

C A M P A I G N F O R ACCOUNTABILITY

November 10, 2015

Andrew J. Ceresney
Director of Enforcement
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Honorable Johnny Isakson, Chair
Honorable Barbara Boxer, Vice Chair
Senate Select Committee on Ethics
Hart Building, Room 220
Washington, DC 20510

VIA FAX

Re: Request for Investigation of Senator Robert P. Corker, Jr.

Dear Mr. Ceresney, Chairman Isakson, and Vice Chairwoman Boxer:

Campaign for Accountability respectfully requests that the Securities and Exchange Commission and the Senate Select Committee on Ethics investigate whether Senator Robert P. Corker, Jr. (R-TN) violated federal law and Senate rules by trading stock based on material, non-public information he received from an insider with either CBL & Associates Properties (“CBL”) and/or UBS, and by knowingly omitting data from his personal financial disclosure forms.

Background

CBL is reportedly the fourth-largest shopping mall real estate investment trust (“REIT”) in the United States and began trading publicly in 1993.¹ Since joining the Senate, Sen. Corker’s personal financial disclosure forms (“PFDs”) show he and his family have carried out 70 trades of CBL stock between 2007 and 2015 – far more than of any other stock in his portfolio.² Many of these trades appear to have been improbably well-timed, preceding by a few days or weeks large fluctuations in the company’s share price.

In recent months, Sen. Corker has filed at least two amendments to his PFDs. These amendments reveal seven trades by Sen. Corker and his family in CBL – worth a total of up to

¹ CBL Corporate History, available at http://www.cblproperties.com/cbl.nsf/corporate_history.html.

² See Sen. Robert P. Corker, [Personal Financial Disclosure Forms, 2006-2014](https://www.opensecrets.org/pfds/candlook.php?txtName=Corker), available at <https://www.opensecrets.org/pfds/candlook.php?txtName=Corker>; and Periodic Transaction Reports for 3/20/2015, 8/31/2015, and 10/19/2015, available at <https://efdsearch.senate.gov/search/>.

\$34 million – that he had previously failed to disclose.³ One of these newly disclosed purchases preceded a months-long increase in CBL’s share price that appears to have earned Sen. Corker a minimum of \$1.47 million.⁴

Amid a major public controversy over alleged congressional insider trading in late 2011, the *Wall Street Journal* reported on December 30, 2011 that Sen. Corker reaped more than \$1 million on his CBL trades during 2010.⁵ The *Journal* did not have the whole story, however, as Sen. Corker provided an incomplete account to the paper of his trading activity – neglecting to mention that he had also been trading CBL stock heavily (and profitably) in 2011. Sen. Corker also took full credit for his many trades, neglecting to disclose that the trades were actually placed by his broker, UBS, whose analysts follow CBL and rate its stock.

A few months after the *Journal* initially called attention to Sen. Corker’s unusual trades, he was required to disclose his 2011 investments in his annual PFD.⁶ According to a letter not filed until 2013 by Sen. Corker’s accountant, UBS allegedly withheld information about the senator’s 2011 trading activity– with the result that Sen. Corker omitted material information regarding his CBL trades and holdings on his 2011 PFD.⁷ Sen. Corker’s inaccurate 2011 PFD was released in August 2012, as he was in the midst of campaigning for a new Senate term in the November 2012 elections.

On November 3, 2015, the *Journal* published another story, this time noting that Sen. Corker had failed to reveal a dozen stock purchases in CBL, “including several that resulted in his most profitable investments.”⁸ The article noted that Sen. Corker had previously failed to disclose a March 9, 2009 purchase of CBL at \$2.07/share for between \$200,000 and \$500,000 made through accounts in the names of his dependent daughters.⁹ CBL shares were not sold from that account until May 12, 2010, when the stock had risen in value to about \$16/share, netting a gain of at least \$1 million, and perhaps has much as \$3.8 million.¹⁰

The Trades

Sen. Corker first disclosed owning CBL on his 2007 PFD, reporting assets valued at more than \$1 million.¹¹ The senator and his family made eight trades in 2008, six of which were not

³ Brody Mullins and Tom McGinty, Sen. Bob Corker Profits on Quick Stock Trades, *Wall Street Journal*, November 3, 2015 (attached as Exhibit A).

⁴ *Id.*

⁵ Brody Mullins, Jason Zweig and Tom McGinty, Lawmakers Lose in Markets – Analysis Shows That Some Members of Congress Should Elect Not to Trade, *Wall Street Journal*, December 30, 2011 (attached as Exhibit B).

⁶ See Sen. Robert P. Corker, Jr., United States Senate Financial Disclosure Report for 2011 at 2, filed August 10, 2012, available at http://pfds.opensecrets.org/N00027441_2011.pdf (“hereinafter 2011 PFD”).

⁷ Sen. Robert P. Corker, Amendment to Personal Financial Disclosure Form for 2011, filed August 27, 2013, available at <https://efdsearch.senate.gov/search/view/paper/4529ABA0-62AD-401B-A36D-F08F08D9FAD1/> (hereinafter “2011 Amendment”).

⁸ Mullins and McGinty, *Wall Street Journal*, Nov. 3, 2015.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Sen. Robert P. Corker, Personal Financial Disclosure Form for 2007, at 36, filed August 8, 2008, available at http://pfds.opensecrets.org/N00027441_2007.pdf.

disclosed until Sen. Corker filed amendment on November 2, 2015, more than seven years later.¹²

In 2010, the senator actively traded the REIT's stock, reporting 26 transactions that year.¹³ Fourteen of the trades were in excess of \$1 million, and two of them were valued at between \$5 million and \$25 million.¹⁴

In many of his CBL trades, Sen. Corker purchased during low periods and sold during high moments, typically beating the subsequent market movement. For instance, on May 7, 2010, Sen. Corker executed two purchases of CBL stock on behalf of his dependent children collectively worth between \$1 million and \$2 million.¹⁵ That day, the stock closed at \$13.70/share, its lowest price in months, but it would subsequently surge. On May 12, it had already jumped to \$16.06, a 17% increase in just three trading days.¹⁶

Also on May 12, Sen. Corker's financial disclosures indicate that he executed two sales of CBL stock on behalf of his dependent children worth more than \$1 million each.¹⁷ The Corkers secured substantial profits in a very short time period—between \$172,000 and \$344,000 over the course of just five days. They appear to have sold at the perfect time as the stock subsequently tumbled, bottoming out at \$12.64/share in early June.¹⁸

In several of his trades in 2010 and 2011, Sen. Corker's transactions foreshadowed ratings announcements by his broker, UBS. On at least three occasions, Sen. Corker registered CBL transactions worth millions of dollars days before a UBS ratings adjustment of CBL stock sent the share price in a favorable direction. For instance, on June 29, 2010 and again July 7, 2010, Sen. Corker purchased CBL stock worth between \$1 million and \$5 million.¹⁹ On July 8, 2010, UBS, the senator's broker, announced an upgrade of CBL stock from "sell" to "neutral."²⁰ The stock's value increased by approximately 19%, moving from \$11.83 on July 7 to \$14.00 on July 26 and \$13.96 on July 27.²¹ Sen. Corker therefore reaped a profit of between \$309,000 and \$1.545 million in less than a month.

¹² Sen. Robert P. Corker, Amendment to Personal Financial Disclosure Form for 2008, filed November 2, 2015, available at https://www.legistorm.com/memberdisclosure/814/Sen_Bob_Corker.html.

