

# BETWEEN THE LINES

March 26, 2020

## Trading on Public Trust

---

### Introduction

While many U.S. Senators had been actively trading stocks before the spread of the coronavirus that caused U.S. markets to fall, Senators Richard Burr and Kelly Loeffler have attracted the highest level of media attention surrounding their actions. This is in part because they both sit on the Senate Health Committee and attended the Committee's January 24 closed-door briefing on the coronavirus just prior to their stock trades. These trades reportedly saved Mr. Burr and Ms. Loeffler \$250,000 and \$480,000 in losses respectively. Moreover, shortly after the trades in question, Mr. Burr, who is also the Chair of the Senate Intelligence Committee and receives daily briefings on the pandemic, made public statements downplaying the risk of the spread of the virus, and Ms. Loeffler made public statements downplaying its economic impact. In this edition of *Between the Lines*, we take a departure from our typical examination of earnings calls—designed to help our clients determine when management teams lack confidence, have undisclosed concerns or are not fully forthcoming—and focus our behavioral lens on statements made by Mr. Burr and Ms. Loeffler in response to allegations of insider trading. Our analysis shows that it is likely that both Ms. Loeffler and Mr. Burr portrayed the impact of the virus in a more positive light than they believed, and that they both made or authorized inappropriate trades based on what they knew by virtue of their positions.

---

### Walking a fine line between inside knowledge...

Ms. Loeffler appeared on Fox news to explain the decisions to sell her stock in sectors that would soon be particularly hit hard by the coronavirus and buy stock in sectors likely to do well in the context of the pandemic. On March 19, she was interviewed by Tucker Carlson. He asked Ms. Loeffler who made the decisions and why. In response, she states that when she first started in the Senate she “spent time with lawyers to make sure I understood not only SEC requirements around being in the senate” but “also spent time making sure I understood the Stock Act and the rules under the Senate Ethics Committee for how we perform our financial transactions.” She goes on to say that “I decided I was going to maintain the same posture that I had in the financial services industry which was to have a third party person... set of advisors that were fully charged and able to make these transactions on my own <behalf> so I did not have to be involved in any of the decision making around these financial transactions. And that worked very well in the private sector. It kept us from having to have concerns around insider trading.” All of these statements are meant to give the impression that she has conducted her financial activities lawfully, but they fall short of actually saying so. **Simply knowing the rules does not mean she adhered to them.** Furthermore, she focuses on the fact that she has third-party advisors who make the decisions about her financial transactions in order to give the impression that she was not involved in the decision to execute the trades in question. But again, these statements fall short of an answer or a specific denial of any wrongdoing. Ultimately, she does not address the question at all. She doesn't say who made the stock trade decisions on January 24 or explain why those decisions were made.

Recognizing that she did not answer the questions, Mr. Tucker repeats them: who made the decision and on what basis? This time, she answers that her financial advisors made the decision but offers no explanation of the basis on which the decision was made. That she cannot simply say her advisors made the trades based on independent research and analysis suggests that **the decision was likely based on information that, if revealed, would be damaging to Ms. Loeffler.** Furthermore, she states “the most important thing is that I am informed only after those trades are made, I have nothing in terms of a say in what buys and sells are executed, what that timing is and I'm only advised after it happens.” Ms. Loeffler's concerted attempt to distance herself from the timing of the transactions, and convince viewers that she was unaware of what was happening in

her portfolio at the time, narrowly focuses on the execution of the trades and **leaves open the possibility that she had advance knowledge of, or even contributed to, the decision to make the trades in question.**

Indeed, during a second interview on March 20, Fox News' Ed Henry directly asks Ms. Loeffler if she was trading on inside information. She fails to deny that this was the case. Instead, she says "I'm really glad you asked, Ed, because I do want to set the record straight. I've seen some of those stories and it's absolutely false and it could not be true." Her statements that "it's absolutely false and it could not be true" are false denials. The statements say the stories in the news are not true. They do not specify that Ms. Loeffler's trades were not based on inside information. Also, the statement that the statements "could not be true" is not the same as saying they *are not* true, suggesting that Ms. Loeffler is unable to commit to this statement. Furthermore, Ms. Loeffler says "if you actually look at the personal transaction reports that were filed, it notices at the bottom that I'm only informed of my transactions after they occur several weeks (sic) so certainly those transactions, at least on my behalf, were a mix of buys and sells very routine for my portfolio..." The fact that she was informed of transactions only after they occurred **does not preclude the possibility that she was aware of the plans to make the trades ahead of time.** Also, Ms. Loeffler qualifies that the transactions "at least on my behalf" were "a routine mix" of buys and sells which suggests that for others involved in managing her portfolio, the trades were not routine. Altogether, Ms. Loeffler's behaviors, most significantly **her failure to specifically deny that the trades were based on insider information, provide strong behavioral evidence that she is aware they were.**

### ...and outside perception.

In his March 19 interview, Mr. Carlson also highlights that after Ms. Loeffler was aware of these equity trades, Ms. Loeffler made a public statement that the economy was doing well *vis-a-vis* the coronavirus threat. During the interview, Mr. Carlson shows a video, released after Ms. Loeffler learned of the trades, in which she says "the good news is the consumer is strong, the economy is strong, jobs are growing. Our president has done a fantastic job making sure that we're in the best position to manage through this situation." Mr. Carlson challenges Ms. Loeffler on whether she should have made that public statement based on what she should have surmised from those trades. Specifically, he asks that when she saw the report of the trades "did the thought cross your mind" that it was a sign of something ominous for the economy. In response, Ms. Loeffler attempts to brush off the question. She says "Tucker this is the kind of normal course for managing portfolios. Some months you have buys and sells, some months you have buys, some months you have sells." This is meant to give the impression that she could not have made such a connection, but she does not say so which **suggests that she did have at least some idea that the economy was not in good shape when she made her public statement.**

