

CONFIDENTIAL

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

REPORT

Review No. 21-1051

The Board of the Office of Congressional Ethics (hereafter “the Board”), by a vote of no less than four members, on July 16, 2021, adopted the following report and ordered it to be transmitted to the Committee on Ethics of the United States House of Representatives (hereafter “the Committee”).

SUBJECT: Rep. Tom Malinowski

NATURE OF THE ALLEGED VIOLATION: Rep. Malinowski did not file Periodic Transaction Reports (PTRs) for stock transactions he made between 2019 and 2020. If Rep. Malinowski failed to properly disclose stocks that he purchased or sold or failed to properly file PTRs for any of the stock transactions he made, then he may have violated House rules, standards of conduct, and federal law.

RECOMMENDATION: The Board recommends that the Committee further review the above allegation concerning Rep. Malinowski because there is substantial reason to believe that he failed to properly disclose stocks that he purchased or sold or failed to properly file PTRs for any of the stock transactions he made.

VOTES IN THE AFFIRMATIVE: 5

VOTES IN THE NEGATIVE: 1

ABSTENTIONS: 0

MEMBER OF THE BOARD OR STAFF DESIGNATED TO PRESENT THIS REPORT TO THE COMMITTEE: Omar S. Ashmawy, Staff Director & Chief Counsel.

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FINDINGS OF FACT AND CITATIONS TO LAW

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FINDINGS OF FACT AND CITATIONS TO LAW

Review No. 21-1051

On July 16, 2021, the Board of the Office of Congressional Ethics (hereafter “the Board”) adopted the following findings of fact and accompanying citations to law, regulations, rules and standards of conduct (*in italics*). The Board notes that these findings do not constitute a determination of whether or not a violation actually occurred.

I. INTRODUCTION

A. Summary of Allegations

1. Rep. Malinowski did not file Periodic Transaction Reports (PTRs) for stock transactions he made between 2019 and 2020. If Rep. Malinowski failed to properly disclose stocks that he purchased or sold or failed to properly file PTRs for any of the stock transactions he made, then he may have violated House rules, standards of conduct, and federal law.
2. The Board recommends that the Committee on Ethics of the United States House of Representatives (“Committee”) further review the above allegation concerning Rep. Malinowski because there is substantial reason to believe that that he failed to properly disclose stocks that he purchased or sold or failed to properly file PTRs for any of the stock transactions he made.

B. Jurisdictional Statement

3. The allegations that were the subject of this review concern Rep. Tom Malinowski, a Member of the United States House of Representatives from the 7th District of New Jersey. The Resolution the United States House of Representatives adopted creating the Office of Congressional Ethics (“OCE”) directs that, “[n]o review shall be undertaken ... by the [B]oard of any alleged violation that occurred before the date of adoption of this resolution.”¹ The House adopted this Resolution on March 11, 2008. Because the conduct under review occurred after March 11, 2008, review by the Board is in accordance with the Resolution.

C. Procedural History

4. The OCE received a written request for a preliminary review in this matter signed by at least two members of the Board on April 7, 2021. The preliminary review commenced on April 8, 2021.²

¹ H. Res. 895 of the 110th Congress § 1(e) (2008) (as amended) (hereafter “the Resolution”).

² A preliminary review is “requested” in writing by members of the Board of the OCE. The request for a preliminary review is received by the OCE on a date certain. According to the Resolution, the timeframe for conducting a preliminary review is 30 days from the date of receipt of the Board’s request.

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5. On April 8, 2021, the OCE notified Rep. Malinowski of the initiation of the preliminary review, provided him with a statement of the nature of the review, notified him of his right to be represented by counsel in this matter, and notified him that invoking his right to counsel would not be held negatively against him.³
6. At least three members of the Board voted to initiate a second-phase review in this matter on May 7, 2021. The second-phase review commenced on May 8, 2021.⁴ The second-phase review was scheduled to end on June 21, 2021.
7. On May 7, 2021, the OCE notified Rep. Malinowski of the initiation of the second-phase review in this matter, and again notified him of his right to be represented by counsel in this matter, and that invoking that right would not be held negatively against him.⁵
8. The Board voted to refer the matter to the Committee for further review and adopted these findings on July 16, 2021.
9. The report and its findings in this matter were transmitted to the Committee on July 23, 2021.

D. Summary of Investigative Activity

10. The OCE requested documentary and in some cases testimonial information from the following sources:
 - (1) Rep. Malinowski;
 - (2) Witness 1, an employee of Rep. Malinowski's with knowledge; and
 - (3) Gagnon Securities.