¹³ See Sen. Robert P. Corker, Personal Financial Disclosure Form for 2010, filed August 4, 2011 at IV-1-IV-3, available at http://pfd.opensecrets.org/N00027441_2010.pdf (hereinafter "2010 PFD").

¹⁴ *Id.*

¹⁵ 2010 PFD.

¹⁶ CBL & Associates Properties Inc., Historical Prices, available at <http://finance.yahoo.com/q/hp?s=CBL&a=03&b=1&c=2010&d=04&e=12&f=2010&g=d>.

¹⁷ 2010 PFD. Disclosure requirements for sales by family members have less restrictive ranges, so there is no indication of an outer limit on the sale.

¹⁸ CBL & Associates Properties Inc., Historical Prices, available at <http://finance.yahoo.com/q/hp?s=CBL&a=03&b=1&c=2010&d=05&e=30&f=2010&g=d>.

¹⁹ 2010 PFD.

²⁰ UBS Upgrades Several REIT Stocks, *StreetInsider.com*, July 8, 2010 (attached as Exhibit C).

²¹ CBL & Associates Properties Inc., Historical Prices, available at <http://finance.yahoo.com/q/hp?s=CBL&a=05&b=1&c=2010&d=07&e=1&f=2010&g=d>.

On July 26 and July 27, 2010, Sen. Corker sold his CBL stock in two trades collectively worth between \$2 million and \$10 million.²² Shortly thereafter, on August 5, 2010, UBS dropped its rating of CBL from “neutral” to “sell,”²³ causing a tumble in the stock’s value: the day of the announcement, the stock slipped from \$13.92 to \$13.40. A week later, it registered a value of \$12.55, and would subsequently fall even further.²⁴

Sen. Corker continued actively trading CBL stock in 2011, registering 14 total trades.²⁵ As in 2010, on at least one occasion his trades closely preceded favorable ratings adjustments by UBS, resulting in a windfall, and on multiple occasions, his trades preceded announcements of CBL of new investments and acquisitions, which precipitated a boost in price.

Sen. Corker’s first CBL trade of the year occurred on January 24, 2011, when he purchased between \$500,000 and \$1 million worth of stock at approximately \$16.90/share.²⁶ Notably, this purchase preceded a CBL conference call that announced better than anticipated results and disclosed new investments in four CBL properties, which preceded a weeks-long surge in the price of CBL.²⁷

On April 6, 2011, Sen. Corker bought another \$500,000-\$1 million worth of CBL stock,²⁸ this time at about \$17.51/share.²⁹ CBL’s stock price hit a three-month high on April 27, 2011 of \$18.70.³⁰ The same day, the senator sold a block of shares worth between \$1 million and \$5 million.³¹ His investment on April 6 appears to have earned him between approximately \$34,000 and \$68,000 during that period.

On June 14, 2011, UBS announced it was upgrading its rating of CBL from “sell” to “neutral,” the only such ratings adjustment for that year uncovered to date.³² As he did on multiple occasions in 2010, Sen. Corker made trades closely preceding the announcement, allowing him to profit from the subsequent movement in the market. On June 10, Sen. Corker purchased between \$1 million and \$5 million worth of CBL stock at about \$16.73/share, and

²² 2010 PFD.

²³ UBS Downgrades CBL & Associates to Sell, *StreetInsider.com*, August 5, 2010, available at <http://www.streetinsider.com/Downgrades/UBS+Downgrades+CBL+%26+Associates+%28CBL%29+to+Sell/5867531.html>.

²⁴ CBL & Associates Properties Inc., Historical Prices, available at <http://finance.yahoo.com/q/hp?s=CBL&a=05&b=1&c=2010&d=07&e=27&f=2010&g=d>.

²⁵ 2011 PFD at IV(1).

²⁶ *Id.*; CBL & Associates Properties Inc., Historical Prices, available at <http://finance.yahoo.com/q/hp?s=CBL&a=11&b=1&c=2010&d=01&e=1&f=2011&g=d>.

²⁷ See CBL & Associates sees FY11 FFO \$2.10-\$2.15 vs. consensus \$2, *Theflyonthewall.com*, February 8, 2011 (attached as Exhibit C); CBL & Associates Properties Inc., Historical Prices, available at <http://finance.yahoo.com/q/hp?s=CBL&a=00&b=15&c=2011&d=02&e=27&f=2011&g=d>.

²⁸ 2011 PFD.

²⁹ CBL & Associates Properties Inc., Historical Prices, available at <http://finance.yahoo.com/q/hp?s=CBL&a=02&b=10&c=2011&d=03&e=10&f=2011&g=d>.

³⁰ *Id.*

³¹ 2011 PFD.

³² UBS Upgrades CBL & Associates to Neutral, *StreetInsider.com*, June 14, 2011, available at <http://www.streetinsider.com/Upgrades/UBS+Upgrades+CBL+%26+Associates+%28CBL%29+to+Neutral/6578406.html>.

three days later, on June 13, the day before the UBS upgrade, he bought another \$1 million to \$5 million at around \$16.91/share.³³

The temporary boost in CBL share prices allowed Sen. Corker to reap a short-term windfall. On June 22, Sen. Corker sold between \$1 million and \$5 million of CBL at about \$18.04/share, and he sold another \$1 million to \$5 million on June 29 at approximately \$17.98/share.³⁴ As a result of the trades, Sen. Corker earned profits of between approximately \$142,000 and \$709,000 in just a few weeks.

In the spring of 2012, Sen. Corker filed his PFD for 2011 indicating his profits from trading CBL were between \$100,000 and \$1 million, and that he no longer held any CBL stock.³⁵ Contrary to the information he provided on his PFD, however, Sen. Corker, in fact, had retained between \$1 million and \$5 million worth of CBL stock, as he finally disclosed in August 2013, when he filed an amendment to his 2011 PFD.³⁶

In the August 2013 amendment, Sen. Corker's accountant claimed the large CBL holding had not been declared earlier because it had not come to light until it appeared in a 2012 UBS brokerage statement.³⁷ The letter stated, "The gain/loss report for 2012 provided by UBS clearly reflects the acquisition date for CBL stock sold in 2012 as November of 2011."³⁸

Still, Sen. Corker did not disclose the specifics of the trade that led him to retain his CBL stake until October 15, 2015, nearly four years after the event.³⁹ According to the 2015 amendment, Sen. Corker acquired between \$1 million and \$5 million in CBL stock on November 29, 2011.⁴⁰ That day, CBL closed at \$13.39, just two days removed from the stock's six-week low.⁴¹ From there, however, CBL embarked on a months-long increase.

By the time Sen. Corker sold liquidated CBL holdings on May 2, 2012, the price had reached \$19.02/share, an increase of 42% in the share price⁴² that appears to have earned him a minimum of of \$1.47 million in profits.⁴³ A month later, the stock had lost 20% of its value,⁴⁴

³³ 2011 PFD; CBL & Associates Properties Inc., Historical Prices, *available at* <http://finance.yahoo.com/q/hp?s=CBL&a=03&b=1&c=2011&d=06&e=1&f=2011&g=d>.

³⁴ 2011 PFD; CBL & Associates Properties Inc., Historical Prices, *available at* <http://finance.yahoo.com/q/hp?s=CBL&a=03&b=1&c=2011&d=06&e=1&f=2011&g=d>.

³⁵ 2011 PFD.

³⁶ 2011 Amendment.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Sen. Robert P. Corker, Amendment to Personal Financial Disclosure Form for 2011, filed October 16, 2015, *available at* <https://efdsearch.senate.gov/search/print/paper/181D0705E-C862-4928-B8B8-103D9A3B0503/> (hereinafter "2011 Amendment 2").

