CLC
ADVANCING DEMOCRACY THROUGH LAW

November 22, 2022

Christi A. Grimm
Inspector General
U.S. Department of Health and Human Services
Office of Inspector General
330 Independence Avenue, S.W.
Washington, D.C. 20201

Submitted electronically via form.

Dear Inspector General Grimm:

Campaign Legal Center ("CLC") respectfully requests that the U.S. Department of Health and Human Services ("HHS") Office of Inspector General ("OIG") investigate deficiencies in the agency's ethics program. Specifically, HHS repeatedly allowed senior officials to trade stock in companies that appear to create conflicts of interest with their official duties.[1] Federal ethics rules provide that the HHS Secretary and the Designated Agency Ethics Official ("DAEO") are responsible for "maintaining an effective agency ethics program."[2] Pursuant to 5 C.F.R. § 2638.106, the OIG should investigate whether the HHS ethics program has enabled public officials to have personal financial interests that violate the Ethics in Government Act.

Recent reporting revealed that during the past four years, particularly at the beginning of the COVID-19 pandemic, the HHS ethics program permitted two senior officials to trade stock based on nonpublic information and allowed one senior official to trade stock in companies that senior officials were prohibited from owning.

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[1] Rebecca Ballhaus, et al., *As Covid Hit, Washington Officials Traded Stocks With Exquisite Timing*, Wall St. J. (Oct. 19, 2022), https://www.wsj.com/articles/covid-washington-officials-stocks-trading-markets-stimulus-11666192404 (attached as Exhibit A).
[2] 5 C.F.R. § 2638.104(c)(5).

The agency's ethics officials are required to prevent actual conflicts of interest and the appearance of such conflicts caused by an official's personal financial interests. An investigation is needed to determine whether the ethics officials are complying with the requirements.

HHS serves a vital role in Americans' lives by enhancing "the health and well-being of all Americans."[3] The HHS Secretary and agency ethics officials are instrumental in maintaining that public trust by enforcing ethics laws.[4] The public has a right to know that the officials tasked with protecting their health and well-being are always acting in the public's interest, not in their own private financial interest.

The HHS Secretary and Agency Ethics Officials Are Required to Identify and Resolve Employee Conflicts of Interests

Under 5 C.F.R. § 2638.107, the HHS Secretary "is responsible for, and will exercise, personal leadership in, establishing and maintaining an effective agency ethics program and fostering an ethical culture in the agency."[5] As part of those responsibilities, the HHS Secretary designates "employees to serve as the DAEO and ADAEO . . . ."[6] Pursuant to 5 C.F.R. § 2634.605, a DAEO must examine employee financial disclosure reports to determine that "[n]o interest or position disclosed on the report violates or appears to violate . . . [t]he [Ethics in Government] Act," or any agency-specific rule which governs the filer.[7] Additionally, the DAEO is responsible for "building and sustaining an ethical culture"[8] and carrying out "an effective government ethics education program."[9]

Pursuant to 5 C.F.R. § 2635.502, the Standards of Ethical Conduct for Employees of the Executive Branch ("Standards of Conduct"), officials are required to act with impartiality in performing official duties.[10] This includes instances in which an employee's involvement in a specific matter would cause "a reasonable person with knowledge of the relevant facts to question his impartiality in the matter."[11]

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[3] About HHS, HHS.gov, https://www.hhs.gov/about/index.html.
[4] 5 C.F.R. § 2638.104.
[5] 5 C.F.R. § 2638.107.
[6] 5 C.F.R. § 2638.107(a).
[7] 5 C.F.R. § 2634.605(b)(2).
[8] 5 C.F.R. § 2638.104(b)(2).
[9] 5 C.F.R. § 2638.104(c)(5).
[10] 5 C.F.R. §§ 2635.501-503.
[11] 5 C.F.R. § 2635.502(a).

The Standards of Conduct also require employees, as part of their basic obligation to public service to "not hold financial interests that conflict with the conscientious performance of duty;"[12] and "not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest."[13] They also prohibit employees from using public office for private gain.[14] Finally, officials should "avoid any actions creating the appearance that they are violating" these provisions.[15]

In the event that an employee fails to prevent a conflict of interest or the appearance of a conflict of interest, DAEOs must take appropriate action to resolve the conflict under 5 C.F.R. § 2638.104(c)(6).[16] In addition, 5 C.F.R. § 2638.104(c)(8) requires DAEOs to carry out an effective financial disclosure program to assist employees in preventing the appearance of a conflict of interest.[17]

Pursuant to 5 C.F.R. § 2638.106, "[a]n agency's Inspector General has authority to conduct investigations of suspected violations of conflict of interest laws and other government ethics laws and regulations."

HHS Repeatedly Allowed Officials to Own Stock in Companies Related to Their Official Duties

In January and February of 2020, two officials traded stocks based on nonpublic information about the looming pandemic. From 2004 to 2019, another senior official owned and traded stock in companies that were prohibited because those companies are significantly regulated by the agency, and so any trading in them would appear to create conflicts of interest with their official duties.

The officials responsible for creating these conflicts of interest, including the HHS Secretary and DAEO, apparently approved, ignored, or misread the ethics rules and laws. HHS ethics officials failing to stop conflicts

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[12] 5 C.F.R. § 2635.101(b)(2).
[13] 5 C.F.R. § 2635.101(b)(3).
[14] 5 C.F.R. § 2635.101(b)(7).
[15] 5 C.F.R. § 2635.101(b)(14).
[16] 5 C.F.R. § 2638.104(c)(6) directs DAEOs to take "appropriate action to resolve conflicts of interest, through recusals, directed divestitures, waivers, authorizations, assignments, and other appropriate means."
[17] 5 C.F.R. § 2638.104(c)(8).

of interest for at least three senior officials heightens the concern that widespread conflicts of interest have permeated the entire agency.

1. **<u>Deputy Director for Public Health Service and Implementation Science</u>**: Stephen Redd served as the Deputy Director for Public Health Service and Implementation Science at the Center for Disease Control from 2019 to 2020.[18] His responsibilities included facilitating science programs and policies to identify and respond to domestic and global public health threats.[19] Specifically, Dr. Redd collected information about the COVID-19 virus and the federal response to brief lawmakers.[20]

    - *<u>Stock</u>* – Dr. Redd sold stocks and bonds valued between $195,005 and $500,000 in January and February of 2020. He also purchased short-term bond funds valued between $2,002 and $30,000 in February 2020.

    - *<u>Conflict of Interest</u>* – Dr. Redd sold stocks and bonds when only health officials were aware of the severity of the COVID-19 threat. Dr. Redd also purchased short-term, low risk bonds during that same period. These trades are suspicious given that Dr. Redd's position gave him nonpublic information about the looming pandemic. He also provided this information to Congress, giving him a unique ability to speak to lawmakers and influence pandemic-related legislation. The timing of the securities sales and short-term bonds purchases just before the stock market fell gives the impression that Dr. Redd received nonpublic information and decided to capitalize on it before the information became public. Under 5 C.F.R. § 2635.101(b)(3), Dr. Redd may not trade stock based on nonpublic information.