II. REP. MALINOWSKI FAILED TO FILE PERIODIC TRANSACTION REPORTS

A. Applicable Law, Rules, and Standards of Conduct

11. Federal Statutes

The Stop Trading on Congressional Knowledge Act of 2012, Pub. L. No. 112-105, 126 Stat. 291 (2012), P.L. 112-105 ("STOCK Act") amended the Ethics in Government Act of 1978 ("EIGA") to require Members of Congress to file Periodic Transaction Reports (PTRs) for their stock transactions.⁶

³ Letter from Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics, to Rep. Malinowski (April 8, 2021).

⁴ According to the Resolution, the Board must vote (as opposed to make a written authorization) on whether to conduct a second-phase review in a matter before the expiration of the 30-day preliminary review. If the Board votes for a second phase, the second phase commences the day after the preliminary review ends.

⁵ Letter from Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics, to Rep. Malinowski (May 7, 2021).

⁶ STOCK Act, Section 6; *see also* House Committee on Ethics, Instruction Guide: Financial Disclosure Statements and Periodic Transaction Reports at 5 (CY 2019) ("[T]he Representative Louise McIntosh Slaughter Stop Trading on Congressional Knowledge Act (STOCK Act) amended the EIGA to add a requirement for Members, officers, and certain employees of the House to report certain securities transactions over \$1,000 within 30 days of notice of

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Pursuant to the EIGA, 5 U.S.C. app. 4 § 103(l), which was added to require PTR filings: “Not later than 30 days after receiving notification of any transaction required to be reported under section 102(a)(5)(B), but in no case later than 45 days after such transaction, [Members of Congress], if required to file a report under any subsection of section 101, subject to any waivers and exclusions, shall file a report of the transaction.”

5 U.S.C. app. 4 § 102(a)(5)(B) of the EIGA requires “a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds \$1,000 . . . in stocks, bonds, commodities futures, and other forms of securities.”

Pursuant to the EIGA, 5 U.S.C. app. 4 §§ 101(d -f): “Any individual who is an officer or employee described in subsection (f) [including a Member of Congress] during any calendar year and performs the duties of his positions or office for a period in excess of sixty days in that calendar year shall file on before May 15 of the succeeding year a report containing the information described in section 102(a).”

Pursuant to EIGA, 5 U.S.C. app. 4 §§ 104(a): “The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102.” Additionally, “[i]t shall be unlawful for any person to knowingly and willfully—(i) falsify any information that such person is required to report under section 102; and (ii) fail to file or report any information that such person is required to report under section 102.”

12. House Rules

Pursuant to House Rule 26, cl. 2: “For the purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be considered Rules of the House as they pertain to Members, Delegates, the Resident Commissioner, officers, and employees of the House.”

13. House Committee on Ethics Instruction Guide

*The House Committee on Ethics Financial Disclosure and Periodic Transaction Reports Instruction Guide (“Instruction Guide”) explains that “Members, officers, and employees compensated at the senior staff rate . . . are required to file PTRs for reportable transactions.”⁷ The Instruction Guide emphasizes that reportable transactions “must be reported on a PTR **within 30 days of you becoming aware of the transaction, but no later than 45 days after the transaction.**”⁸*

Regarding late filings, the Instruction Guide states: “For late PTRs, the following late fee policy applies: 1st late PTR filing (no matter how many missed transactions): \$200. 2nd to 4th late PTR filings: \$200 for each month in which a filer had a late transaction. For example, if the filer

the transaction, but in no case later than 45 days after the transaction. These STOCK Act filings are known as Periodic Transaction Reports (PTRs).”).

⁷ House Committee on Ethics, Instruction Guide: Financial Disclosure Statements and Periodic Transaction Reports at 5 (CY 2019).

⁸ *Id.* (emphasis in original).

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failed to file timely reports for transactions that were executed in January, April, and July, but instead reported all such transactions on one PTR in October, then \$600 in late fees is owed. (Transactions filed late in 3 months at \$200 each.) 5th late PTR and beyond: \$200 for each late transaction. For example, if the filer failed to file timely reports for 15 transactions, then \$3,000 in late fees is owed. (15 transactions reported late at \$200 each.). The late filing fee shall be paid by check or money order made payable to the United States Treasury and submitted to the Clerk at the Legislative Resource Center. Payment of the fee does not preclude the Committee from taking other disciplinary action authorized by law or the rules of the House of Representatives. The Committee has authority to waive the fee, but only in extraordinary circumstances. Fee waiver requests must be directed in writing to the Chair of the Committee, signed by the filer, and state the circumstances believed to justify the waiver.”⁹