⁴⁰ 2011 Amendment 2.

⁴¹ CBL & Associates Properties Inc., Historical Prices, *available at* <http://finance.yahoo.com/q/hp?s=CBL&a=10&b=1&c=2011&d=11&e=1&f=2011&g=d>.

⁴² CBL & Associates Properties Inc., Historical Prices, *available at* <http://finance.yahoo.com/q/hp?s=CBL&a=03&b=1&c=2011&d=04&e=12&f=2011&g=d>.

⁴³ This calculation is based on the fact that Sen. Corker's CBL holdings leapt from the \$1-\$5 million range to the \$5-\$25 million range from November 2011 to May 2012. Presumably this increase is attributable to the 42% jump in the stock's value. To have at least \$5 million worth of CBL stock following the 42% increase, Sen. Corker would

indicating that he both bought CBL in November 2011 and sold in May 2012 at almost the ideal point in the stock's trajectory. According to his 2012 PFD, that single trade was worth between \$5 million and \$25 million.⁴⁵

In essence, Sen. Corker bought low, sold high, and failed to disclose his profit in the prescribed time period.

Sen. Corker's Relationships with CBL and UBS

Sen. Corker has longstanding ties to both CBL and UBS, including a uniquely tight relationship with the REIT. As already noted, Sen. Corker's stock portfolio consists of more CBL stock trades than any other security, despite the fact that CBL stock is thinly traded and many of his other stocks are well-known Fortune 500 firms.⁴⁶ Since 2006, the senator and his family have made approximately 70 trades of CBL, 19 of Apple, 15 of AIG (which he sold completely in 2007), and 14 of Wells Fargo.⁴⁷

Sen. Corker's ties to CBL date back to the origins of his professional life: he worked for a company whose primary business was subcontracting for CBL after college and then went out on his own, starting a construction company, and later his own very successful real estate development business, the Corker Development Company.⁴⁸ When Sen. Corker was elected mayor of Chattanooga, CBL and Corker were the two largest developers in the county.⁴⁹ CBL executives were the first and most generous donors when Sen. Corker filed to run for Senate in 2006, contributing \$24,000,⁵⁰ constituting 56% of his first day's take. CBL executives, employees and their spouses have been among the senator's top campaign donors, contributing \$88,706 to his campaign committee and PAC.⁵¹

CBL executives also hold leadership positions in trade groups that have supported Sen. Corker's political career. Members of the Lebovitz family, which owns CBL, have for years served on the board of governors of the National Association for Real Estate Investment Trusts (NAREIT).⁵² Stephen Lebovitz, the president and CEO of CBL, is the current chair of the

have to have held approximately \$3.53 million worth of stock before the increase, meaning his profit would have been a minimum of \$1.47 million.

⁴⁴ CBL & Associates Properties Inc., Historical Prices, available at

<http://finance.yahoo.com/q/hp?s=CBL&a=03&h=1&c=2012&d=05&e=30&f=2012&g=d>.

⁴⁵ Sen. Robert P. Corker, United States Senate Financial Disclosure Report for 2012 at 2, filed August 12, 2013, available at http://pfd.opensecrets.org/N00027441_2012.pdf (hereinafter "2012 PFD").

⁴⁶ Mullins, Zweig and McGinty, *Wall Street Journal*, Dec. 30, 2011.

⁴⁷ See Sen. Robert P. Corker, Personal Financial Disclosure Forms, 2006-2014.

⁴⁸ Mullins, Zweig and McGinty, *Wall Street Journal*, Dec. 30, 2011.

⁴⁹ Dave Flessner, Chattanooga, Tenn. Mayor Proposes Property Tax Increase, *Knight-Ridder Tribune Business News*, August 22, 2011 (attached as Exhibit D).

⁵⁰ Bob Corker for Senate, FEC Form 3, 2004 Year-End Report, Amended, July 22, 2005, available at <http://docquery.fec.gov/pdf/198/25020341198/25020341198.pdf>.

⁵¹ Bob Corker For Senate 2018, Inc., FEC Form 3, 2006-2012 Reports, available at <http://docquery.fec.gov/cgi-bin/fecimg/?C00430462>; Bob Corker For Senate, FEC Form 3, 2004-2006 Reports, available at <http://docquery.fec.gov/cgi-bin/fecimg/?C00407650>.

⁵² See Mentions to the Lebovitz family in the Nareit Board of Governors, available at <https://www.reit.com/nareit-you/about-nareit/advisory-board-governors>.

International Council of Shopping Centers (ICSC).⁵³ These two groups were part of a nine-PAC consortium that held a fundraiser for Sen. Corker in Washington in 2011, and have donated \$15,000 directly to his campaign committee since his arrival in the Senate.⁵⁴ In the same period, CBL executives have contributed more than \$50,000 each to NAREIT and the ICSC, indirectly funding Sen. Corker.⁵⁵

Sen. Corker is also well-connected to UBS. He has had accounts with the bank at least since he first began filing PFDs and the bank is a tenant in a building he once owned in downtown Chattanooga, Tennessee.⁵⁶ UBS executive Douglas A. Brown, senior vice president for wealth management in the Chattanooga office, was an early contributor to the senator's 2006 campaign⁵⁷ and UBS has donated \$75,300 to Sen. Corker's campaign committee over the course of his Senate career, making it his eleventh largest contributor.⁵⁸ UBS contributed an additional \$30,000 to the senator's PAC between 2009 and 2015.⁵⁹

Sen. Corker's Explanation

When recently confronted by the *Wall Street Journal* over the inaccuracies in his filings, Sen. Corker explained, "in a few cases, only the sale and gain or loss of the transaction was reported. As a result of this inquiry, and after completing a full review, we are correcting this oversight."⁶⁰ He has blamed all the inaccuracies and errors on his accounting firm, apparently contradicting his accountant's 2013 explanation that the failure to disclose was the result of information withheld by Sen. Corker's broker, UBS.

Whatever the case, Sen. Corker was on notice previously that there were problems in his filings but failed to correct them. His original financial disclosure for 2011 indicated he held no CBL stock, but it was not until two years later that he filed an amendment, revealing that he owned CBL stock valued at between \$1 and \$5 million. Even then, however, he did not disclose the date of the purchase or amount of the transaction. Rather, only after questioned by the *Journal* did the senator file another amendment, this time showing that he purchased the stock on

⁵³ Stephen D. Lebovitz, President & CEO, CBL & Associates Properties, Inc. Elected ICSC Chairman, May 19, 2015, available at <http://www.icsc.org/press/stephen-d.-lebovitz-president-ceo-cbl-associates-properties-inc.-elected-ic>.

⁵⁴ Real Estate Dinner for Bob Corker, July 19, 2011, available at politicalpartytime.org/party/27067/. International Council of Shopping Centers, Contributions to Federal Candidates, available at <https://www.opensecrets.org/pacs/pacgot.php?cycle=2006&cmte=C00217638>. National Association of Real Estate Investment Trusts, Contributions to Federal Candidates, available at <https://www.opensecrets.org/pacs/pacgot.php?cycle=2016&cmte=C00303339>.

⁵⁵ National Association of Real Estate Trusts, Inc. Political Action Committee, FEC Form 3X Reports, 2004-2015, available at <http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do?candidateCommitteeId=C00303339&tabIndex=3> International Council of Shopping Centers Inc. Political Action Committee, FEC Form 3X Reports, 2004-2015, available at <http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do?candidateCommitteeId=C00217638&tabIndex=3>.