    - *<u>Ethics Program Deficiency</u>* – The ethics office flagged for Dr. Redd that he did not report his trades in the required 30-day period, however they did not raise any issues with any of Dr. Redd's trades. A reasonable person would view the timing of Dr. Redd's stock trades

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[18] Pam Auchmutey, *In Tune to a Different Rhythm*, Emory Medicine Magazine (2020), https://emorymedicinemagazine.emory.edu/issues/2020/fall/whats-up-doc/in-tune-to-a-different-rhythm/index.html; Stephen Redd, LindedIn, https://www.linkedin.com/in/stephen-redd-0b5b3014/.
[19] Hugh Auchincloss, M.D., Nat'l Inst. of Allergy and Infectious Diseases, https://www.niaid.nih.gov/about/hugh-auchincloss-md; Ctrs. for Disease Control and Prevention, U.S. Gov't Manual, https://www.usgovernmentmanual.gov/Agency?EntityId=pG2OjWAiFrE=&ParentEId=Ldrc/ujFJeo=&EType=/sbLHImeIYk=.
[20] Ballhaus, *supra* note 1.

and short-term bonds purchases as suspicious, which Dr. Redd has a responsibility to avoid.[21] Based on the suspicious appearance of these trades, the DAEO should have taken action to resolve the appearance of the conflict of interest.[22] Further, Dr. Redd stated to *The Wall Street Journal* that ethics regulations are mainly about disclosure and do not indicate that "if you think that something bad is going to happen, you shouldn't trade." His statement shows a clear lack of understanding about the purpose of conflict of interest laws, which points to a deficiency in the DAEO's ethics education program, which federal regulations require to be effective.[23]

2. Principal Deputy Director at the National Institute of Health ("NIH")'s National Institute of Allergy and Infectious Disease ("NIAID"): Hugh Auchincloss has served as the Principal Deputy Director of NIH's NIAID since 2006.[24] As Principal Deputy Director, Dr. Auchincloss is responsible for all research planning and implementation activities for NIAID, including strategic vision and overseeing research and product development for infectious diseases.[25]

- *Stock* – Dr. Auchincloss sold $15,001 to $50,000 of a stock mutual fund and mutual funds worth between $111,006 and $315,000 in January 2020.

- *Conflict of Interest* – Dr. Auchincloss sold his first stock mutual fund on January 24, 2020, the same day he emailed NIAID that its focus was now "[n]ew coronavirus all the time."[26] Dr. Auchincloss sent this email and made securities sales months before the public knew about the significant threat COVID-19 posed or the likely economic consequences. Dr. Auchincloss sold the second set of mutual funds after receiving an email describing the severity of the COVID-19 threat. The timing of these sales suggests that Dr. Auchincloss made the transactions based on nonpublic information he learned through his position as Principal Deputy Director. Dr. Auchincloss is prohibited from trading stock based on nonpublic information under 5 C.F.R. § 2635.101(b)(3). Further supporting the idea that Dr. Auchincloss was

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[21] 5 C.F.R. § 2635.101(b)(14).
[22] *See* 5 C.F.R. § 2638.104(c)(6).
[23] *See* 5 C.F.R. § 2638.104(c)(5).
[24] Hugh Auchincloss, M.D., NIAID, *supra* note 18.
[25] *Id.*
[26] Ballhaus, *supra* note 1.

using nonpublic information to further his own private interest, Dr. Auchincloss conducted more financial transactions in January 2020 than he had in the two years prior.[27]

- *Ethics Program Deficiency* – NIAID stated that ethics officials routinely review financial disclosure reports to resolve potential conflicts of interest. However, the DAEO should have flagged Dr. Auchincloss's trades as creating a clear conflict of interest, as he was selling stock almost immediately after receiving nonpublic information about the pandemic before the public became aware and the stock market fell.

3. **Director of the Office of Planning**: Malcolm Bertoni served as the Director of the Office of Planning at the Food and Drug Administration from 2004 to 2019.[28] The Director of the Office of Planning's role is to serve as the principal advisor to the Office of Regulatory affairs on issues such as policy development, as well as compliance and enforcement.[29]
   - *Stock* – Mr. Bertoni made more than 170 trades of approximately 70 prohibited companies throughout his tenure as Director of the Office of Planning.
   - *Conflict of Interest* – The stocks Mr. Bertoni traded were on the FDA list of companies senior agency officials may not own because they are significantly regulated by the FDA.[30]
   - *Ethics Program Deficiency* – According to Mr. Bertoni, the ethics office mistakenly told Mr. Bertoni that his trades fell under an exemption.[31] Given this, the DAEO did not properly apply the ethics regulations to Mr. Bertoni as required by 5 C.F.R. § 2638.104(b)(2).

Based on these examples of seemingly obvious conflicts of interest, it is unclear how the ethics officials concluded that it was appropriate for the

[27] *Id.*
[28] James V. Grimaldi, et al., *Wall Street Traders or Washington Officials? Sometimes It's Hard to Tell*, Wall St. J. (Oct. 18, 2022), https://www.wsj.com/articles/wall-street-traders-or-washington-officials-sometimes-its-hard-to-tell-11666103385 (attached as Exhibit B).
[29] Steven Tave, Dir. Off. of Strategic Planning and Operational Policy, U.S. Food and Drug Admin., https://www.fda.gov/about-fda/office-regulatory-affairs/steven-tave-director-office-strategic-planning-and-operational-policy#:~:text=Steve%20Tave%20is%20the%20Director,the%20commodities%20that%20FDA%20regulates.
[30] Grimaldi, *supra* note 27.
[31] *Id.*

senior officials to simultaneously own the stocks and perform their duties. The OIG should review the ethics program to determine the deficiencies.

An Investigation is Needed to Determine Whether the HHS Secretary and Agency Ethics Officials Took Appropriate Action to Avoid Employee Conflicts of Interest

The trades made by Dr. Stephen Redd, Dr. Hugh Auchincloss, and Mr. Malcolm Bertoni create at least the appearance of a conflict of interest. They were all high-ranking officials at HHS during the period the trades occurred. Dr. Redd and Dr. Auchincloss's trades occurred in-step with nonpublic information they received. Mr. Bertoni traded stock in companies FDA senior staff were prohibited from owning, purchased in reliance on the DAEO's incorrect advice.

Federal regulations clearly require the HHS Secretary and DAEO to ensure that an official does not have an interest that may create a conflict of interest, and to take action to resolve the appearance of a conflict if one is present.[32] The facts suggest that the ethics officials did not take any action to resolve the appearance of conflicts of interest presented by Dr. Redd's and Dr. Auchincloss's stock trades, and only took action with regard to Mr. Bertoni's trades after mistakenly approving his owning prohibited stock.

We request that your office investigate whether the HHS ethics program is implemented properly in compliance with financial disclosure requirements of 5 C.F.R. § 2638.104(c)(8).

Respectfully Submitted,

________/s/________

Kedric L. Payne
General Counsel and Senior Director, Ethics
Campaign Legal Center

________/s/________

Danielle Caputo
Legal Counsel
Campaign Legal Center

[32] 5 C.F.R. § 2638.104(c)(6).

Exhibit A

Federal officials working on the government response to Covid-19 made well-timed financial trades when the pandemic began—both as the markets plunged and as they rallied—a Wall Street Journal investigation found.

In January 2020, the U.S. public was largely unaware of the threat posed by the virus spreading in China, but health officials were on high alert and girding for a crisis.
A deputy to top health official Anthony Fauci reported 10 sales of mutual funds and stocks totaling between $157,000 and $480,000 that month. Collectively, officials at another health agency, Health and Human Services, reported 60% more sales of stocks and funds in January than the average over the previous 12 months, driven by a handful of particularly active traders.

By March, agencies across the government were working on wide-reaching measures to prop the economy and markets. Then-Transportation Secretary Elaine Chao purchased more than $600,000 in two stock funds while her agency was involved in the pandemic response and her husband, Republican Sen. Mitch McConnell, was leading negotiations over a giant, market-boosting stimulus bill.

And as the government was devising a loan package aimed specifically at helping companies including Boeing Co. and General Electric Co., a Treasury Department official involved in administering the aid acquired shares of both companies.

Federal officials owned millions of dollars of stock in industries most affected by the pandemic and the government's response. About 240 officials at health agencies and at the

Pentagon, a key player in the vaccine rollout, reported owning a total of between $9 million and $28 million in stocks of drug, manufacturing and biotechnology companies that won federal contracts related to Covid-19 in 2020 and 2021, the Journal's analysis found.

Nearly 400 officials across 50 agencies reported owning stocks in airline, resort, hotel, restaurant and cruise companies in early 2020, the review found.

By March, every major agency was drawn into the pandemic response. That month was the most active for trading by officials across the federal government, including at HHS, in the Journal's analysis of financial disclosure forms for about 12,000 officials spanning 2016 to 2021. Federal officials reported more than 11,600 trades that month, 44% more than in any other month in the analysis.