Again, she feels compelled to distance herself from the stock trading decisions by saying, "I trust the professionals that manage our portfolio. I don't get involved there. I don't have a say. I don't want to have a say." She makes a strong attempt to shut down the line of questioning saying, "I want to focus on my work for Georgians. We should be talking about coronavirus right now." She also defends her earlier statements on the economy by citing strong employment figures at the time she made those statements, adding that at the time "no one knew where we would be on March 20." Her aggressive efforts to shut down the questions about what her stock trades revealed to her about the future of the economy is a **strong indication that she believed that the coronavirus would have a severely negative economic impact at the time she made public statements to the contrary. This would have garnered time for her advisors to advantageously sell her stocks before the severity of the situation was broadly known and markets tumbled.**

### The best offense is a good defense.

Senator Burr is also accused of improperly selling stock before the pandemic tanked the market even as he was making reassuring public statements. National Public Radio (NPR) reported that on February 27, the senator had warned a private audience at the Capital Hill Club that the coronavirus is "much more aggressive in its transmission than anything that we have seen in recent history" and that "it is probably more akin to the 1918 [influenza] pandemic." Publicly, however, Mr. Burr was portraying the U.S. as capable of successfully containing the virus, co-authoring an Op-Ed on February 7 laying out the tools to do so and making a statement on March 5 that "Luckily, we have a framework in place that has put us in a better position than any other country in the world to respond to a public health threat like the coronavirus."

Mr. Burr's responses to the allegations have come in the form of tweets and a letter to the Senate Ethics Committee. In his tweets, Mr. Burr attacks NPR to give the impression that their report is untrue. On March 19 he made a series of tweets such as "In a tabloid-style hit piece today, NPR knowingly and irresponsibly misrepresented a speech I gave last month about the coronavirus threat" and "Unfortunately, NPR's journalistic malpractice has raised concerns that Americans weren't

warned about the significant steps we may have to take to stop the coronavirus threat.” **These attempts to discredit NPR rather than refute the allegations suggest that Mr. Burr is unable to do so.** He also tweeted multiple times to defend the nature of the meeting at the Capital Hill club saying “Every state has a state society. They aren’t ‘secretive’ or ‘high-dollar donor’ organizations. They’re great civic institutions that bring people in D.C. together for events, receptions, and lunches. And they’re open to anyone who wants to get involved.” And “Like most member of Congress, I address our state society every year. That a good thing. That’s what we should be doing. Meeting constituents and talking to them about the work we’re doing in D.C. is an important part of our job, especially in times of uncertainty.” These statements are meant to give the impression that Mr. Burr’s public and private messages about the coronavirus are consistent and to dispel any notion that what he says to D.C. insiders is privileged information. But Mr. Burr never says so. This, along with his effort to discredit NPR’s report, **suggests that Mr. Burr was indeed misrepresenting his true understanding of the threat of the coronavirus in his broader public statements.**

The next day, on March 20, Mr. Burr wrote a letter to the Senate Ethics Committee regarding accusations he inappropriately traded stock.

*“Dear Chairman Lankford and Vice Chairman Coons: I write to you regarding recent news reports that have circulated regarding the periodic transaction report I filed with your committee listing sales of stock on February 13, 2020. While I relied solely on public reporting to guide my decision to sell the stock, it is my belief that an independent review is warranted to ensure full and complete transparency.*

*To follow up on my conversation with the Chairman this morning, I am sending this letter to request a full and expedited investigation of these sales by the Ethics Committee. I stand ready to be fully transparent with you and your Committee as you do your work.”*

On the surface, the proactive request for an investigation is intended to create the appearance that Mr. Burr has nothing to hide. It is notable, however, that he does not take the opportunity to say that the investigation will clear his name. In fact, his statement that an independent review is “warranted” when taken literally suggests **that he has doubts about the appropriateness of his stock trades.** Also, he states he is willing to be fully transparent with “you and your committee” which suggests that he will be less willing to be transparent with entities other than the Senate Ethics Committee. This in turn suggests that he is not confident his case would hold up under outside scrutiny. Altogether, this indicates that **it is likely that Mr. Burr did rely on non-public information in his stock trading decision.**

**About this Report:**

This report represents the application of BIA's Tactical Behavior Assessment® methodology and reflects BIA's assessment of the completeness and responsiveness of statements made during earnings conference calls, television interviews and other presentations. In each case, our assessment represents the opinion of BIA applying the Tactical Behavior Assessment® methodology and does not purport to indicate that any individual is in any specific instance being truthful or deceptive. BIA does not make stock recommendations. Under no circumstances is BIA's analysis intended to be a recommendation to buy or sell the securities of the company which is the subject of this report.

**About BIA:**

Business Intelligence Advisors (BIA) is the leading Intelligence Solutions research and advisory firm. Founded in 2001 on the principle that Intelligence techniques originally developed for the national intelligence community could be powerfully applied to the private sector, BIA has developed a ground-breaking suite of service offerings to provide clients with an edge in collecting and evaluating information critical to their success – whether that means making a more informed investment decision, identifying hidden risks, or enhancing due diligence efforts. BIA's services, which include proprietary Behavioral Intelligence Research, Expert Advisory, Investment Intelligence, and Learning & Development Solutions, are delivered by a team of in-house experts from the national intelligence and finance fields.

[www.biadvisors.com](http://www.biadvisors.com)