⁵⁶ <http://chattanooga.com/2005/7/18/69616/Corker-Group-Renovating-Tallan-Buildings.aspx>.

⁵⁷ Bob Corker for Senate, FEC Form 3 Reports, 2005-2006, available at [Senate Letter Final.docx](#).

⁵⁸ <http://www.opensecrets.org/politicians/contrib.php?cycle=Career&cid=N00027441&type=1>.

⁵⁹ See Rock City PAC, FEC Form 3X, 2007-2015 Reports, available at <http://docquery.fec.gov/cgi-bin/fecimg/?C00436410>.

⁶⁰ Mullins and McGinty, *Wall Street Journal*, Nov. 3, 2015.

November 29, 2011.⁶¹ It also happens that the stock rose 6.7% the very next day, continuing on an upward trajectory for the next few months.⁶² Sen. Corker then sold his entire CBL stake for between \$5 and \$25 million, netting an apparent profit of between \$1.47 million and \$2.1 million.⁶³

In sum, the undisclosed transaction was incredibly lucrative, likely would have been questioned during the 2012 Senate campaign had Sen. Corker revealed it as required, and the senator's explanation for his inaccurate disclosures appears to evolve with each newly discovered fact.

Legal Violations

Insider Trading

Under the classic theory of insider trading, Section 10(b) of the Securities Exchange Act of 1934 prohibits a corporate insider from trading shares of that corporation based on material non-public information in violation of the duty of trust and confidence insiders owe to shareholders. *Chiarella v. U.S.*, 445 U.S. 222, 228 (1980); *SEC v. Obus*, 693 F.3d 276, 284 (2d Cir. 2012).

A tipper who violates his fiduciary duty by deliberately or recklessly tipping information he knows to be material and non-public, and personally benefits from the tip may be held liable for insider trading. *Dirks v. SEC*, 463 U.S. 646, 660-62 (1983); *Obus* at 286.

A tippee who knows that tipped information is material and non-public and has some level of knowledge that by trading on the information he is a participant in the tipper's breach of fiduciary duty also violates the law. *Dirks* at 660; *Obus* at 287. Tippee liability is established if a tippee knew or had reason to know that confidential information was obtained and transmitted improperly, and the tippee intentionally or recklessly traded while in possession of that information. *Obus* at 288.

Recently, the Second Circuit Court of Appeals reconsidered the elements of tippee liability. To sustain an insider trading conviction against a tippee, the government must prove:

(1) the corporate insider was entrusted with a fiduciary duty; (2) the corporate insider breached his fiduciary duty by (a) disclosing confidential information to a tippee (b) in exchange for a personal benefit; (3) the tippee knew of the tipper's breach, that is, he knew the information was confidential and divulged for personal benefit; and (4) the tippee still used that information to trade in a security or tip another individual for personal benefit.

U.S. v. Newman, 773 F.3d 438, 450 (2d Cir. 2014) (citing *Dirks v. SEC*, 463 U.S. 646, 659-64 (1983) and *U.S. v. Jiau*, 734 F.3d 147, 152-53 (2d Cir. 2013)).

⁶¹ *Id.*

⁶² *Id.*; CBL & Associates Properties Inc., Historical Prices, available at <http://finance.yahoo.com/q/!hp?s=CBL&a=10&b=1&c=2011&d=11&e=15&f=2011&g=d>.

⁶³ *Id.*

The court concluded that a tippee must know of the personal benefit received by the tipper in exchange for the disclosure, *Id.* at 449, and that the personal benefit must be “of some consequence.” *Id.* at 452. In other decisions the Second Circuit has explained that “personal benefit” is broadly defined, including not only pecuniary gain, but also “‘reputational benefit’ or the benefit one would obtain from simply ‘mak[ing] a gift of confidential information to a trading relative or friend.’” *Obus at 285; U.S. v. Jiau*, 734 F.3d 147, 153 (2d Cir. 2013). Post *Newman*, however, it appears that in exchange for the confidential information, the benefit to the tipper must be “at least a potential gain of a pecuniary or similarly valuable nature.” *Newman*, 773 F.3d at 452.

Based on his trading pattern, it appears that on several occasions Sen. Corker likely received material, non-public information from either a UBS and/or CBL insider, who would have breached a fiduciary duty by divulging this information, and the senator then used that information to place timely trades on CBL securities. While the exact nature of the personal benefit the tipper received is unknown, the gains to be reaped from providing tips worth millions of dollars to a sitting United States senator cannot be overstated. The “friendship” or indebtedness of a member of the Senate can result not only in reputational gain, but in substantial pecuniary gain as well. Further, Sen. Corker is a member of the Senate Committee on Banking, Housing & Urban Affairs, which has jurisdiction over issues of relevance and financial value to both UBS and CBL. Sen. Corker is in a position to offer insight on potential committee legislative and oversight action and to advocate in favor of UBS and CBL interests.

Significantly, as a publicly traded REIT sponsor with access to large amounts of capital, CBL is expected to be among the primary beneficiaries of one of Sen. Corker’s legislative priorities, a housing policy bill that could lead to the demise of government-backed mortgage insurers Fannie Mae and Freddie Mac. According to *Multifamily Executive*,

Unlike smaller entrepreneurial players, the REITs have many financing avenues available to them by virtue of their size and public-company status. And should the GSEs go away, many small owners might be forced to sell – and the large owners would be there, capital in hand, ready to buy.⁶⁴

Similarly, UBS is also a potential beneficiary of Sen. Corker’s housing policy as big banks will be in a position to finance more mortgages if Fannie Mae and Freddie Mac are eliminated. Notably, in 2010, UBS began pushing into the U.S. mortgage business at around the same time of some of Sen. Corker’s most suspicious trades.⁶⁵

Ethics in Government and False Statements Acts

The Ethics in Government Act of 1978 (“EIGA”) requires all members of the Senate to file a personal financial disclosure report with the Secretary of the Senate.⁶⁶ Senators must

⁶⁴ Jerry Ascierio, *REITs Stand to Gain from the GSE’s Demise*, *Multifamily Executive*, August 10, 2011, available at http://www.multifamilyexecutive.com/business-finance/reits-stand-to-gain-from-the-gses-demise-1_o.

⁶⁵ Aaron Lucchetti, *UBS Makes Push for U.S. Mortgages*, *Wall Street Journal*, August 2, 2010, available at <http://www.wsj.com/articles/SB10001424052748703787904575403354133923236>.

⁶⁶ 5 U.S.C. app. 4, §§ 101(f), 103(h)(1)(A)(i)(I). EIGA further requires these reports to be disclosed to the public immediately after they are submitted. *Id.* § 103(d).

disclose information regarding their financial and employment history, including sources of income, gifts, and financial interests.⁶⁷ They also must disclose the receipt of gifts from any source other than the U.S. government⁶⁸ and report the identity of the source of the gift and the value of gifts aggregating more than \$375 in value from any one source.⁶⁹ The name and address of the source, as well as a description of the item and its value, all must be disclosed.⁷⁰

The EIGA authorizes the Attorney General to seek a penalty of up to \$50,000 against an individual who knowingly and willfully falsifies or fails to file or report any required information.⁷¹ Further, knowingly and willfully making any materially false, fictitious or fraudulent statement on an EIGA filing is subject to criminal prosecution and up to five years imprisonment under the False Statements Act.⁷² In addition, Senate Rule 34 provides that Title I of EIGA is regarded as a rule of the Senate, subjecting violators to disciplinary action by the Senate Ethics Committee.⁷³

Sen. Corker clearly failed to include information about numerous stock trades on his PFDs and even his initial 2013 amendment to his 2011 PFD was inaccurate. Given the amounts involved, it is clear that the omissions were material, leaving only the question of whether the omissions were knowing and willful to remain.