The Instruction Guide also states: “Each individual is responsible for the completeness and accuracy of the information contained in the individual’s FD Statement or PTR, even if someone else prepared, or assisted in preparing, all or part of it. The EIGA provides that the Attorney General may pursue either civil or criminal penalties against an individual who knowingly and willfully falsifies a Statement or fails to file a Statement required by the EIGA. The maximum civil penalty is \$61,585. The maximum criminal penalty is up to one year in prison and a fine of up to \$61,585. In addition, 18 U.S.C. § 1001, as amended by the False Statements Accountability Act of 1996, is applicable to FD Statements and PTRs. That criminal statute provides for a fine of up to \$250,000 and/or imprisonment for up to five years for knowingly and willfully making any materially false, fictitious, or fraudulent statement or representation, or falsifying, concealing, or covering up a material fact, in a filing under the EIGA. House Rule 26 provides that Title I of the EIGA shall be deemed to be a rule of the House with regard to House Members, officers, and employees. As such, in addition to the penalties noted above, a Member, officer, or employee who violates these provisions is subject to additional action by the Committee and/or the House.”¹⁰

The Instruction Guide further explains: “Multiple transactions of the same type involving the same asset (e.g., three purchases of Google stock) may be combined into a single entry if they are made at regular intervals, such as monthly or quarterly, or are automatic reinvestments. You may not, however, combine multiple transactions that you initiate at irregular intervals, unless you provide all of the dates in the date column (e.g., purchases of Google stock on January 6, May 12, and October 26). Nor may you combine multiple transactions of different types involving the same asset (e.g., a purchase and two sales of Google stock) into a single entry.”¹¹

14. Committee Guidance on Reporting Violations

In the Matter of Allegations Relating to Representative Vernon G. Buchanan, the Committee noted that inadvertent errors and omissions “are not uncommon” in financial disclosure

⁹ *Id.* at 7-8.

¹⁰ *Id.* at 9.

¹¹ *Id.* at 28.

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statements.¹² The Committee described the potential for concern with respect to errors and omissions that “are knowing or willful, or appear to be significantly related to other potential violations.”¹³ The Committee went on to explain that “accurate and complete reporting on Financial Disclosure Statements should be every filer’s goal and is necessary to be in compliance with House Rules and federal law. All filers are encouraged to promptly file amendments whenever they learn of errors or omissions. Failure to do so may constitute a knowing and willful violation.”¹⁴

B. Rep. Malinowski Failed to Properly File Periodic Transaction Reports for Reportable Transactions Made in 2019, 2020, and 2021

15. This review commenced after Rep. Malinowski publicly acknowledged his failure to file timely PTRs pursuant to the STOCK Act. This review sought to examine the basis for the untimeliness and the steps Rep. Malinowski took to remedy his PTR-related failures. Rep. Malinowski, his staff, and his associates fully cooperated with this review. The Board recognizes and appreciate this cooperation.

i. Rep. Malinowski’s Failure to File PTRs

16. Rep. Malinowski was first elected to Congress in November 2018 and began serving as a Member of the U.S. House of Representatives in January 2019. As a new Member of Congress, Rep. Malinowski was trained on his financial disclosure obligations under the EIGA.¹⁵ Rep. Malinowski was already familiar with these obligations given his prior political service at the Department of State, where he was also required to file annual financial disclosure statements and PTRs, pursuant to the EIGA.¹⁶

17. Shortly after his swearing in as a new Member of the U.S. House of Representatives, Rep. Malinowski and Witness 1, a senior employee in Rep. Malinowski’s congressional office, discussed the need for Rep. Malinowski to file regular PTR statements.¹⁷ Rep. Malinowski was required to do this because he regularly traded securities through a broker, Gagnon Securities (“Gagnon”).¹⁸ After these conversations, Rep. Malinowski determined, and

¹² *In the Matter of Allegations Relating to Representative Vernon G. Buchanan*, 112th Cong., 2nd Sess. (July 10, 2012) at 5.

¹³ *Id.*

¹⁴ *Id.* at 6.

¹⁵ Transcript of Interview of Rep. Malinowski (“Rep. Malinowski Transcript”), June 11, 2021 (Exhibit 1 at 21-1051_0004); Transcript of Interview of Witness 1 (“Witness 1 Transcript”) (Exhibit 2 at 21-1051_0028); February 6, 2019 – February 7, 2019 Emails between Witness 1 and Robert Ross (Exhibit 3 at 21-1051_0045-46); *see also* Committee on Ethics, *FAQs About Training*, <https://ethics.house.gov/legislation/schedule/faqs-about-training> (“All new Members . . . must receive ethics training within 60 days of their start date.”).

