

Securities Regulation Daily Wrap Up, TOP STORY—Sens. Warren and Van Hollen call for SEC, CFTC to investigate alleged Trump statements on air strike, (Jan. 15, 2020)

Securities Regulation Daily Wrap Up

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A U.S. air strike targeting an Iranian military official is the subject of a letter by two Democratic senators who cite media reports that President Trump allegedly told guests at his resort that recent U.S. military action against Iran was forthcoming.

Senator and presidential candidate Elizabeth Warren (D-Mass) and Sen. Chris Van Hollen (D-Md) have called on the SEC and the CFTC to investigate allegations that President Trump may have signaled to visitors to his private resort that U.S. military action was forthcoming against Iran in advance of a U.S. air strike that killed Iranian Major General Qasem Soleimani, the senators announced in a [press release](#). The senators' related [letter](#) sent to SEC Chairman Jay Clayton and CFTC Chairman Heath Tarbert blends allegations of potential securities and commodities law violations with U.S. national security and foreign policy. The senators want SEC and CFTC officials to brief them by mid-February on the matter in addition to conducting the requested investigations.

According to Sens. Warren and Van Hollen, *The Daily Beast* reported that President Trump had told persons at Trump's Mar-a-Lago resort that, with respect to Iran, a "big response" would occur "very 'soon.'" Reports on the matter in *The Daily Beast* often cite unnamed sources.

According to Sens. Warren and Van Hollen: "If this report is true, it raises a number of troubling national security questions regarding President Trump's handling of classified and other sensitive national security information. It also means that individuals who were guests at President Trump's resort may have obtained confidential market-moving information and had the opportunity to trade defense industry stocks or commodities or make other trades based on this information."

The letter notes the prohibitions contained in Exchange Act Section 21A, which focuses on transactions made while in possession of material, nonpublic information. Civil penalties can be as much as three times the profit gained or loss avoided. The senators also note the potentially heavy penalties under Exchange Act Section 32 of up to \$5 million and/or up to 20 years in prison for criminal violations of securities laws. Specifically, the senators' letter cites the Insider Trading Sanctions Act of 1984 (Pub. Law [No. 98-376](#)), although the substantive provisions of that legislation have since been moved from Exchange Act Section 21 to Section 21A and further amended by subsequent legislation to reflect changes to the text on insider trading and related amendments made pursuant to the early 2000s commodities reforms and the 2010 Dodd-Frank Act reforms (See, e.g., Pub. Law [No. 100-704](#)).

The senators acknowledge that "[w]e have no way of knowing which individuals received information from President Trump in advance of the attack, what precise information they received and when they received it, or whether they may have made any securities or commodities trades based on that information." As a result, the senators ask the SEC and CFTC to answer a series of questions that deal broadly with: (1) who President Trump may have communicated with about the air strike; (2) whether any information communicated by President Trump about the air strike was material, nonpublic information; and (3) whether any recipients of such information traded securities based on such information.

The senators' letter appears to emphasize potential trades by persons who may have received information about the air strike from President Trump. However, even assuming an SEC or CFTC investigation yielded allegations of civil or criminal securities or commodities violations against President Trump, prosecutors in a criminal case

would likely have to grapple with the Department of Justice's [memorandum](#) urging against the indictment of a sitting president.

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