The evidence indicates that they were. Sen. Corker has blamed his accounting firm for the inaccuracies, claiming his accountants “mistakenly used realized gain/loss methodology instead of the Senate financial disclosure guidelines.”⁷⁴ Yet in the amendment to his 2011 PFD – not filed until 2013, well after his 2012 election – Sen. Corker’s accountant claimed the senator had failed to reveal his enormous profit on the sale of CBL stock because it had only come to light a year later when it appeared on a UBS brokerage statement,⁷⁵ implying that Sen. Corker was not personally familiar with the trades. This is contradicted by Sen. Corker’s statement to the *Journal* in 2011 in which he took personal credit for making the trades:

*“I’ve watched the trading range on this hometown-based stock and have found that especially during times of market volatility it trades within wide ranges,” Mr. Corker said. “I’ve bought it heavily when it is at the low end of that range and then I hold it until there is upward movement, when I sell.”*⁷⁶

⁶⁷ *Id.* § 102.

⁶⁸ Public Financial Disclosure Report for the United States Senate eFD Instructions, available at http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=98558990-0fa2-4880-8ffd-67728e7a7a69 at 19 (hereinafter “PFD Instructions”).

⁶⁹ *Id.* In 2011, filers were required to report gifts aggregating more than \$335 and in 2012, they were required to report those aggregating more than \$350. See e.g., 2011 PFD and 2012 PFD.

⁷⁰ PFD Instructions at 19.

⁷¹ *Id.* at 4 (citing 5 U.S.C. App. 4 § 104(a)).

⁷² *Id.*

⁷³ PFD Instructions at 1.

⁷⁴ Andy Sher, Sen. Bob Corker Blames Accountants for Disclosure ‘Filing Errors’, *Chattanooga Times Free Press*, November 5, 2015, available at <http://www.timesfreepress.com/news/local/story/2015/nov/05/corker-blames-accountants-disclosure-filing-e/334056/>.

⁷⁵ 2011 Amendment.

⁷⁶ Mullins, Zweig and McGinty, *Wall Street Journal*, Dec. 30, 2011.

Further, the number of unreported trades, the fact that many of those trades were made through accounts in the name of Sen. Corker's wife and daughters, and the particularly auspicious timing of many of those trades, all combine to suggest Sen. Corker was attempting to hide his CBL trading from public view.

In addition, Sen. Corker failed to disclose the likely gift of stock tips. The information he appears to have received allowing him to reap substantial profits on stock trades clearly has monetary value and therefore falls within the definition of "gift." Given that Sen. Corker appears to have made more than \$1 million based on this information—he declared capital gains on his CBL trades of between \$1 million to \$5 million in both 2010 and 2012—the value of the information exceeds the aggregate value triggering disclosure. Sen. Corker did not, however, disclose any stock tips on his 2011 or 2012 PFDs. As a result, he seems to have violated the EIGA and – because his failure to disclose the inside information he received appears knowing and willful – he also likely violated the False Statements Act.

Gift Rule

Rule 35, paragraph 1(a)(1) of the Senate Code of Official Conduct states that "No Member, officer or employee of the Senate shall knowingly accept a gift except as provided in this rule."⁷⁷ The Ethics Manual defines "gift" to mean "any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value."⁷⁸ Accordingly, the Senate Ethics Committee has stated that "Members and staff who use a "tip" of material, nonpublic information to buy or sell securities in order to make a profit or avoid a loss would have received an improper gift."⁷⁹

It is also notable that officials with CBL and UBS have contributed to Sen. Corker's campaigns. Federal Election Commission records show CBL's executives, directors and their spouses have been among the senator's most generous donors contributing \$88,706 to his campaign and political action committee, Rock City PAC.⁸⁰ UBS executives also have been significant donors.⁸¹

The Senate Ethics Manual states:

The public has a right to expect Members, officers, and employees to exercise impartial judgment in performing their duties. The receipt of gifts, entertainment, or favors from certain persons or interests may interfere with this impartial

⁷⁷ Senate Select Committee on Ethics, *Senate Ethics Manual*, p. 314 (108th Cong. 2003 ed.).

⁷⁸ *Id.*

⁷⁹ Senate Select Committee on Ethics, *Restrictions on Insider Trading Under Securities Laws and Ethics Rules*, December 4, 2012, available at http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=8c923399-2dc0-4ef6-a0d2-9ef564fc7038 (hereinafter "Senate Insider Trading Memo").

⁸⁰ Bob Corker For Senate 2018, Inc., *FEC Form 3, 2006-2012 Reports*, available at <http://docquery.fec.gov/cgi-bin/fecimg/?C00430462>; Bob Corker For Senate, *FEC Form 3, 2004-2006 Reports*, available at: <http://docquery.fec.gov/cgi-bin/fecimg/?C00407650>.

⁸¹ See <http://www.opensecrets.org/politicians/contrib.php?cycle=Career&cid=N00027441&type=1>; Rock City PAC, *FEC Form 3X, 2007-2015 Reports*, available at <http://docquery.fec.gov/cgi-bin/fecimg/?C00436410>.

judgment, or may create an appearance of impropriety that may undermine the public's faith in government.⁸²

Although it is unknown whether Sen. Corker has used his official position to benefit CBL, UBS and/or any of their executives, the receipt of stock tips from company insiders creates exactly the sort of appearance of impropriety that the Gift Rule was designed to address.

STOCK Act

Congress unambiguously affirmed that “Members of Congress are not exempt from the insider trading prohibitions arising under the securities laws” when it enacted the Stop Trading on Congressional Knowledge Act (“STOCK Act”). 112 P.L. 105, 126 Stat. 291, 292. In 2012, Congress amended the Securities Exchange Act of 1934 (“Exchange Act”) to state:

[F]or purposes of the insider trading prohibitions arising under this Act, including section 10(b) and Rule 10b-5 thereunder, each Member of Congress or employee of Congress owes a duty to the Congress, the United States Government, and the citizens of the United States with respect to material, nonpublic information derived from such person's position as a Member of Congress or employee of Congress or gained from the performance of such person's official responsibilities.

Exchange Act Section 21A(g)(1), 15 U.S.C. § 78u-1(g)(1). While this amendment focused on members of Congress and congressional staff trading on information they gained from their official positions, the Senate Ethics Committee also reiterated that members and staff “are prohibited from insider trading based on information received outside of their official duties.”⁸³ The committee elaborated,

[I]f a corporate insider “tips” a Senator or staffer to trade in that corporation's securities based on material, nonpublic information and the Senator or staffer knew or should have known that there was a breach of the insider's fiduciary duty to the corporation's shareholders, the Senator or staffer becomes subject to the insider's duty and is prohibited from trading based on that confidential information.⁸⁴

In addition to federal insider trading prohibitions, Sen. Corker's conduct appears to violate the STOCK Act.

Conflict of Interest Rule

Senators are prohibited from using their official positions for their financial benefit. Rule 37.1 provides:

⁸² *Id.* at 21.

⁸³ Senate Insider Trading Memo.

⁸⁴ *Id.*

A Member, officer, or employee of the Senate shall not receive any compensation, nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position as a Member, officer, or employee.

