April 5, 2022
Opening Statement of Chairman Sherrod Brown
"Keeping Markets Fair: Considering Insider Trading Legislation"

The tragedy and uncertainty of the coronavirus pandemic taught us a lot about the economy and the stock market.

At first, for a brief period at the beginning of the pandemic, the stock market tracked what was happening in the rest of the economy. As small businesses and families struggled, U.S. stock market suffered the fastest drop in history, plummeting 34 percent in 33 days.

But then, the stock market had the fastest rebound in history, recovering all of those losses by mid-August.

Meanwhile, small businesses were making impossible decisions about layoffs or shutting their doors altogether. 14 million Americans were unemployed.

And last year, we saw record highs in the stock market and all-time records in initial public offerings, private equity, and venture capital.

It was a reminder of what most Americans already know – the stock market is detached from the reality of most people's lives.

And it disproportionately benefits the wealthy. According to Federal Reserve data, the wealthiest one percent hold 53 percent of stock and mutual fund investments, and the bottom 90 percent own less than 12 percent.

Think about that – just one percent of the country holds more than half of all Wall Street assets.

So it's no surprise that most Americans don't trust the markets. They don't think the stock market is fair, and they think the wealthy and well-connected cheat the system.

And too often, they're right. It's why today we're examining how Congress and this Committee must work to crack down on bad actors who cheat the system **and cheat Americans planning for the future**.

Everyone on Wall Street should play by the same rules. We know that's almost never been the case.

Right now, it seems too easy for corporate insiders out on the golf course to exchange information about upcoming mergers and deals, and get away with it.

All too often we see insiders—from boardrooms to bankers—involved in suspicious trading. These are people who should know better, people who know when they are crossing the line – but they just can't seem to help themselves.

The SEC and the Department of Justice have prosecuted insider trading for decades using principles of fraud under the securities laws. Most of these principles have developed without a standard defined by Congress.

Most people would probably be surprised to learn that there's no one law written down anywhere that spells out what constitutes illegal insider trading.

Over the years, federal courts have disagreed on what types of misconduct are in fact illegal. And when the Supreme Court has stepped in, instead of resulting in a clearer understanding of the law, it's just created more confusion on what counts as illegal insider trading

We should all want strict, clear rules on what constitutes illegal insider trading. We should all want a statute that spells out when someone is crossing the line.

That would help avoid this uncertainty and inconsistency.

Since 2014, there's been a debate between the federal circuit courts and the Supreme Court about when people who provide or receive inside information and trade on it are liable for insider trading.

After the back and forth in those cases, experts still disagree on how much the law changed, where the lines are, and what happens if courts disagree in the future.

We have also seen that there may be limits to our ability to use insider trading case law to hold new varieties of improper trades accountable.

This is especially true with the rise of cyber threats – for example, if someone deliberately hacks into a computer system to access inside information and then trades on it. Existing statutes and case law, believe it or not, don't always treat that as wrongful insider trading, even though to pretty much everyone that sounds like a textbook example.

Our colleagues in the House have been considering these gaps. Representative Himes has been leading on this issue for years, and has pushed legislation that would take away the uncertainty created by the courts and establish standards that address the questions that come up repeatedly. Senator Reed has been working on a Senate version of that House-passed bill that our witnesses will discuss today.

Insider trading cases might not be as cut and dry or as exciting as we see in the movies, but the same kind of misconduct and suspicious trading happens again and again. It's wrong, it's unfair, and it's yet one more way that the wealthy and the well-connected game the system to get ahead.

It's funny how the people who seem to have the best luck playing the stock market so often happened to have friends in high places.

We hear all the time about insiders who have amazing timing and buy stock days before a big announcement, or we read about the chain of people who share a stock "tip," that is clearly confidential information that shouldn't be shared or traded on.

Congress has the opportunity to finally make it clear what the rules are.

A statutory definition of insider trading would also capture abuses and misconduct – like hacking to steal confidential stock information – that courts have found to be outside the concepts of "fraud" and "deception." Even if the hacker accessed the information because of a security weakness, that doesn't mean what they did is okay and it shouldn't mean they can keep their ill-gotten profits.

The measure we are discussing today closes that gap by focusing on "wrongfully" acquired nonpublic information.

Well-connected people buy sophisticated derivatives on a company's stock on a Friday. The following Tuesday the company announces a merger. To most people that doesn't sound like just a lucky bet or a coincidence. That sounds more like a wink and a nod, and a "you scratch my back, I'll scratch yours" understanding.

And when that happens all the time, it's no surprise that most Americans don't think they can trust the market with their retirement savings. For the vast majority of people who get their income from a paycheck, not a brokerage account, they don't see it as a way to make money.

Families saving for the future deserve to know Congress will protect everyone who invests to send their kids to college or to buy a home one day. We must make sure our laws are written down, clear, and apply to everyone, no matter how wealthy and how powerful.

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