The health agencies didn't respond to requests for comment. A Pentagon spokeswoman said most defense personnel don't work on matters affecting large defense contractors or affecting the finances of private companies, and said the department is "committed to preventing conflicts of interest."

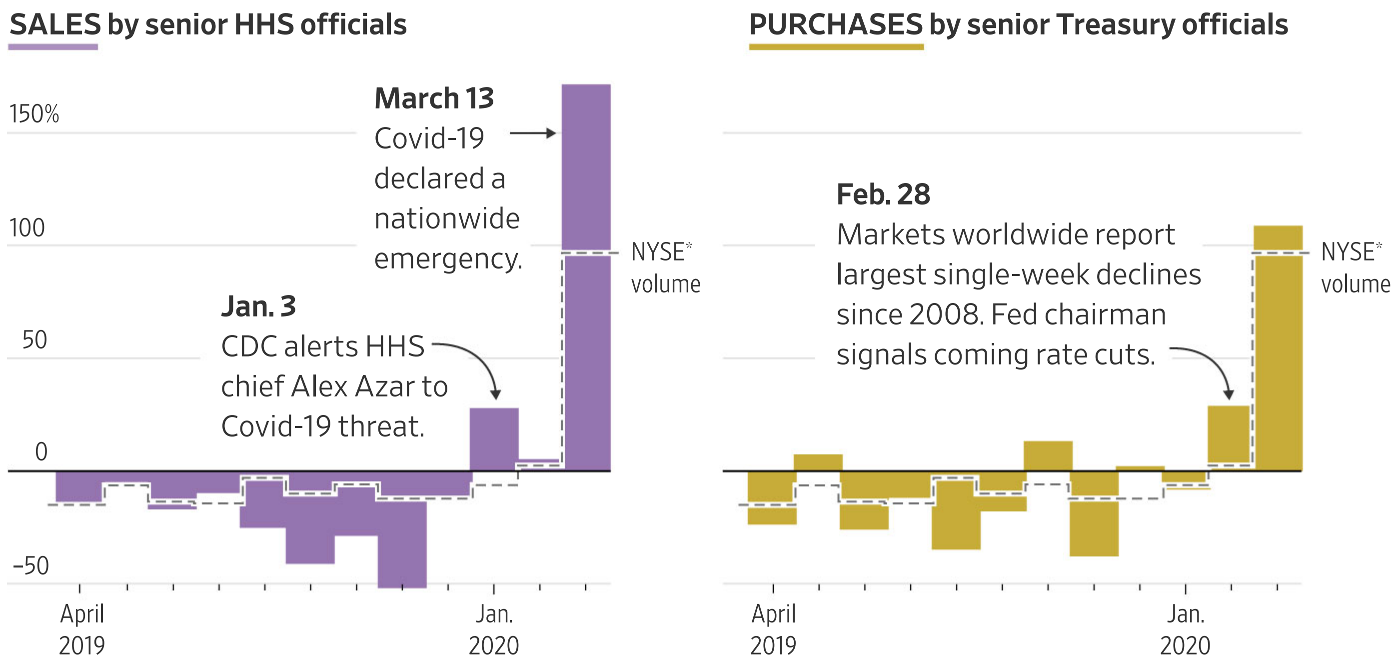
Senior federal officials are required to disclose their financial assets and transactions and those of their spouses and dependent children in annual reports.

Federal employees are barred from working on matters in which they have a significant financial stake, from trading on nonpublic information learned on the job and from taking any official action that creates an appearance of a conflict of interest.

Agency ethics officials rarely have a complete picture of what employees are working on or privy to, especially during a fast-moving, governmentwide mobilization in response to a national emergency.

Most agencies' ethics rules focus on what kinds of stocks officials can trade, not when they can trade. And there are no restrictions on federal officials' investing in diversified mutual funds, which were more volatile than usual early in the pandemic. Ethics officials certified that the employees identified by the Journal were in compliance with these rules.

Pandemic trading compared to 12-month average



*Trades, including purchases and sales, made by all investors in common stocks listed on the New York Stock Exchange.
Note: Monthly trade volume, as percentage change from 12-month average calculated from March 2020. HHS sales in January 2020 were 60% higher than the previous 12-month average calculated from that month.

Three days into January 2020, top U.S. health officials were alerted to an unexplained virus sickening people in China.

By late January, Centers for Disease Control and Prevention leaders were rushing to develop accurate tests, National Institutes of Health officials were taking the first steps toward developing a vaccine, and the Food and Drug Administration was racing to facilitate prevention and treatment options for the novel coronavirus.

The National Institutes of Health in Bethesda, Md.
PHOTO: ERIC LEE FOR THE WALL STREET JOURNAL

On Jan. 24, four days after the CDC publicly reported the first confirmed U.S. Covid-19 infection, Hugh Auchincloss, principal deputy director at the NIH's National Institute of Allergy and Infectious Diseases, summed up the state of his agency in an email: "New coronavirus all the time."

That same day, while the stock market remained lofty, Dr. Auchincloss reported selling $15,001 to $50,000 of a stock mutual fund. Days later he sold two more mutual funds and a stock, Chevron Corp., according to his financial disclosures, which give wide dollar ranges. That was just the beginning.

Dr. Auchincloss was invited to a Jan. 29 meeting of an NIH working group called the International Clinical Research Subcommittee. The top agenda item was "Wuhan coronavirus—plans for a response," according to emails released in response to public-records requests.

On the last day of January, an email sent to Dr. Auchincloss and his boss, Dr. Fauci, signaled the severity of the threat. Public Health Service officers had been told they could be deployed, a health official wrote, and could assist with "quarantine efforts."

NIH official Hugh Auchincloss.
PHOTO: NIAID

Dr. Auchincloss disclosed six sales of mutual funds that day, totaling between $111,006 and $315,000 in value.

His January sales amounted to the largest number of transactions he had reported for a single month since 2018, according to his financial disclosures.

Each holding he sold fell sharply in the market downturn that soon followed, as the public and investors started paying attention to the threat posed by Covid-19.

Dr. Auchincloss, who retained some other holdings, didn't respond to requests for comment. The National Institute of Allergy and Infectious Diseases declined to make him available for an interview.

The agency said that financial disclosure reports are routinely reviewed by NIH ethics officials to ensure compliance with reporting requirements and resolve potential conflicts of interest.

It declined to say whether Dr. Auchincloss made the trades himself or had a managed account.

“As a matter of employee privacy, we will not disclose the additional information requested because it is beyond the public financial disclosure reporting requirements,” the agency said.

Among officials involved in the CDC’s early pandemic response was Stephen Redd, a veteran epidemiologist serving as deputy director for Public Health Service and Implementation Science at the agency. His role involved collecting information about the state of the virus and the federal response in order to brief lawmakers.

The CDC had a clear view of the virus’s threat by the end of January, Dr. Redd later told a student interviewer in Atlanta. “It was easy to see it was going to be a really big problem,” he said.

Dr. Redd disclosed sales of between $95,004 and $250,000 in stocks and bonds in January. He reported the sale in February of $100,001 to $250,000 of bonds, along with purchases of between $2,002 and $30,000 of short-term bond funds, a low-risk investment.

Dr. Redd said he had no advance knowledge of these trades, which he said were in his wife’s retirement account and made by a financial adviser. He said he didn’t learn of them until that summer, although he was required by law to report any trades made in his or his wife’s accounts within 30 days.

Stephen Redd, then a CDC official, listened during a Senate Commerce, Science and Transportation Subcommittee hearing on March 4, 2020.

PHOTO: STEFANI REYNOLDS/BLOOMBERG NEWS

He acknowledged that federal officials are "responsible for knowing" about their financial transactions. He said neither he nor his wife knew why the adviser made the trades.

Dr. Redd said that ethics officials later told him he hadn't reported the trades in the required 30-day period, but that the officials didn't raise any questions about the trades' timing. Dr. Redd, who retired in the fall of 2020, said he wasn't aware of any guidance about trading during the early months of the pandemic.