This paragraph “should be read as a broad prohibition against members, officers or employees deriving financial benefit, directly or indirectly, from use of their official positions.”⁸⁵

If, as it appears, Sen. Corker received stock tips because of his position as a senator, he violated Rule 37.1.

Improper Conduct that Reflects Upon the Senate

The Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as “improper conduct which may reflect upon the Senate.”⁸⁶ This rule is intended to protect the integrity and reputation of the Senate as a whole.⁸⁷ The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules. . .”⁸⁸ The Senate Ethics Committee has stated that

those who intentionally use confidential information coming to them by virtue of their Senate responsibilities or position to make a profit or avoid a loss or to assist others to do so, will be deemed to have violated ethics standards and rules, engaged in conduct reflecting discredit on the Senate, and potentially violated securities laws and regulations.⁸⁹

If, as it appears, Sen. Corker intentionally used confidential information to make profits and avoid losses on CBL stock, he engaged in improper conduct that reflects discredibly on the Senate.

The Select Committee on Ethics also has the option of criticizing Sen. Corker’s conduct. On some occasions, the Committee has stopped short of finding that alleged conduct was “improper conduct reflecting upon the Senate,” but has found “that the conduct should not be condoned or should otherwise be criticized in a public statement by the Committee.”⁹⁰ For example, the Committee has found that: a senator’s “interven[tion] with regulators gave the appearance of being improper and was attended with insensitivity and poor judgement,” that a

⁸⁵ *Id.*

⁸⁶ Senate Select Committee on Ethics, *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

⁸⁷ *Id.*

⁸⁸ *Id.* at 433; *see also* fn. 10 citing a 1964 investigation into the activities of Bobby Baker, then Secretary to the Majority of the Senate, the Committee on Rules and Administration, which stated, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88th Cong., 2d Sess. 5 (1964).

⁸⁹ Senate Insider Trading Memo.

⁹⁰ Senate Ethics Manual at 435.

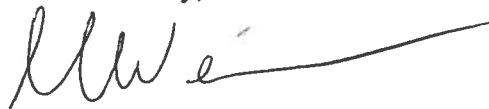
senator “exercised poor judgment in intervening with regulators,” and that another senator conducted office business “in an inappropriate manner...”⁹¹ Therefore, even if the Committee is not persuaded Sen. Corker’s conduct reaches the level of improper conduct, at the very least, the Committee should issue a public statement criticizing his conduct.

Conclusion

Over the course of only two years, from 2010 to 2012, the total value of Sen. Corker’s trades of CBL stock was somewhere between \$45 million and \$213 million. Based on significant dollar figure involved, the high volume of trades of just that one stock, the unusually auspicious timing of many of the trades, the failure to report the trades in a timely fashion, Sen. Corker’s deep ties to CBL and UBS, and the fact that as a member of the Senate Banking Committee he is positioned to be of service to CBL and UBS⁹², an investigation into whether Sen. Corker engaged in insider trading, knowingly failed to report his trades, and violated Senate ethics rules is clearly warranted.

We look forward to your prompt investigation of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anne L. Weismann', with a long horizontal flourish extending to the right.

Anne L. Weismann
Executive Director

Encls.

cc: Raymond Hulser
Chief, Public Integrity Section
Department of Justice

⁹¹ *Id.*, fn. 19.

⁹² As a senior member of the Banking Committee, Sen. Corker also has oversight jurisdiction of the SEC. Continuing in that role may be inappropriate given the circumstances.

EXHIBIT A

THE WALL STREET JOURNAL.

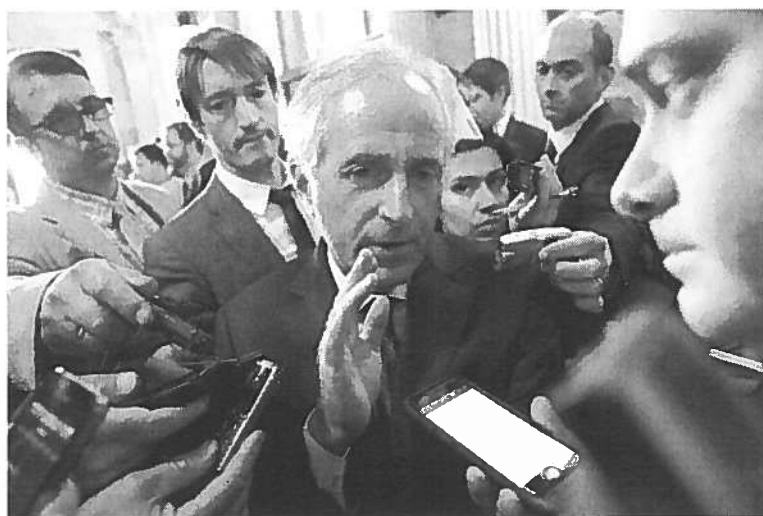
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<http://www.wsj.com/articles/sen-bob-corker-profits-on-quick-stock-trades-1446596135>

POLITICS

Sen. Bob Corker Profits on Quick Stock Trades

Tennessee Republican discloses a dozen previously unreported share purchases in a little-known real-estate firm



Tennessee Sen. Bob Corker, shown in July, says he is 'extremely disappointed in the filing errors.' PHOTO: JONATHAN ERNST/REUTERS

By **BRODY MULLINS** and **TOM MCGINTY**

Updated Nov. 3, 2015 8:08 p.m. ET

WASHINGTON—In the course of his Senate career, Republican Sen. Bob Corker of Tennessee has made many short-term trades in shares of a little-known Chattanooga real-estate company.

Until recently, he hadn't made public a dozen stock purchases in the firm, including several that resulted in his most profitable investments.

In one previously unknown purchase, Mr. Corker purchased between \$1 million and \$5 million in shares of the firm, CBL & Associates Properties Inc., in late 2011 and sold them five months later for a 42% gain. A pair of purchases in 2009

in accounts in the name of his daughters likely netted more than \$1 million, though in that case the exact gain is impossible to calculate.

The trades are among the CBL stock purchases that Mr. Corker disclosed only recently after questions from The Wall Street Journal about apparent discrepancies in his Senate financial-disclosure reports. Congressional ethics rules require lawmakers to make public their financial investments in broad ranges each year.

Some of Mr. Corker’s newly disclosed trades came during a period of heightened scrutiny of financial investments by members of Congress and as Mr. Corker was preparing to run for re-election in 2012.

In a written statement to the Journal last week, Mr. Corker said he was “extremely disappointed in the filing errors that were made in these earlier reports where the accounting firm mistakenly used realized gain/loss methodology instead of the Senate financial disclosure guidelines.”

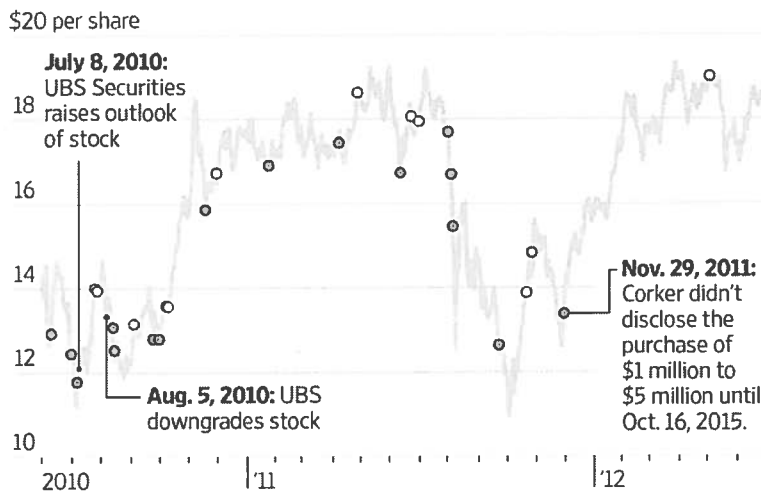
As a result of the mistakes, Mr. Corker said, “in a few cases, only the sale and gain or loss of the transaction was reported. As a result of this inquiry, and after completing a full review, we are correcting this oversight.”