¹⁶ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0004-05); Witness 1 Transcript (Exhibit 2 at 21-1051_0028).

¹⁷ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0004-05); Witness 1 Transcript (Exhibit 2 at 21-1051_0028-29).

¹⁸ *See* January 2019 – March 2021 Gagnon Securities Monthly Statements (Exhibit 4 at 21-1051_0048); Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0014). The OCE found that Rep. Malinowski did not direct Gagnon to engage in specific trades or otherwise provide direction to Gagnon about his investments. Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0019-20); Transcript of Interview with Gagnon Securities (“Gagnon Transcript”) (Exhibit 5 at 21-1051_0052-54).

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advised Witness 1, that he would be responsible for and regularly file his own PTRs.¹⁹ Rep. Malinowski did not seek assistance from his congressional staff or his broker in compiling or filing his PTRs.²⁰

18. While staff was not responsible for preparing and did not assist Rep. Malinowski with these filings, Witness 1 did periodically remind Rep. Malinowski to file his PTRs.²¹ Rep. Malinowski also received monthly statements from Gagnon which included all securities transactions made in his account.²² The OCE received and reviewed these statements, which confirm that Rep. Malinowski's broker made reportable transactions each month.²³
19. Despite receipt of these monthly statements and periodic reminders from his staff to file, Rep. Malinowski failed to file timely PTRs for reportable transactions made between January 2019 and May 2021.²⁴ As discussed in more detail below, Rep. Malinowski initially failed to file PTRs for reportable transactions made between January 2019 and January 2021; later, after these failures became public and the OCE opened this review, Rep. Malinowski again filed PTRs with late reportable transactions.

Initial failure to file PTRs

20. Rep. Malinowski's failure to file timely PTRs drew initial public attention in March 2021, when Rep. Malinowski was confronted by the press about this issue.²⁵ Rep. Malinowski's failure to file PTRs was apparent to the public since his 2019 annual financial disclosure statement, publicly filed in August 2020, identified numerous reportable transactions from 2019, but he filed no corresponding PTRs for those transactions during 2019.^{26, 27}

¹⁹ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0004-05); Witness 1 Transcript (Exhibit 2 at 21-1051_0028-29).

²⁰ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0003-05); Witness 1 Transcript (Exhibit 2 at 21-1051_0026-27).

²¹ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0005); Witness 1 Transcript (Exhibit 2 at 21-1051_0029-30).

²² Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0005); Gagnon Transcript (Exhibit 5 at 21-1051_0054).

²³ January 2019 – March 2021 Gagnon Securities Monthly Statements (Exhibit 4 at 21-1051_0048). The OCE requested and Rep. Malinowski provided the OCE with all his monthly investment statements from Gagnon between January 2019 and March 2021. The OCE confirmed that any securities transactions Rep. Malinowski makes, he makes through Gagnon. Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0014-15).

²⁴ See January 2019 – March 2021 Gagnon Securities Monthly Statements (Exhibit 4 at 21-1051_0048) (identifying reportable transactions in 2019, 2020, and 2021 for which no PTR was filed prior to March 5, 2021); Rep. Malinowski March 5, 2021 Corrective PTR (Exhibit 6 at 21-1051_0058-72) (identifying reportable transactions from January 2019 – January 2021 which were unreported prior to March 5, 2021); Rep. Malinowski June 12, 2021 PTR (Exhibit 7 at 21-1051_0074-75) (identifying transactions made over 45 days before the filing); Rep. Malinowski June 23, 2021 PTR (Exhibit 8 at 21-1051_77-78) (identifying transactions made over 45 days before the filing).

²⁵ See e.g., March 2, 2021 – March 29, 2021 Emails between Witness 1, Amanda Osborne, and Dave Levinthal (Exhibit 9 at 21-1051_0080-95); Dave Levinthal, *Democratic Rep. Tom Malinowski, a champion for transparency, failed to disclose dozens of stock transactions worth at least \$671,000 in apparent violation of federal law*, BUSINESS INSIDER (March 4, 2021).