"I don't know that there's anything that said, 'If you think that something bad is going to happen, you shouldn't trade,'" he said. "It's mostly about disclosure."

The CDC didn't respond to multiple requests for comment.

In late February 2020, as awareness of the viral threat grew, officials in the Trump administration faced a different problem: turbulent financial markets. Treasury and Federal Reserve officials began to coordinate on measures to stabilize them.

U.S. stocks sank on Feb. 20, and over the next week, equity markets worldwide recorded their largest single-week declines since the 2008 global financial crisis. Yields on 10-year and 30-year U.S. Treasury securities fell to record lows, as investors fled to these relatively safer assets.

On Feb. 28, Fed Chairman Jerome Powell signaled in a written statement that the central bank was prepared to cut interest rates, a stimulatory move aimed at quelling the economic disruption.

In Bozhou, China, on Feb. 18, 2020, a sanitation team sprayed disinfectant as a preventive measure against the spread of the coronavirus.

PHOTO: AGENCE FRANCE-PRESSE/GETTY IMAGES

In the seven days preceding that statement, officials at the Treasury and Fed reported more than twice as many trades as they made during the same seven days of 2019.

They reported more than three stock or fund purchases for every sale from Feb. 21 to Feb. 27, 2020, according to the Journal analysis of financial disclosures.

Treasury Department officials as a group reported about 30% more stock and fund purchases in February than the average over the previous 12 months.

Two Fed bank presidents resigned last year after they disclosed a series of investments during Fed market interventions in response to Covid-19. The central bank in February 2022 prohibited its top officials from buying individual stocks and sector funds and barred trading during periods of “heightened financial market stress.”

At emergency meetings on March 3 and March 15, 2020, the Fed slashed short-term rates to near zero and imposed other market-supporting measures.

Traders at the New York Stock Exchange watched a presidential news conference in March 2020.
PHOTO: MARK LENNIHAN/ASSOCIATED PRESS

On March 13, then-President Donald Trump announced a federal partnership with the private sector to increase the nation's testing capability for Covid, inviting top executives at 10 companies, including Target Corp., Walmart Inc., CVS Pharmacy Inc. and Walgreens Boots Alliance Inc., to the White House for the announcement.

Roughly 300 federal officials reported owning stock in at least one of the 10 companies at the time, their financial disclosures show.

As the pandemic's toll mounted, Congress in mid-March was negotiating with the administration over a package providing funds for individuals and companies hit by the fallout.

The rate cuts hadn't immediately calmed investors. Stock trading was halted for 15 minutes on the morning of March 16 when the S&P 500 fell 7%, triggering a so-called circuit breaker. The index staggered to the closing bell, down 12%.

That same day, Ms. Chao, the transportation secretary, made three purchases in stock funds that track the S&P 500 and the U.S. stock market broadly, totaling between $600,003 and $1.2 million, according to her financial disclosures.

After Republican frustration with a previous piece of relief legislation, Ms. Chao's husband, then-Senate Majority Leader McConnell, had taken the reins in Congress on a much larger bill. He released his first draft on March 19.

Ms. Chao was also working on the pandemic response. Her agency—part of the White House Coronavirus Task Force—was helping repatriate Americans abroad, conducting screenings at airports, establishing health protocols for airlines and cruise ships and coordinating with international counterparts, she told a House committee.

The S&P 500 hit bottom on March 23. From its high on Feb. 19, it had dropped nearly 34%.

Times Square in New York was nearly empty on March 25, 2020. Covid-19 had prompted the mayor to declare an emergency and ban large gatherings.

PHOTO: SARAH BLESENER FOR THE WALL STREET JOURNAL

The next day, the administration and Congress neared a deal on the stimulus bill. The stock market soared on the news—and with it Ms. Chao's mutual fund investment from eight days earlier.

Mr. Trump signed the Coronavirus Aid, Relief, and Economic Security Act, or Cares Act, on March 27, handing out pens to guests, including Ms. Chao and Mr. McConnell. Ms. Chao released a statement praising the administration's pandemic response, saying the bill "ensures that critical federal resources will soon reach where they are needed."

By the end of the month, her investment in the S&P fund had gained 8%. By the end of the year, it was up 57%, according to its net asset value.

Ms. Chao's total disclosed purchases in March 2020 were between $669,009 and $1.5 million, her second-highest monthly total in the Journal's review of her four years as transportation secretary.

Elaine Chao, then U.S. transportation secretary, in November 2020 with husband Mitch McConnell, then the Senate Majority Leader.

PHOTO: SCOTTY PERRY/BLOOMBERG NEWS

A spokesman for Ms. Chao said she periodically adjusts her investments in mutual funds based on the advice of financial professionals. "These funds are held separately from her husband and managed without his consultation," the spokesman said.

A spokesman for Mr. McConnell referred the Journal to the statement by Ms. Chao's representative.

At around the same time, a Treasury official later involved in administering the stimulus package made a series of well-timed trades.

Early on, the Trump administration made it clear it wouldn't leave Boeing or the rest of the aviation and airline sector hanging, as the travel industry was thrown into turmoil. "We have to protect Boeing," Mr. Trump said March 17. "We'll be helping Boeing."

The Treasury Department publicly detailed what it wanted to see in the stimulus legislation on March 18, including $50 billion in loans for airlines and $450 billion for "severely distressed sectors" and small businesses.

Two days later, Treasury domestic finance counselor Jeff Goettman reported purchases of 15 stocks, including Boeing and General Electric, totaling between $29,015 and $260,000, according to his financial disclosure.

Boeing was in close contact with Treasury officials as it lobbied the administration and Congress for federal aid.

Days after Mr. Goettman's stock purchases, lawmakers inserted a $17 billion provision for companies deemed essential to national security, which congressional officials said at the time was partly designed to help Boeing.

The provision stayed in the final legislation, authorizing the Treasury to administer the loan fund. Then-Secretary Steven Mnuchin later said the fund had been created with companies including Boeing and GE in mind.

Mr. Goettman convened the group that administered the legislation's $80 billion for airlines—which included the national-security loan fund—according to his bio on the website of Virginia Gov. Glenn Youngkin, for whom he now serves as chief of staff. Boeing didn't ultimately apply because it objected to the condition that the U.S. take an equity stake or warrants for shares in loan recipients, its chief executive said at the time.

A week after Mr. Goettman's March 20 stock purchases, Boeing's shares were up 70%, and GE's were up 17%.

Mr. Goettman declined to comment.

The Treasury Department in Washington.
PHOTO: ERIC LEE FOR THE WALL STREET JOURNAL

The Treasury declined to comment on his trading. A spokesman said: "The Treasury Department follows regulations issued by the Office of Government Ethics and we expect all employees to follow them. These regulations include the disclosure of stock purchases, recusals to avoid conflicts of interest and a prohibition against using nonpublic information to inform financial activities."

Mr. Goettman disclosed more GE stock purchases on March 27 and April 1, totaling between $2,002 and $30,000.

On April 2, Mr. Trump, using authority granted in a Korean War-era law, ordered the federal government to help six medical-device manufacturers, including GE, secure supplies they needed to make ventilators for hospitalized Covid patients.

Mr. Goettman reported additional GE share purchases that day, bringing his GE investment to the range of $3,003 to $45,000.

Two weeks later, HHS disclosed a $336 million government contract with GE to produce 50,000 ventilators. The stock rose more than 5% on the news.

—Design by Andrew Levinson. Graphics by Stephanie Stamm. A color filter has been used on photos.

Write to Rebecca Ballhaus at Rebecca.Ballhaus@wsj.com, Joe Palazzolo at joe.palazzolo@wsj.com, Brody Mullins at brody.mullins@wsj.com and Chad Day at

Exhibit B

Chad.Day@wsj.com

Appeared in the October 20, 2022, print edition as 'Officials Bet Well On Stocks As Covid Emerged'.

https://www.wsj.com/articles/wall-street-traders-or-washington-officials-sometimes-its-hard-to-tell-11666103385

CAPITAL ASSETS

Wall Street Traders or Washington Officials? Sometimes It's Hard to Tell.