Buy Low, Sell High

Sen. Bob Corker (R, Tenn.) routinely bought the stock of Tennessee real-estate firm CBL at a low level and sold it at a higher price.

Closing price for CBL
June 2010–June 2012

● Corker purchases stock
○ Corker sells stock



Source: Senate Financial Disclosure Reports

THE WALL STREET JOURNAL.

Congressional ethics rules allow lawmakers to invest in just about any company, as long as they aren’t trading based on inside information and they disclose their investments. Lawmakers contend they should be allowed to trade stocks, because a ban would “insulate a legislator from the personal and economic interests that his or her constituency, or

society in general, has in governmental decisions and policy,” as the rules put it.

There are no penalties for making fixes to disclosures, a frequent occurrence, because ethics regulators want to encourage lawmakers to correct mistakes.

The new disclosures are the latest twist in Mr. Corker's history with CBL, a publicly traded company that he knows well. After college, he worked for a company that constructed buildings for CBL. He later started his own construction company and then invested in shopping malls and office buildings. Several CBL executives have donated to his campaigns. CBL didn't respond to requests for comment.

On entering the Senate in 2007, Mr. Corker had a diverse portfolio including hundreds of widely owned Fortune 500 corporations. In recent years, CBL has been one of the few stocks he has traded.

Mr. Corker has bought or sold CBL stock 45 times. His wife and two daughters made 25 additional CBL trades in accounts in their names, according to Mr. Corker's office and his financial-disclosure forms.

Mr. Corker made between \$1 million and \$5 million on CBL trades in both 2010 and 2012, the disclosures show. However, he could have lost money in other years; senators are required to disclose annual profits, but not losses, on investments.

In 2011, the Journal published a story that mentioned Mr. Corker's frequent trading in CBL. In a statement for that story, he said he had "watched the trading range on this hometown-based stock" and "found that especially during times of market volatility it trades within wide ranges." He added: "I've bought it heavily when it is at the low end of that range and then I hold it until there is upward movement, when I sell."

Mr. Corker's spokeswoman, Tara DiJulio, said the CBL investments "have been public dating back to 2007, and he even discussed with The Wall Street Journal in a 2011 interview how he watches the volatility of this stock."

Mr. Corker's successful strategy was on display in March 2009—in one of the previously undisclosed trades—when CBL stock traded near its low of \$2.07. On March 9, 2009, accounts in the name of Mr. Corker's daughters made a pair of purchases of CBL stock worth a total of \$200,000 to \$500,000.

The first time any CBL shares were sold from that account, on May 12, 2010, the stock had risen more than sevenfold to about \$16. That trade very likely netted a gain of at least \$1 million.

Mr. Corker's office said losses on other CBL trades in his children's accounts in 2010 wiped out that gain. The same accounts had paid about \$24 a share for more than \$2 million of CBL shares in 2008, and those trades most likely suffered significant losses.

Other previously disclosed trades successfully took advantage of movements in the company's stock. In three June and July 2010 trades, Mr. Corker bought a total of between \$3 million and \$15 million in CBL shares. The day after the last trade, the stock rose when investment-research firm UBS Securities said it was upgrading its outlook. From July 7 to July 26, when Mr. Corker started to sell the stock, it was up 18.3%.

Disclosure records show Mr. Corker sold two stakes worth a total of between \$2 million and \$10 million on July 26 and 27. The following week, UBS issued another analysis, this time downgrading the stock. The share price declined about 10% over the following week.

UBS declined to comment on the matter.

Other investment analysts were split in their projections of CBL stock.

Some of Mr. Corker's investments coincided with a time of scrutiny over lawmakers' investments. In November 2011, CBS's "60 Minutes" broadcast an investigation into stock trading by lawmakers, giving momentum to a long-stalled bill that made it illegal for lawmakers to trade stocks based on inside information.

For one of Mr. Corker's most-profitable trades, it was impossible until recently to calculate the return on his investment. His original financial disclosure for 2011 indicated he didn't own CBL stock at the end of the year. That turned out to be incorrect. In August 2013, he filed an amendment saying that at the end of 2011, he owned shares worth between \$1 million and \$5 million. However, the senator didn't disclose the precise date of the purchase or the amount of the transaction. After being contacted by the Journal in October, Mr. Corker's office filed an amendment showing that he bought \$1 million to \$5 million of CBL stock on Nov. 29, 2011. The stock rose 6.7% the next day and, over the following months, it rose steadily, buttressed by a number of positive events.

Mr. Corker sold his entire CBL stake for between \$5 million and \$25 million in May 2012, according to the filings. The sale of the stock purchased on Nov. 29 netted him a profit of somewhere between \$420,000 and \$2.1 million.

Mr. Corker has continued to invest in CBL since.

Write to Brody Mullins at brody.mullins@wsj.com and Tom McGinty at tom.mcginty@wsj.com

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EXHIBIT B

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MARKETS

Lawmakers Lose in Markets

Analysis Shows That Some Members of Congress Should Elect Not to Trade

By **BRODY MULLINS**, **JASON ZWEIG** and **TOM MCGINTY**

December 30, 2011

Amid the controversy about stock trading on Capitol Hill, one element has largely been overlooked: Some members of Congress aren't particularly good at it.

Scores of lawmakers from both political parties bought and sold stocks actively last year, according to an analysis of congressional financial disclosures. Many would have been better off if they hadn't.



Bob Corker

Sen. Bob Corker, a Tennessee Republican, earned more than \$1 million on dozens of short-term trades in a real estate investment trust—but would have doubled that total had he simply bought and held, according to an analysis of his disclosure form.

Sen. Tom Coburn (R., Okla.) made more than 200 trades in stocks and bonds in 2010, and says he has lost money trading in each of the seven years he has been in Congress.

Rep. Luis Gutierrez, an Illinois Democrat, made dozens of trades in stocks and mutual funds, including two instances in which he bought and sold a fund in the same day, even though the share price of mutual funds doesn't fluctuate within the same day.

"If the congressman ever writes a book, it will not be about how to get rich playing the market from your laptop," said Douglas Rivlin, the congressman's spokesman.



Tom Coburn

Over the past two years, The Wall Street Journal has examined thousands of records of congressional trades using annual financial-disclosure reports collected by LegiStorm.com, a nonpartisan firm devoted to increasing transparency on Capitol Hill.

The Journal found that more than 50 members of Congress traded actively or reported especially large transactions in 2010. Few appeared to make much money on the trades, and many suffered losses. Trading reports for 2011 won't be available until next year.

The latest information comes amid growing concern that lawmakers could invest based on information they acquire in their positions in government. It also shows that in many cases, members of Congress make common investment mistakes despite their seeming advantage of possessing information not readily available to other investors.



Luis Gutierrez

There have been conflicting studies on the topic, but a recent paper by Jens Hainmueller of the Massachusetts Institute of Technology and Andrew Eggers of the London School of Economics examined congressional investing portfolios from 2004 through 2008 and found that the average investor in Congress lagged behind the market by 2% to 3% annually.

