securi-  
2                             ties Exchange Act of 1934 (15 U.S.C. 78u-1) is  
3                             amended by adding at the end the following:

4                             “(g) DUTY OF MEMBERS AND EMPLOYEES OF CON-  
5                             GRESS.—

6                             “(1) IN GENERAL.—For purposes of the insider  
7                             trading prohibitions arising under the securities  
8                             laws, including section 10(b) and Rule 10b-5 there-  
9                             under, each Member of Congress or employee of  
10                            Congress owes a duty arising from a relationship of  
11                            trust and confidence to the Congress, the United  
12                            States Government, and the citizens of the United  
13                            States with respect to material, nonpublic informa-  
14                            tion derived from such person’s position as a Mem-  
15                            ber of Congress or employee of Congress or gained  
16                            from the performance of such person’s official re-  
17                            sponsibilities.

18                             “(2) DEFINITIONS.—In this subsection—

19                             “(A) the term ‘Member of Congress’  
20                             means a member of the Senate or House of  
21                             Representatives, a Delegate to the House of  
22                             Representatives, and the Resident Commis-  
23                             sioner from Puerto Rico; and

24                             “(B) the term ‘employee of Congress’  
25                             means—

1                         “(i) an employee of the Senate; or  
2                         “(ii) an employee of the House of  
3                         Representatives.

4                         “(3) RULE OF CONSTRUCTION.—Nothing in  
5                         this subsection shall be construed to impair or limit  
6                         the construction of the existing antifraud provisions  
7                         of the securities laws or the authority of the Com-  
8                         mission under those provisions.”.

9                         **SEC. 5. CONFORMING CHANGES TO THE COMMODITY EX-**

10                         **CHANGE ACT.**

11                         Section 4c(a) of the Commodity Exchange Act (7  
12 U.S.C. 6c(a)) is amended—

13                         (1) in paragraph (3), in the matter preceding  
14                          subparagraph (A)—

15                         (A) by inserting “or any Member of Con-  
16                         gress or employee of Congress (defined in this  
17                         subsection as those terms are defined in section  
18                         2 of the Stop Trading on Congressional Knowl-  
19                         edge Act of 2012)” after “Federal Govern-  
20                         ment,” the first place it appears;

21                         (B) by inserting “Member,” after “position  
22                         of the”; and

23                         (C) by inserting “or by Congress” before  
24                         “in a manner”; and

25                         (2) in paragraph (4)—

1                             (A) in subparagraph (A), in the matter  
2                             preceding clause (i)—

3                                 (i) by inserting “or any Member of  
4                             Congress or employee of Congress” after  
5                             “Federal Government,” the first place it  
6                             appears;

7                                 (ii) by inserting “Member,” after “po-  
8                             sition of the”; and

9                                 (iii) by inserting “or by Congress” be-  
10                             fore “in a manner”;

11                             (B) in subparagraph (B), in the matter  
12                             preceding clause (i), by inserting “or any Mem-  
13                             ber of Congress or employee of Congress” after  
14                             “Federal Government,”; and

15                             (C) in subparagraph (C)—

16                                 (i) in the matter preceding clause (i),  
17                             by inserting “or by Congress”—

18                                     (I) before “that may affect”; and  
19                                     (II) before “in a manner”; and

20                                 (ii) in clause (iii), by inserting “to  
21                             Congress, or any Member of Congress or  
22                             employee of Congress” after “Federal Gov-  
23                             ernment”.

**1 SEC. 6. PROMPT REPORTING OF FINANCIAL TRANS-****2 ACTIONS.**

3       (a) REPORTING REQUIREMENT.—Section 101 of the  
4 Ethics in Government Act of 1978 is amended by adding  
5 at the end the following subsection:

6       “(j) Not later than 30 days after any transaction re-  
7 quired to be reported under section 102(a)(5)(B), a Mem-  
8 ber of Congress or officer or employee of Congress shall  
9 file a report of the transaction.”.