²⁶ See Rep. Malinowski 2019 Annual Financial Disclosure Statement (Exhibit 10 at 21-1051_0097-106); Rep. Malinowski March 5, 2021 Corrective PTR (Exhibit 6 at 21-1051_0058-72) (identifying reportable transactions from January 2019 – January 2021 unreported prior to March 5, 2021). Rep. Malinowski and his staff were actually confronted by the press about his failure to file timely PTRs in January 2021. Rep. Malinowski Transcript (Exhibit

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21. In response to a March 2, 2021 press inquiry, Rep. Malinowski publicly acknowledged his failure to file timely PTRs in accordance with the STOCK Act.²⁸ Rep. Malinowski also readily admitted these failures during a later interview with the OCE.²⁹
22. At the time of this March 2, 2021 press inquiry, Rep. Malinowski did not realize that in addition to his failure to timely *enter* reportable transactions into the House's Financial Disclosure Online Reporting System ("online reporting system"), he was also failing to *submit* these transactions as final.³⁰ Prior to March 5, 2021, Rep. Malinowski entered reportable PTR transactions into the online reporting system, but he failed to hit the "submit" button, which would have finalized the transactions in the online reporting system and made them publicly available on the website of the Clerk of U.S. House of Representatives.³¹ Thus, when Rep. Malinowski was admitting in early March 2021 that he had *filed* his PTRs late, he was actually acknowledging that he *entered* his reportable transactions late; it was not until March 5, 2021 that he realized he had not been submitting the transactions into the online reporting system.³² On that date, after realizing this error, he hit the submit button and generated a report which contained the reportable transactions from January 2019 – January 2021 that he had previously entered into the online reporting system.³³

1 at 21-1051_0006-07); Witness 1 Transcript (Exhibit 2 at 21-1051_0031-32). According to Witness 1, the NRCC pitched a local reporter a story about Rep. Malinowski's failure to file PTRs for the transactions he made in 2019; the reporter confronted Witness 1 on the issue and Witness 1 addressed it with Rep. Malinowski, but the reporter never published a story about the failures. Witness 1 Transcript (Exhibit 2 at 21-1051_0031-32); *see also* Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0006-07). Despite this press inquiry and internal discussion on the matter, Rep. Malinowski's failure to file PTRs remained an issue. Witness 1 Transcript (Exhibit 2 at 21-1051_0031-32); Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0006-07). Then, in March 2021, Business Insider approached Witness 1 about the same issues and ultimately published a story, as discussed in more detail below. While this story made reference to potential insider trading by Rep. Malinowski, the OCE found that Rep. Malinowski did not direct any trades or speak with Gagnon about his portfolio, *see supra* n.18, and therefore no further discussion of insider trading occurs in this report.

²⁷ The Instruction Guide explains that the Committee reviews and compares assets and transactions identified by filers in one report against those found in other reports to ensure compliance with disclosure requirements. *See* Instruction Guide at 24. With respect to PTRs, the Instruction Manual states: "if you have a transaction that was reported on a PTR but is not reported on the FD Statement or vice versa, or if the information reported on the PTR and FD Statement is not the same, the Committee may contact the filer regarding the omission or conflicting information if the explanation is not apparent from the filing." *Id.* It does not appear Rep. Malinowski was contacted by the Committee regarding his failure to file PTRs associated with the transactions listed in his 2019 annual financial disclosure statement.

²⁸ *See* March 2, 2021 – March 29, 2021 Emails between Witness 1, Amanda Osborne, and Dave Levinthal (Exhibit 9 at 21-1051_0088-91); Dave Levinthal, *Democratic Rep. Tom Malinowski, a champion for transparency, failed to disclose dozens of stock transactions worth at least \$671,000 in apparent violation of federal law*, BUSINESS INSIDER (March 4, 2021); *see also* Jonathan D. Salant, *N.J. congressman under fire for failing to disclose stock trades*, NJ.COM (March 5, 2021); March 4, 2021 NBC News press response (Exhibit 11 at 21-1051_0108-09).

²⁹ *See e.g.*, Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0005-06).

³⁰ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0005-06); Witness 1 Transcript (Exhibit 2 at 21-1051_0027, 0030-31).

³¹ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0005-06); Witness 1 Transcript (Exhibit 2 at 21-1051_0027, 0030-31).

³² Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0005-06); Witness 1 Transcript (Exhibit 2 at 21-1051_0027, 0030-31); Rep. Malinowski March 5, 2021 Corrective PTR (Exhibit 6 at 21-1051_0058-72).

³³ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0005-06); Witness 1 Transcript (Exhibit 2 at 21-1051_0027, 0030-31); Rep. Malinowski March 5, 2021 Corrective PTR (Exhibit 6 at 21-1051_0058-72).