Seven dozen senior executive-branch employees disclosed a total of 80,000 stock and fund trades in the past six years

By James V. Grimaldi Follow *, James Benedict* Follow *, Coulter Jones* Follow *and Chad Day* Follow

Oct. 18, 2022 10:29 am ET

It's the kind of rapid-fire trading you see on Wall Street: hundreds of stock-market wagers, sometimes peppered with options and other aggressive trades.

But this wasn't done on behalf of professional traders. The transactions came from about seven dozen senior federal-government officials who disclosed that they or their families each made more than 500 trades from 2016 through 2021. That totals more than 80,000 transactions while these officials worked in government.

These officials accounted for roughly a quarter of all transactions while representing less than 1% of filers in a Wall Street Journal review of financial disclosures by federal officials.

An Internal Revenue Service official reported 1,525 trades on the disclosure forms. A Justice Department attorney listed 2,763 trades, including hundreds involving options, according to the Journal's review.

And a Commodity Futures Trading Commission economist, Lihong McPhail, reported more than 9,500 trades in 2020 alone by her husband, also a federal employee, according to the CFTC and her disclosure forms, which report values of holdings in broad dollar ranges. That's an average of 38 trades per trading day.

The CFTC, which regulates the U.S. derivatives markets, including futures, options and swaps, gave Ms. McPhail approval for her husband to do short selling despite a CFTC ban on such trading. An ethics official believed the rule was unenforceable and feared the agency could be sued if it didn't allow the trading, according to a CFTC spokesman.

Ms. McPhail didn't respond to requests for comment about the trades. Her husband, Joseph McPhail, referred calls to the CFTC. The CFTC said it didn't speak for the McPhails. The former ethics official who allowed short selling by Ms. McPhail's husband couldn't be reached for comment.

Let's look at the McPhail trades over time, beginning in February 2020:

The McPhail trades

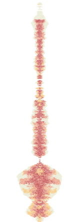
Trade type

Short Short cover Option Buy or sell

Minimum value

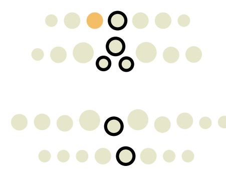
$1,000 $100,001

0
trades



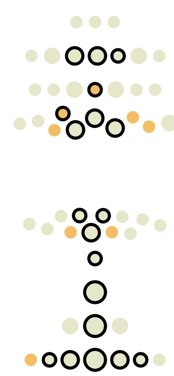
This long string of trades—each is represented by a dot—can be found in the financial disclosures of Ms. McPha
husband did the trading.

Feb. 2020



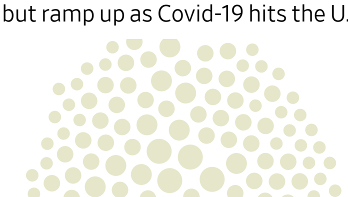
SPECIFIC TRADES

Dots outlined in black circles show 31 trades of stocks and exchange-traded funds (ETFs) that mine or hold pre
some that include the physical commodity. These are among the 1,376 similar mining and metals trades in 202
reported by Ms. McPhail.

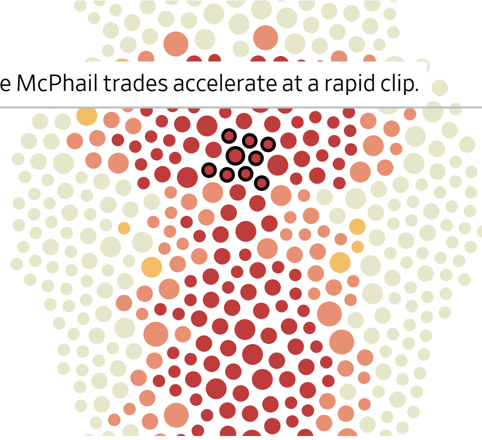


March 2020

Trades that Ms. McPhail discloses begin at a slow pace but ramp up as Covid-19 hits the U.S.



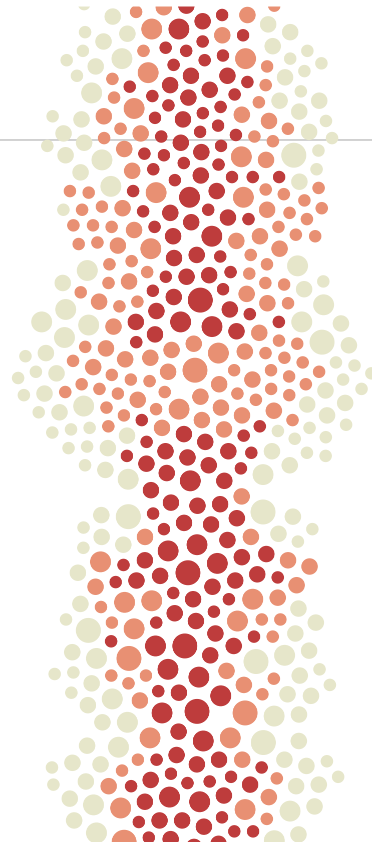
As pandemic worries fuel stock-market panic, the McPhail trades accelerate at a rapid clip.



SPECIFIC TRADES

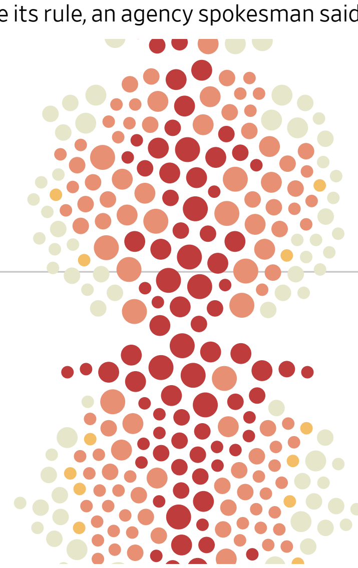
Red dots represent short sales, betting on a price drop. Outlined red dots here are shorts in General Motors an

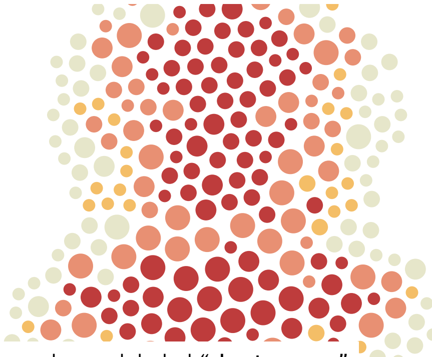
April 2020



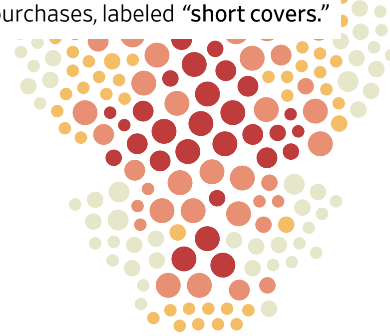
The CFTC bars employees and their families from short selling. When Ms. McPhail several years back asked if an ethics official determined the CFTC couldn't enforce its rule, an agency spokesman said.