Last year the Journal reported that several members of Congress and their aides in 2008 and 2009 had traded shares of companies they helped oversee in their official duties, in many cases reaping profits. These congressional members and aides said they didn't use inside information.

Congressional ethics rules, adopted in the 1960s, allow lawmakers to vote on legislation that affects their financial holdings; they are required simply to disclose their stock trading and ownership annually.

Legislation is gaining steam on Capitol Hill to change those rules. A House bill written by Rep. Louise Slaughter (D., N.Y.) would ban lawmakers from making trades based on

information they gather in the halls of Congress. There is no evidence that the lawmakers who traded actively in 2010 used information obtained from their positions.

The proposed legislation also would require lawmakers to disclose their trading within 90 days, instead of the current yearly disclosure. It has been endorsed by a majority of House members. This month, a Senate committee approved similar legislation.

Mr. Coburn and his wife made more than 200 trades in stocks and bonds in 2010, according to his financial-disclosure form. Among other bets, Mr. Coburn traded shares of airline United Continental Holdings, telecom giant AT&T Corp. and Apache Corp., an oil and gas company. Profits or losses couldn't be determined because they had not sold their stocks by the end of the filing period.

Mr. Coburn, a medical doctor, says many of his trades were simply ways to get out of the market and that much of his portfolio is now in cash.

"I've never been ahead since I've been in Congress," Mr. Coburn said in an interview. "So if I'm using insider trading, I'm not very smart."

Mr. Gutierrez, a member of the House Financial Services Committee, opened his first online brokerage account with Charles Schwab on May 10, 2010, according to his office and public records. That day, the onetime teacher and social worker bought shares of Berkshire Hathaway Inc., the trading records show. He sold Berkshire Hathaway shares 17 days later, the records show, at a 4% to 9% loss.

A day after the Berkshire purchase, Mr. Gutierrez bought a Schwab "target-date" fund intended for investors with a 25-year investing horizon. He sold it two weeks later, for a maximum pretax gain of \$200, the records show.

In one instance, on Oct. 11, 2010, Mr. Gutierrez bought two mutual funds, and sold them the same day, according to the disclosures. Such a trade can never be profitable, financial advisers say, since a mutual fund's price is required under federal law not to change during the trading day.

Mr. Gutierrez made more than a dozen sales of mutual-fund shares that he held less than 90 days, according to the Journal's analysis of disclosure forms. Schwab generally charges a short-term redemption fee of \$49.95 on such sales.

In a statement, Mr. Rivlin, the congressman's spokesman, said Mr. Gutierrez tried rapidly trading mutual funds "as experiments to see how fast they would grow," but that



Sen. Bob Corker ASSOCIATED PRESS

"the experiments were failures and incurred both fees and losses."

Mr. Corker, the Tennessee Republican, made 26 trades in CBL & Associates Properties, a Chattanooga-based real-estate investment trust. Mr. Corker, who was in the construction and development business, worked for an affiliate of CBL after college.

A dozen times, Mr. Corker traded between \$1 million and \$5 million worth of CBL, according to trading records. Three transactions were between \$5 million and \$25 million.

CBL and an index that tracks the Dow Jones Industrial Average are the only stocks Mr. Corker trades. CBL is thinly traded, amplifying price swings.

"I've watched the trading range on this hometown-based stock and have found that especially during times of market volatility it trades within wide ranges," Mr. Corker said. "I've bought it heavily when it is at the low end of that range and then I hold it until there is upward movement, when I sell."

CBL shares returned 89% in 2010. But because Mr. Corker jumped in and out of the stock so many times, his capital gain was limited to between \$1 million and \$5 million. That's a pretax profit of between about 2% and 40%. He declined to specify the percentage.

Write to Brody Mullins at brody.mullins@wsj.com, Jason Zweig at intelligentinvestor@wsj.com and Tom McGinty at tom.mcginty@wsj.com

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EXHIBIT C

UBS Upgrades Several REIT Stocks

57 words

8 July 2010

StreetInsider.com

STINS

English

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UBS upgrades AvalonBay Communities (NYSE: AVB) (PT\$92), CBL & Associates (NYSE: CBL) (PT\$12), Essex Property Trust (NYSE: ESS)(PT\$96), Post Properties (NYSE: PPS) (PT\$23), and Realty Income (NYSE: O) (PT\$30) from Sell to Neutral.

UBS upgrades Camden Property Trust (NYSE: CPT) (PT\$48) from Neutral to Buy.

Document STINS00020100708e6780005I

EXHIBIT D

Chattanooga, Tenn., Mayor Proposes Property Tax Increase

Dave Flessner

596 words

22 August 2001

KRTBN Knight-Ridder Tribune Business News: Chattanooga Times/Free Press - Tennessee

KRTBN

English

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Whether or not Mayor **Bob Corker** pays a political price for raising city taxes, businessman **Bob Corker** will.

As the owner of one of Chattanooga's biggest land companies and one of the city's largest residences, the city tax bill for Mr. Corker will jump by more than \$100,000 because of the property tax increase proposed in the city budget he presented to the City Council on Tuesday.

"Some politicians say they "feel your pain." Well, **Bob Corker** really will," said Robert Swansbrough, a UTC political science professor. "It may help him defuse some of the political price you pay from raising taxes, although it obviously won't satisfy some people who oppose any type of tax increase."

Mr. Corker, a former commissioner of finance and administration under Gov. Don Sundquist, acquired Chattanooga's two biggest commercial real estate companies two years ago before being elected mayor in March of this year. Through his purchase of Stone Fort Land Co. and Osborne Enterprises in 1999 and his other real estate holdings, Mr. Corker is the sixth largest property taxpayer in Hamilton County.

Among real estate developers, he ranks behind only **CBL & Associates** and its related investments in Hamilton County, according to a list prepared last fall by the Hamilton County Trustee's Office.

CBL owns Hamilton Place Mall, the state's biggest shopping complex, and a half dozen other major retail and office developments in its home town.

Mr. Corker has placed his business in a blind trust since he took office at City Hall and he declined Tuesday to talk about the impact of any property tax on his own property holdings. But Mr. Corker's businesses -- now headed by Corker Group President Leigh Ferguson -- continue to own the Krystal, Tallan and Volunteer office buildings downtown, the office complex next to Eastgate Town Center and more than a dozen other offices, warehouses and stores along Riverfront Parkway and in East Ridge.

"As a businessman operating these properties, we would love to have no increase in taxes," Mr. Ferguson said. "But we realize that is not achievable if we are going to have the kinds of city services that are

available in Chattanooga. I do know in talking with property managers in other cities that our taxes in Chattanooga are still relatively low."

Mr. Ferguson said Mayor Corker's proposal to boost the city's property tax rate 24 percent "will have a significant cost for our business.

"But at this point, we are still in the process of analyzing how much that will be and how we will handle it," he said.

Mayor Corker isn't the only one employed by City Hall feeling the price of a possible property tax increase. The biggest taxpayer in Hamilton County is the city-owned EPB, which will have to pay an estimated \$365,000 more because of the property tax increase and reappraisal this year. EPB and its wholesale power supplier, the Tennessee Valley Authority, are the two biggest taxpayers in Chattanooga. As non-profit businesses, both utilities make in-lieu-of-tax payments to the city and county based upon their revenues and local holdings.

"We may be a non-profit business, but we are still the biggest taxpayer in Hamilton County and very proud of it," EPB President Harold DePriest said.

Mr. DePriest said EPB will work the extra tax expense in its budget this year "and we don't plan any rate increase (in either electric or telephone rates) as a result."

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