10     (b) EFFECTIVE DATE.—The amendment made by  
11 subsection (a) shall apply to transactions occurring on or  
12 after the date that is 90 days after the date of enactment  
13 of this Act.

**14 SEC. 7. REPORT ON POLITICAL INTELLIGENCE ACTIVITIES.**

15     (a) REPORT.—

16       (1) IN GENERAL.—Not later than 12 months  
17 after the date of enactment of this Act, the Com-  
18 troller General of the United States, in consultation  
19 with the Congressional Research Service, shall sub-  
20 mit to the Committee on Homeland Security and  
21 Governmental Affairs of the Senate and the Com-  
22 mittee on Oversight and Government Reform of the  
23 House of Representatives a report on the role of po-  
24 litical intelligence in the financial markets.

25       (2) CONTENTS.—The report required by this  
26 section shall include a discussion of—

- 1                         (A) what is known about the prevalence of  
2                         the sale of political intelligence and the extent  
3                         to which investors rely on such information;
- 4                         (B) what is known about the effect that  
5                         the sale of political intelligence may have on the  
6                         financial markets;
- 7                         (C) the extent to which information which  
8                         is being sold would be considered non-public in-  
9                         formation;
- 10                        (D) the legal and ethical issues that may  
11                         be raised by the sale of political intelligence;
- 12                        (E) any benefits from imposing disclosure  
13                         requirements on those who engage in political  
14                         intelligence activities; and
- 15                        (F) any legal and practical issues that may  
16                         be raised by the imposition of disclosure re-  
17                         quirements on those who engage in political in-  
18                         telligence activities.

19                       (b) DEFINITION.—For purposes of this section, the  
20                         term “political intelligence” shall mean information that  
21                         is—

22                       (1) derived by a person from direct communica-  
23                         tions with executive branch and legislative branch of-  
24                         ficials; and

1                   (2) provided in exchange for financial com-  
2                   pensation to a client who intends, and who is known  
3                   to intend, to use the information to inform invest-  
4                   ment decisions.

5       **SEC. 8. PUBLIC FILING AND DISCLOSURE OF FINANCIAL**  
6                   **DISCLOSURE FORMS OF MEMBERS OF CON-**  
7                   **GRESS AND CONGRESSIONAL STAFF.**

8                   (a) PUBLIC, ON-LINE DISCLOSURE OF FINANCIAL  
9                   DISCLOSURE FORMS OF MEMBERS OF CONGRESS AND  
10                  CONGRESSIONAL STAFF.—

11                  (1) IN GENERAL.—Not later than August 31,  
12                  2012, or 90 days after the date of enactment of this  
13                  Act, whichever is later, the Secretary of the Senate  
14                  and the Sergeant at Arms of the Senate, and the  
15                  Clerk of the House of Representatives, shall ensure  
16                  that financial disclosure forms filed by Members of  
17                  Congress, officers of the House and Senate, can-  
18                  didates for Congress, and employees of the Senate  
19                  and the House of Representatives in calendar year  
20                  2012 and in subsequent years pursuant to title I of  
21                  the Ethics in Government Act of 1978 are made  
22                  available to the public on the respective official  
23                  websites of the Senate and the House of Representa-  
24                  tives not later than 30 days after such forms are  
25                  filed.

1                   (2) EXTENSIONS.—The existing protocol allow-  
2                   ing for extension requests for financial disclosures  
3                   shall be retained. Notices of extension for financial  
4                   disclosure shall be made available electronically  
5                   under this subsection along with its related disclo-  
6                   sure.

7                   (3) REPORTING TRANSACTIONS.—In the case of  
8                   a transaction disclosure required by section 101(j) of  
9                   the Ethics in Government Act of 1978, as added by  
10                  this Act, such disclosures shall be filed not later  
11                  than 30 days after the transaction. Notices of exten-  
12                  sion for transaction disclosure shall be made avail-  
13                  able electronically under this subsection along with  
14                  its related disclosure.