May 2020

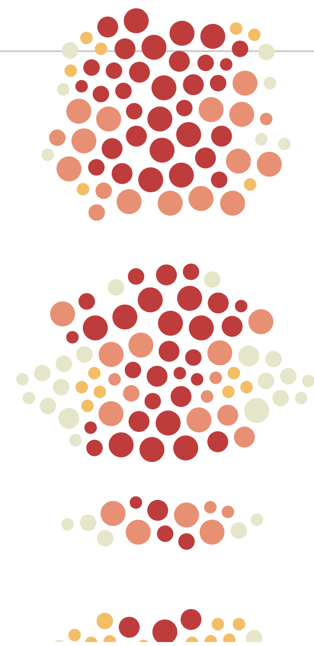




Short sales typically are later closed out by share repurchases, labeled **"short covers."**

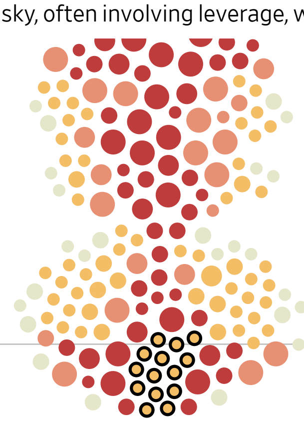


June 2020

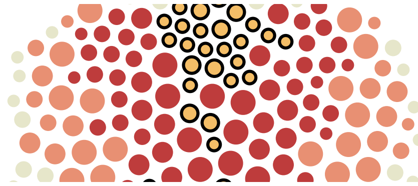


o SPECIFIC TRADES

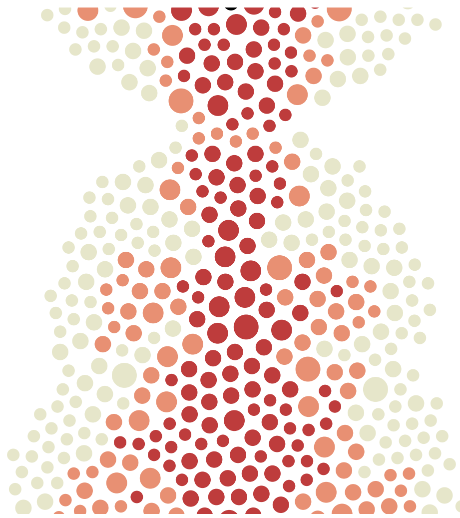
Ms. McPhail discloses purchases by her husband of **call options** on two ETFs, one holding silver and one holdin
investors the right to buy shares at a set price. They are risky, often involving leverage, which amplifies both gai



July 2020



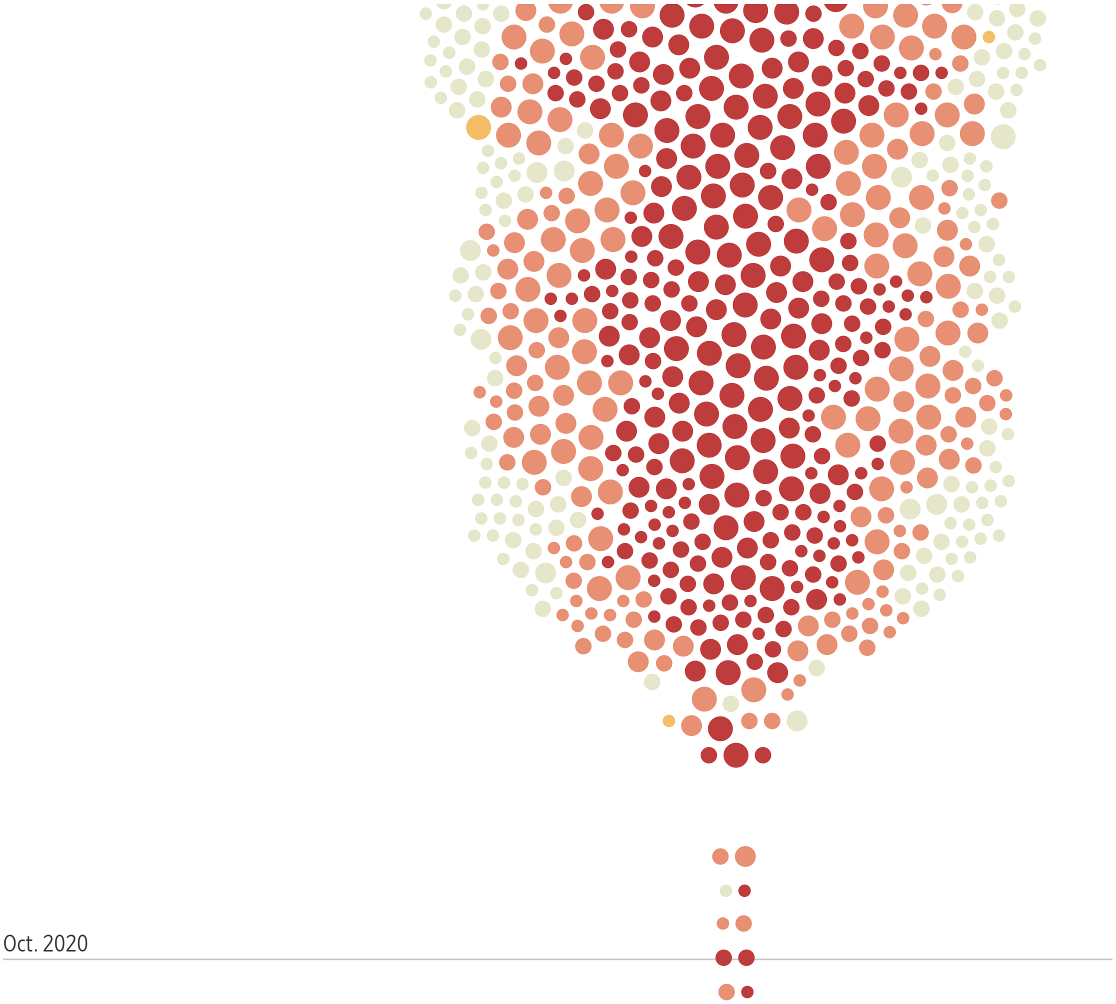
Options and short trading of ETFs holding commodities are similar to the commodity futures trading the age
employees. That makes these contrary to the spirit of the rule, said trading and legal specialists.



Responded a CFTC spokesman: “ETFs are pooled-investment securities that fall outside of commodity prohibit