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23. When asked by the OCE how frequently he entered transactions into the online reporting system, Rep. Malinowski said he would generally update somewhere between two and four months' worth of Gagnon statements at a time.³⁴ This suggests he was entering reportable transactions into the online reporting system every 60+ through 120+ days, which would be inconsistent with his obligations under the STOCK Act (requiring him to disclose reportable transactions no later than 45 days after they occurred).³⁵ When asked by the OCE the reasons for his untimeliness, Rep. Malinowski said:

I was not [filing PTRs] every 45 days, and -- and that was a matter of -- of carelessness on my part, which I regret and take full responsibility for. This is not a justification or excuse. You'll hear that from me a lot today, I think. But it -- I have an overwhelmingly busy job, and this was one of the things I knew I needed to do, and it was important to me to -- to feel like I was disclosing what I needed to disclose to establish that there is nothing in my financial world that -- that I was trying to hide, but I did not put enough pressure on myself to do it every 45 days, and that was -- that was simply careless.³⁶

This statement was consistent with prior public admissions Rep. Malinowski made about his untimely filings.³⁷

Failure to file subsequent PTRs

24. The OCE commenced this review on April 8, 2021, and conducted its interview with Rep. Malinowski on June 11, 2021.³⁸ Throughout the course of the review and during the interview, Rep. Malinowski acknowledged awareness of the STOCK Act's filing requirements and expressed regret for his untimely filings. Then, on June 12, 2021 and June 23, 2021, Rep. Malinowski again filed PTRs which included late reportable transactions.³⁹
25. The June 12, 2021 PTR included nine late reportable transactions.⁴⁰ The June 23, 2021 PTR included two late reportable transactions.⁴¹

³⁴ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0006).

³⁵ See *supra* Section II.A.

³⁶ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0006).

³⁷ See e.g., Jonathan D. Salant, *N.J. congressman under fire for failing to disclose stock trades*, NJ.COM (March 5, 2021) ("He offered no excuses for missing the filing deadline other than to say, 'There's no good reason other than putting off difficult paperwork in the crunch of my responsibilities.'").

³⁸ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0003).

³⁹ Rep. Malinowski June 12, 2021 PTR (Exhibit 7 at 21-1051_0074-75); Rep. Malinowski June 23, 2021 PTR (Exhibit 8 at 21-1051_0077-78).

⁴⁰ Rep. Malinowski June 12, 2021 PTR (Exhibit 7 at 21-1051_0074-75). Forty-five days prior to June 12, 2021 is April 29, 2021. Nine out of the ten transactions reported on the June 12, 2021 PTR occurred prior to April 29, 2021.

⁴¹ Rep. Malinowski June 23, 2021 PTR (Exhibit 8 at 21-1051_0077-78). Forty-five days prior to June 23, 2021 is May 10, 2021. Two of the nine transactions reported on the June 23, 2021 PTR occurred prior to May 10, 2021.

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ii. Rep. Malinowski's Efforts to Address his Failure to File Timely PTRs

26. In the wake of his initial public admissions and the initiation of the OCE's review, Rep. Malinowski took various steps to address his PTR filing failures.
27. As discussed above, on March 5, 2021, Rep. Malinowski officially submitted a corrective PTR which he believed to include all the reportable transactions that he had previously entered into the online reporting system.⁴² Additionally, Rep. Malinowski paid a \$200 fine to the Clerk of the House.⁴³ Rep. Malinowski also hired an attorney in March 2021 to set up a blind trust in coordination with the Committee.⁴⁴ Rep. Malinowski told the OCE that he believes all Members of Congress should be required to maintain blind trusts if they have any investments in the stock market.⁴⁵ Rep. Malinowski believes his blind trust is simply awaiting final approval from the Committee.⁴⁶
28. Rep. Malinowski also fully cooperated with the OCE's review by providing the OCE with requested documents and sitting for an interview. As a part of the review, the OCE inquired about the basis for the \$200 fine given that the amount appeared inconsistent with Committee guidance and precedent.⁴⁷ Rep. Malinowski and Witness 1 told the OCE that they paid this fine at the direction of a Committee staff member, who also said the Committee would contact them if an additional monetary fine was warranted.⁴⁸ When asked whether he had ever seen, or in any way addressed, the PTR late filing fee schedule set forth in the Committee's Instruction Guide, Rep. Malinowski said he had not.⁴⁹
29. During this review, the OCE also examined the corrective PTR to ensure that it disclosed all reportable transactions in accordance with the STOCK Act. After reviewing Rep. Malinowski's monthly statements against the corrective PTR, the OCE uncovered various errors and omissions which suggest the corrective PTR filed on March 5, 2021 does not accurately and completely disclose Rep. Malinowski's trading activities as required by the STOCK Act. For example, the OCE found that Rep. Malinowski: 1) omitted reportable

⁴² See *supra* Section II.B.i. At the time the OCE commenced its review, this corrective PTR was not publicly available on the Clerk's website. Rep. Malinowski provided the corrective PTR to the OCE. After the OCE asked why this PTR was not public, Rep. Malinowski's counsel worked with the Committee to ensure the corrective PTR was made public. However, as discussed below, OCE has concerns about the accuracy and completeness of this document.