15                  (4) EXPIRATION.—The requirements of this  
16                  subsection shall expire upon implementation of the  
17                  public disclosure system established under subsection  
18                  (b).

19                  (b) ELECTRONIC FILING AND ON-LINE PUBLIC  
20                  AVAILABILITY OF FINANCIAL DISCLOSURE FORMS OF  
21                  MEMBERS OF CONGRESS, OFFICERS OF THE HOUSE AND  
22                  SENATE, AND CONGRESSIONAL STAFF.—

23                  (1) IN GENERAL.—Subject to paragraph (6)  
24                  and not later than 18 months after the date of en-  
25                  actment of this Act, the Secretary of the Senate and

1 the Sergeant at Arms of the Senate and the Clerk  
2 of the House of Representatives shall develop sys-  
3 tems to enable—

(A) electronic filing of reports received by them pursuant to section 103(h)(1)(A) of title I of the Ethics in Government Act of 1978; and

(B) public access to financial disclosure reports filed by Members of Congress, Officers of the House and Senate, candidates for Congress, and employees of the Senate and House of Representatives, as well as reports of a transaction disclosure required by section 101(j) of the Ethics in Government Act of 1978, as added by this Act, notices of extensions, amendments and blind trusts, pursuant to title I of the Ethics in Government Act of 1978 through databases that—

(ii) allow the public to search, sort and download data contained in the reports.

1       made available by this subsection. A login protocol  
2       with the name of the user shall be utilized by a per-  
3       son downloading data contained in the reports. For  
4       purposes of filings under this section, section  
5       105(b)(2) of the Ethics in Government Act of 1978  
6       does not apply.

7                     (3) PUBLIC AVAILABILITY.—Pursuant to sec-  
8       tion 105(b)(1) of title I of the Ethics in Government  
9       Act of 1978, electronic availability on the official  
10      websites of the Senate and the House of Representa-  
11      tives under this subsection shall be deemed to have  
12      met the public availability requirement.

13                    (4) FILERS COVERED.—Individuals required  
14       under the Ethics in Government Act of 1978 or the  
15       Senate Rules to file financial disclosure reports with  
16       the Secretary of the Senate or the Clerk of the  
17       House shall file reports electronically using the sys-  
18       tems developed by the Secretary of the Senate, the  
19       Sergeant at Arms of the Senate, and the Clerk of  
20       the House.

21                   (5) EXTENSIONS.—The existing protocol allow-  
22       ing for extension requests for financial disclosures  
23       shall be retained for purposes of this subsection. No-  
24       tices of extension for financial disclosure shall be

1       made available electronically under this subsection  
2       along with its related disclosure.

3           (6) ADDITIONAL TIME.—The requirements of  
4       this subsection may be implemented after the date  
5       provided in paragraph (1) if the Secretary of the  
6       Senate or the Clerk of the House identify in writing  
7       to relevant congressional committees an additional  
8       amount of time needed.

9           (c) RECORDKEEPING.—Section 105(d) of the Ethics  
10      in Government Act of 1978 is amended to read as follows:

11          “(d)(1) Any report filed with or transmitted to an  
12      agency or supervising ethics office or to the Clerk of the  
13      House of Representatives or the Secretary of the Senate  
14      pursuant to this title shall be retained by such agency or  
15      office or by the Clerk or the Secretary of the Senate, as  
16      the case may be.

17          “(2) Such report shall be made available to the pub-  
18      lic—

19            “(A) in the case of a Member of Congress until  
20      a date that is 6 years from the date the individual  
21      ceases to be a Member of Congress; and

22            “(B) in the case of all other reports filed pursu-  
23      ant to this title, for a period of six years after re-  
24      ceipt of the report.