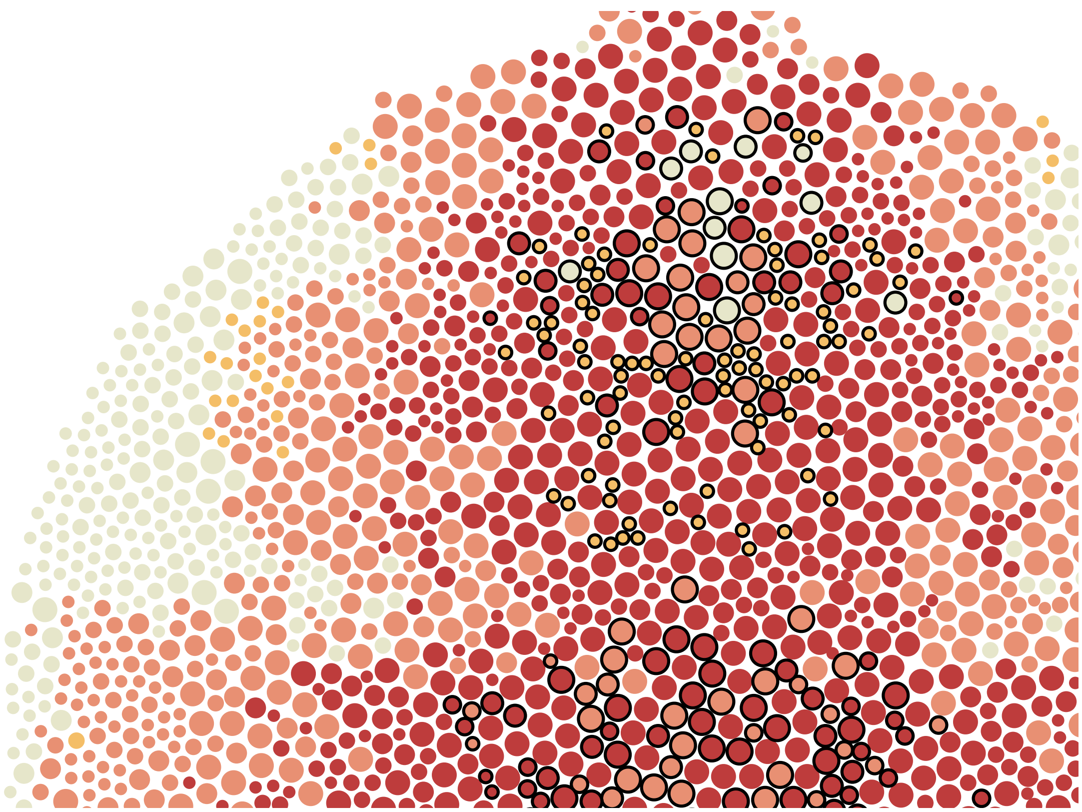
Aug. 2020

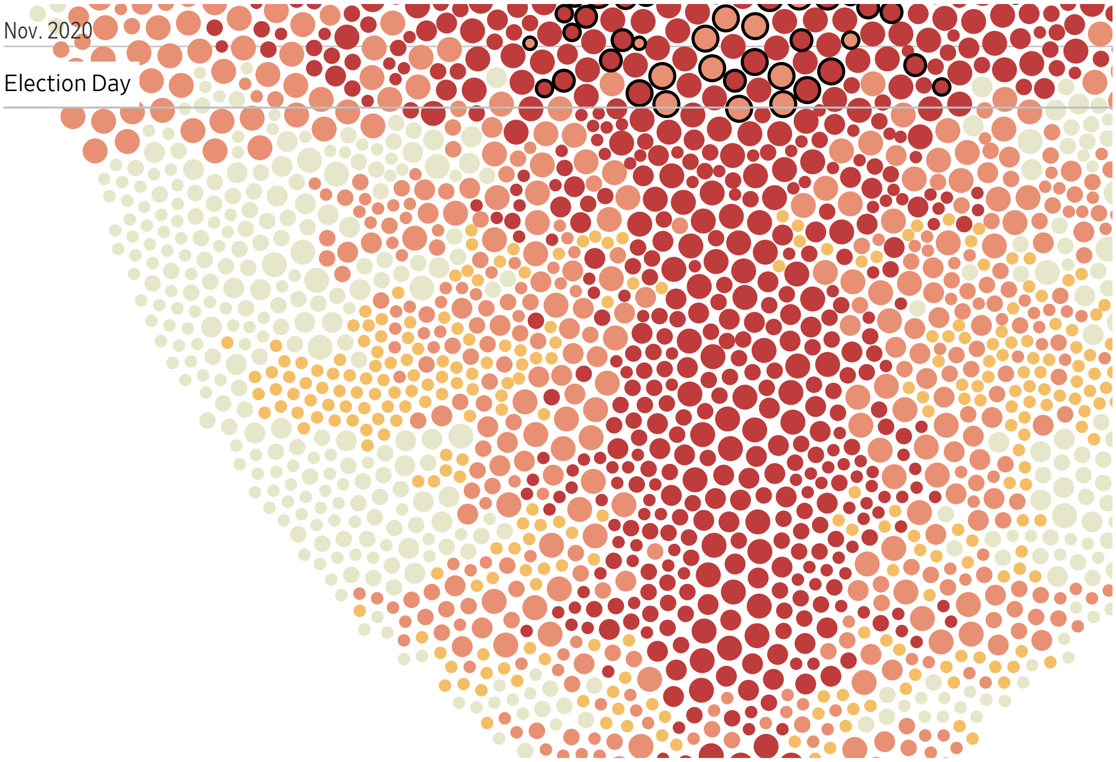
Sept. 2020



SPECIFIC TRADES

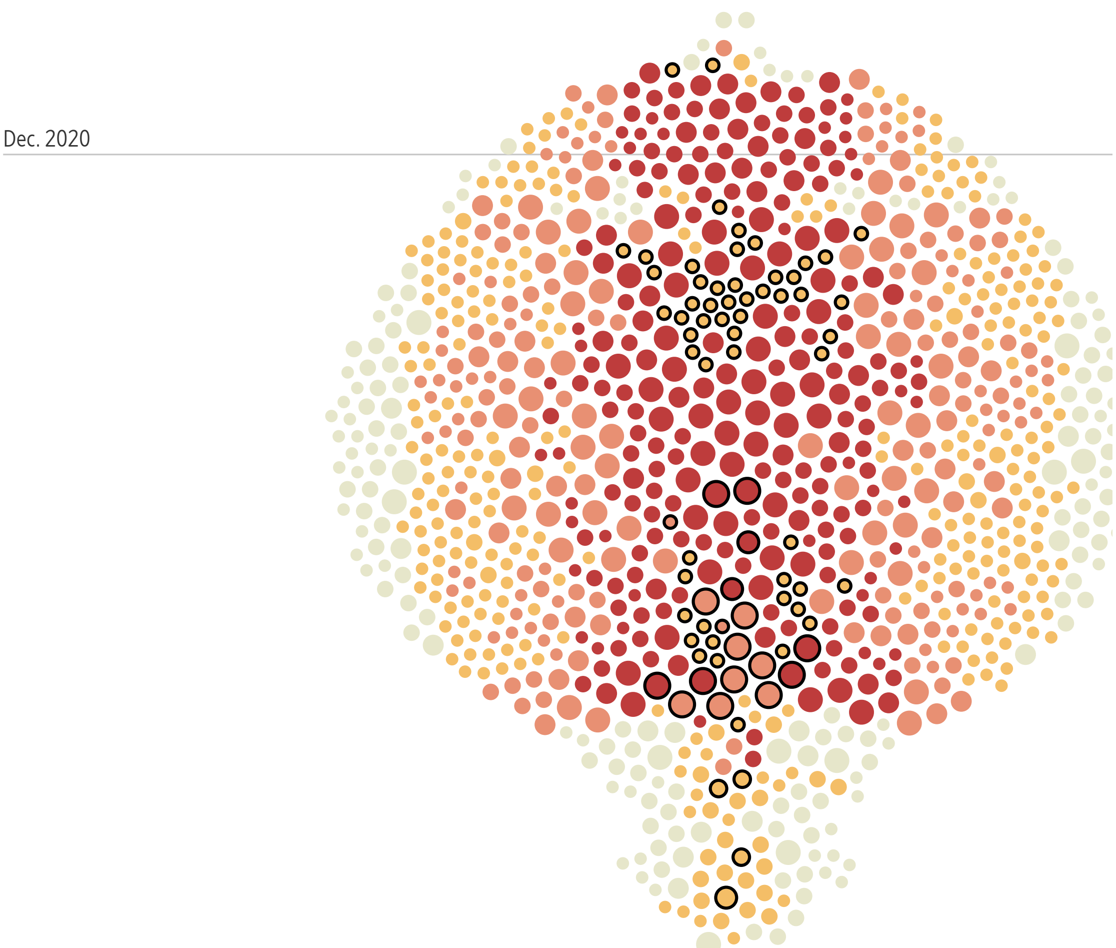
The month before the general election was the most active trading month by Mr. McPhail. The outlined dots re ETFs related to gold, silver and the mining of those metals. Those ETF metals trades include **options**, short sa **general trades**.

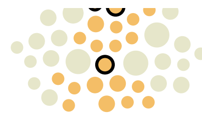




SPECIFIC TRADES

Ms. McPhail discloses 80 trades of an ETF, iShares 20+ Year Treasury Bond. These by Mr. McPhail were allowe
investments.





About one-third of the trades—2,994—are short sales. **Options** account for 1,105 trades.

Trading in ETFs holding Treasury bonds or commodities such as gold is similar to directional bets on commodities and futures contracts that the CFTC regulates. Some specialists said such transactions pose concerns.

"The idea that they are regulating a market that has a dramatic impact on" some of Mr. McPhail's trades "struck me as pretty disturbing," said Dave Lauer, chief executive of a fintech startup who examined the transactions for the Journal.

A CFTC spokesman said: "Employees are required by statute and by regulations to adhere to strict ethical standards and to disclose personal investments to ensure that the work of the CFTC to oversee markets is free from any conflict of interest. In this instance, several years ago the employee sought advice regarding their spouse's investments and received approval from career ethics counsel."

The Federal Deposit Insurance Corp., where Mr. McPhail worked until September 2021 as senior policy analyst, said it "expects our employees, as public servants, to devote their time and efforts to our mission to maintain stability and public confidence in the nation's banking system." The agency said Mr. McPhail wasn't required to file a public financial disclosure form and didn't elaborate.