⁴³ See Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0012-13); Witness 1 Transcript (Exhibit 2 at 21-1051_0037).

⁴⁴ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0020).

⁴⁵ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0020); March 2, 2021 – March 29, 2021 Emails between Witness 1, Amanda Osborne, and Dave Levinthal (Exhibit 9 at 21-1051_0089).

⁴⁶ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0070).

⁴⁷ See Instruction Guide at 7-8; Alex Daugherty, *Donna Shalala, on coronavirus oversight board, pays fine for not revealing stock sales*, MIAMI HERALD (April 28, 2020) (describing payment of a \$1,200 fine for Rep. Shalala's failure to file reportable transactions in six separate 45-day periods), <https://www.miamiherald.com/news/politics-government/article242347411.html>.

⁴⁸ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0012-13); Witness 1 Transcript (Exhibit 2 at 21-1051_0037-38).

⁴⁹ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0014). He also told the OCE that he had not filed a late fee waiver request. *Id.*

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transactions made between 2019 and 2021 from the corrective PTR;⁵⁰ 2) combined multiple reportable transactions of a single company's stock made in the same month (a practice Rep. Malinowski acknowledged engaging in to save time while preparing his PTRs);⁵¹ 3) reported short sales in an inconsistent manner;⁵² and 4) incorrectly reported the date or amount of certain reportable transactions.⁵³

30. The OCE also found errors and omissions associated with Rep. Malinowski's 2019 annual financial disclosure statement, which raised concerns about the accuracy and completeness of that public filing.⁵⁴

31. When confronted with these issues on June 11, 2021, Rep. Malinowski's attorney informed the OCE that they would be performing an internal audit of both Rep. Malinowski's 2019

⁵⁰ Compare January 2019 – March 2021 Gagnon Securities Monthly Statements (Exhibit 4 at 21-1051_0048) with Rep. Malinowski March 5, 2021 Corrective PTR (Exhibit 6 at 21-1051_0058-72). Without specific guidance from the Committee regarding the disclosure of short sales, the OCE could not determine an exact number of transactions that Rep. Malinowski omitted from his corrective PTR between January 1, 2019 and January 20, 2021 (*i.e.*, 45 days prior to the March 5, 2021 corrective PTR filing). However, based on the Instruction Guide and the Office of Government Ethics' ("OGE") short sale guidance cited below, *see infra* n.52, Rep. Malinowski's broker made well over the 153 transactions identified in the corrective PTR.

⁵¹ Compare January 2019 – March 2021 Gagnon Securities Monthly Statements (Exhibit 4 at 21-1051_0048) with Rep. Malinowski March 5, 2021 Corrective PTR (Exhibit 6 at 21-1051_0058-72); Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0018).

⁵² Compare January 2019 – March 2021 Gagnon Securities Monthly Statements (Exhibit 4 at 21-1051_0048) with Rep. Malinowski March 5, 2021 Corrective PTR (Exhibit 6 at 21-1051_0058-72). The OCE notes that the Instruction Guide provides no explanation for how to properly report short sale transactions in a PTR or annual financial disclosure statement. Rep. Malinowski told the OCE that, consistent with the guidance he received while at that State Department, he believed he should be disclosing both sides of a short sale transaction – the sale of the borrowed security and the ultimate repurchase. *See* Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0015-17). This method of reporting would be consistent with guidance provided by the OGE to executive branch filers. *See* Office of Government Ethics, *Public Financial Disclosure Guide – FAQs – Short Sales*, <https://www.oge.gov/Web/278eGuide.nsf/Content/FAQs~FAQs:+Short+Sale> ("You would need to report your sale of a borrowed security to open the short position in an Annual, Termination, or Periodic Transaction report. Likewise, you would need to report your purchase of the security used to close the short position."); *see also* Office of Government Ethics, *Public Financial Disclosure Guide – Short Sale*, <https://www.oge.gov/Web/278eGuide.nsf/2f96d42716636dbf85257f490052263c/21ae571bf981e24b85257f45006de144?OpenDocument>. Additionally, since an individual maintains a vested financial interest in a stock from the moment the short position is opened, reporting all trades associated with a short sale is consistent with the spirit of the disclosure obligations under the EIGA and STOCK Act. While this may be what Rep. Malinowski intended to do in his disclosure statements, it is not what he did in practice. Compare January 2019 – March 2021 Gagnon Securities Monthly Statements (Exhibit 4 at 21-1051_0048) with Rep. Malinowski March 5, 2021 Corrective PTR (Exhibit 6 at 21-1051_0058-72).