1       “(3) After the relevant time period identified under  
2 paragraph (2), the report shall be destroyed unless needed  
3 in an ongoing investigation, except that in the case of an  
4 individual who filed the report pursuant to section 101(b)  
5 and was not subsequently confirmed by the Senate, or who  
6 filed the report pursuant to section 101(c) and was not  
7 subsequently elected, such reports shall be destroyed 1  
8 year after the individual either is no longer under consid-  
9 eration by the Senate or is no longer a candidate for nomi-  
10 nation or election to the Office of President, Vice Presi-  
11 dent, or as a Member of Congress, unless needed in an  
12 ongoing investigation or inquiry.”.

13 **SEC. 9. OTHER FEDERAL OFFICIALS.**

14       (a) PROHIBITION OF THE USE OF NONPUBLIC IN-  
15 FORMATION FOR PRIVATE PROFIT.—

16           (1) EXECUTIVE BRANCH EMPLOYEES.—The Of-  
17 fice of Government Ethics shall issue such interpre-  
18 tive guidance of the relevant Federal ethics statutes  
19 and regulations, including the Standards of Ethical  
20 Conduct for executive branch employees, related to  
21 use of nonpublic information, as necessary to clarify  
22 that no executive branch employee may use non-pub-  
23 lic information derived from such person’s position  
24 as an executive branch employee or gained from the

1 performance of such person's official responsibilities  
2 as a means for making a private profit.

13 (b) APPLICATION OF INSIDER TRADING LAWS.—

20 (2) DUTY.—

(B) AMENDMENT.—Section 21A of the Securities Exchange Act of 1934 (15 U.S.C. 78u-1), as amended by this Act, is amended by adding at the end the following:

**5        "(h) DUTY OF OTHER FEDERAL OFFICIALS.—**

“(1) IN GENERAL.—For purposes of the insider trading prohibitions arising under the securities laws, including section 10(b), and Rule 10b-5 thereunder, each executive branch employee and each judicial officer owes a duty arising from a relationship of trust and confidence to the United States Government and the citizens of the United States with respect to material, nonpublic information derived from such person’s position as an executive branch employee or judicial officer or gained from the performance of such person’s official responsibilities.

17           “(2) DEFINITIONS.—In this subsection—

18                         “(A) the term ‘executive branch em-  
19                         ployee’—

20                             “(i) has the meaning given the term  
21                             ‘employee’ under section 2105 of title 5,  
22                             United States Code;

“(ii) includes

24 "I, the President:

<sup>25</sup> “(II) the Vice President; and

1                         “(III) an employee of the United  
2                         States Postal Service or the Postal  
3                         Regulatory Commission; and

4                         “(B) the term ‘judicial officer’ has the  
5                         meaning given that term under section 109(10)  
6                         of the Ethics in Government Act of 1978.

7                         “(3) RULE OF CONSTRUCTION.—Nothing in  
8                         this subsection shall be construed to impair or limit  
9                         the construction of the existing antifraud provisions  
10                         of the securities laws or the authority of the Com-  
11                         mission under those provisions.”.

12 **SEC. 10. RULE OF CONSTRUCTION.**

13                         Nothing in this Act, the amendments made by this  
14                         Act, or the interpretive guidance to be issued pursuant  
15                         to sections 3 and 9 of this Act, shall be construed to—

16                         (1) impair or limit the construction of the anti-  
17                         fraud provisions of the securities laws or the Com-  
18                         modities Exchange Act or the authority of the Secu-  
19                         rities and Exchange Commission or the Commodity  
20                         Futures Trading Commission under those provi-  
21                         sions;

22                         (2) be in derogation of the obligations, duties  
23                         and functions of a Member of Congress, an employee  
24                         of Congress, an executive branch employee or a judi-

1       cial officer, arising from such person's official posi-  
2       tion; or

3                     (3) be in derogation of existing laws, regula-  
4       tions or ethical obligations governing Members of  
5       Congress, employees of Congress, executive branch  
6       employees or judicial officers.