The Journal, in a series examining the stock holdings of senior federal officials, reviewed the financial disclosures of about 12,000 federal employees from 2016 through 2021 and tabulated those who reported the most frequent trades.

U.S. law prohibits federal employees from participating in policy matters in which they have a significant financial stake. Additional regulations direct federal employees to avoid even the appearance of a conflict. Under federal regulations, an investment of $15,000 or less in an individual stock is not considered a conflict of interest, and the law contains exemptions that often permit officials to own stocks that overlap with their agencies' work.

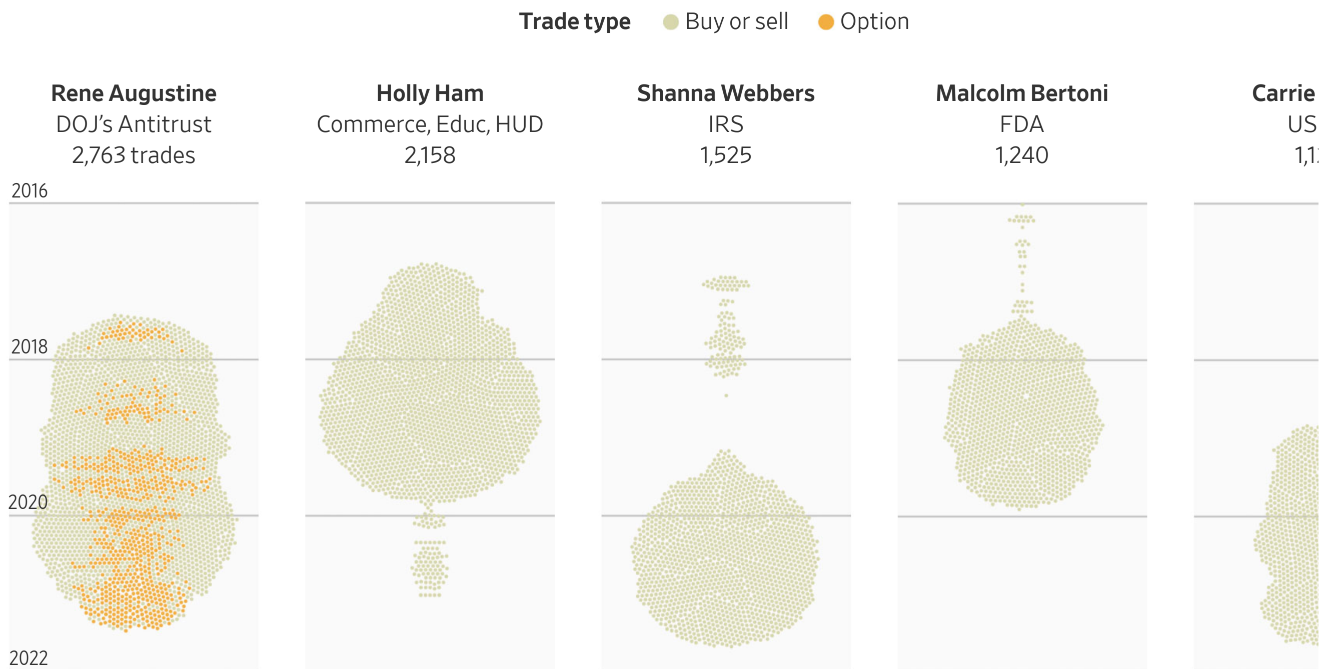
Frequent trading is what led Congress in recent years to tighten rules relating to trading by lawmakers and the judiciary.

Some officials use investment advisers who direct their stock trading. Such trades still can create conflicts, legal and ethics specialists said, because the officials could benefit, no matter who makes the trades. Senior officials must report all trades in their and their family's accounts within 30 days of receiving notice of them and thus have to be aware of them all.

Legislation proposed in September by House Democrats would have banned many of the trades disclosed by many of the senior federal officials in the Journal analysis—shorting stocks, trading stocks or owning most securities, commodities, futures, cryptocurrency and other similar investments.

The bill, which essentially would have restricted holdings to government bonds, mutual funds and the like, has failed thus far to gain traction in Congress. Similar legislation is expected to be introduced next year.

The following is a sample of the most active trading reported in financial-disclosure forms for the years 2016 through 2021. They include trades made by the officials, their spouses, dependent children or investment advisers.



Note: DOJ is the Justice Department; Educ is the Education Department; FDA is the Food and Drug Administration; HUD is the Department of Housing a Development; IRS is the Internal Revenue Service; USDA is the Agriculture Department.

The officials and their responses

Rene Augustine—Justice Department official 2018-21, serving as deputy assistant attorney general for the antitrust division from December 2019 to January 2021.

Most of the trades were in index funds, and of those, more than 750 were options trades of index funds.

"My family's investment activities were performed by third-party advisors and, in compliance with Department of Justice regulations, were disclosed, reviewed and approved by Department of Justice Ethics Officials," Ms. Augustine said in a statement.

Holly Ham—Acting executive director, Center for Faith and Opportunity Initiatives at the Department of Education, 2017-19; senior adviser at the Minority Business Development Agency at the Commerce Department, 2019-21; director of special projects at the Department of Housing and Urban Development from July 2020 to January 2021.

Most of her trades were in 2018. They included biotech, retail and manufacturing stocks and other investments.

In an interview, Ms. Ham said all her transactions were made by her husband, who works for Morgan Stanley, in consultation with her and with care to avoid any real or apparent conflict of interest. When she worked at the Education Department, for example, she avoided education stocks.

"I am very aware of my entire portfolio," Ms. Ham said. "Whenever there are changes, I have to authorize them and to make sure that they are compliant and certified by the ethics official at the agency where I served." The Education Department and Commerce Department declined to comment; HUD didn't respond to a request for comment.

Shanna Webbers—Chief procurement officer, Internal Revenue Service, from 2015 to March 2022. Currently works for the FDIC.

While at the IRS, Ms. Webbers oversaw annual contract obligations of more than $3 billion, according to her LinkedIn page.

"The transactions you are referring to were conducted during my tenure at IRS and are not related to my position at the FDIC," Ms. Webbers said by email. "These transactions were conducted by a financial advisor on my behalf. I followed all relevant IRS ethics rules and I reported these transitions on a monthly and annual basis as the law requires."

She added: "I take my responsibility as a procurement officer seriously. I followed the IRS ethics rules and reported, for full transparency, the transactions conducted by my financial advisor on my behalf both monthly and annually."

The IRS didn't respond to requests for comment.

Malcolm Bertoni—Director of the Office of Planning, Food and Drug Administration, 2004 to 2019.

Mr. Bertoni disclosed more than 170 trades of roughly 70 companies on an FDA list of companies senior agency officials weren't allowed to own because they were deemed significantly regulated by the FDA.

Mr. Bertoni's lawyer, Charles Borden, said Mr. Bertoni and his wife held these stocks despite the ban because they got bad advice from the FDA ethics office. The stocks were in accounts managed by professionals who traded without the knowledge of Mr. Bertoni or his wife, the attorney said. He said the ethics office mistakenly said they fell into an exemption for mutual funds.

Mr. Borden said that because of tax and retirement-planning consequences of having to sell the stocks, and other personal factors, Mr. Bertoni chose to retire. The FDA declined to comment on the events leading up to his departure.

"The FDA takes seriously its obligation to help ensure that decisions made, and actions taken, by the agency and its employees, are not, nor appear to be, tainted by any question of conflict of interest," an FDA spokesman said.

The FDA spokesman said Mr. Bertoni was recused from matters involving the companies once he reported his family's holdings in them.

Carrie Lindig—Easement programs division director, Natural Resources Conservation Service of the USDA.

Ms. Lindig reported trades in companies including Alibaba Group, Caterpillar Inc., Procter & Gamble Co. and UnitedHealth Group Inc.

"The individual being requested for the interview properly reported trades, and there is no reason for an interview," USDA Press Secretary Marissa Perry said. Ms. Lindig didn't respond to requests for comment.

—Joe Palazzolo contributed to this article.