⁵³ Compare January 2019 – March 2021 Gagnon Securities Monthly Statements (Exhibit 4 at 21-1051_0048) with Rep. Malinowski March 5, 2021 Corrective PTR (Exhibit 6 at 21-1051_0058-72).

⁵⁴ *See* Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0018-19). During the course of this review, the OCE compared Rep. Malinowski's 2019 annual financial disclosure statement with his Gagnon statements from 2019. A comparison indicated that Rep. Malinowski omitted certain reportable assets and transactions from his 2019 disclosure. Compare January 2019 – March 2021 Gagnon Securities Monthly Statements (Exhibit 4 at 21-1051_0048) with Rep. Malinowski 2019 Annual Financial Disclosure Statement (Exhibit 10 at 21-1051_0097-106). The OCE raised concerns with Rep. Malinowski about his 2019 annual financial disclosure statement during his June 11, 2021 interview, *see* Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0018-19), and the OCE further discussed the matter with his counsel after the interview.

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annual financial disclosure statement and his PTRs.⁵⁵ To the extent necessary, they would file amended reports to ensure reportable assets and transactions were fully disclosed.⁵⁶ Rep. Malinowski filed an amended 2019 financial disclosure report and a supplemental PTR on July 9, 2021 in an effort to address the deficiencies identified by the OCE.⁵⁷

32. After filing PTRs with late reportable transactions in June of this year, Rep. Malinowski's counsel contacted the Committee to inquire about the need to pay a fine for these subsequent late filings.⁵⁸ While Committee staff did not advise Rep. Malinowski's counsel of the exact amount of the fine owed, Committee staff did encourage Rep. Malinowski to pay a late fee consistent with the Instruction Guide.⁵⁹ As Committee staff explained, "all late financial disclosure filings are considered deficient unless the late fee is paid along with the late filings."⁶⁰
33. On July 1, 2021, after receiving this advice, Rep. Malinowski delivered a \$400 check to the Clerk's office.⁶¹ On Tuesday, July 6, 2021, the Committee informed Rep. Malinowski that the \$400 fine would be refunded since he reported the late transactions within the Committee's "30-day grace period before any late fees are imposed."⁶² To date, Rep. Malinowski appears to have paid a single \$200 fine for his failure to timely file hundreds of reportable transactions between January 2019 and May 2021.
34. In summary, the evidence collected by the OCE reveals that Rep. Malinowski knowingly failed to enter reportable PTR transactions into the online reporting system in accordance with STOCK Act deadlines, intentionally conflated PTR transactions he did report, did not disclose short sales in a consistent manner (or according to his stated intent), and failed to properly disclose assets and transactions on his 2019 annual financial disclosure statement. After acknowledging these failures, he knowingly filed additional PTRs with late reportable transactions. He has been fined \$200 for this conduct.
35. Based on the foregoing information, the Board finds that there is substantial reason to believe that Rep. Malinowski failed to properly disclose stocks that he purchased or sold or failed to properly file PTRs for any of the stock transactions he made.

⁵⁵ Rep. Malinowski Transcript (Exhibit 1 at 21-1051_0021).

⁵⁶ *Id.*

⁵⁷ See July 9, 2021 Supplemental PTR (Exhibit 12 at 21-1051_0111-118); July 9, 2021 Amended 2019 FD (Exhibit 13 at 21-1051_0120-132). The OCE has not reviewed these amended reports for accuracy or completeness given the timing of these filings.

⁵⁸ June 25, 2021 – July 6, 2021 Emails between Rep. Malinowski Counsel and Committee Staff (Exhibit 14 at 21-1051_0134-36).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* It appears, since Rep. Malinowski had only been fined \$200 by the Committee at this point, he and his counsel believed that a \$400 fine (\$200 for both the second and third late PTR filing) was appropriate under the late filing fee schedule set forth in the Instruction Guide.

⁶² *Id.*

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III. CONCLUSION

36. Based on the foregoing information, the Board finds that there is substantial reason to believe that Rep. Malinowski failed to properly disclose stocks that he purchased or sold or failed to properly file PTRs for any of the stock transactions he made.
37. Accordingly, the Board recommends that the Committee further review the above allegation that Rep. Malinowski failed to properly disclose stocks that he purchased or sold or failed to properly file PTRs for any of the stock transactions he made.