

Comparing the base document H.R. 2534, as reported, with the Rules Committee Print 116-39

This document was computer-generated in an effort to show how two versions of the same legislative text differ **and may not have been reviewed for accuracy**. This document may comply with clause 12(b) of rule XXI of the Rules of the House. This document does not represent an official expression by the House and should not be relied on as an authoritative delineation of the proposed change(s) to existing law.

Omitted text is shown ~~stricken~~, new matter that is proposed is in underlined italics, and existing text in which no change is being proposed is shown in regular roman. Typesetting and stylistic characteristics, particularly in the headings and indentations, may not conform to how the text, if adopted, would be illustrated in subsequent versions of legislation or public law.

Section 1 Short title

This Act may be cited as the "Insider Trading Prohibition Act".

Sec. 2. Prohibition on insider trading

(a) IN GENERAL.—

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 16 the following new section:

"Sec. 16A. Prohibition on insider trading

"(a) PROHIBITION AGAINST TRADING SECURITIES WHILE ~~IN POSSESSION~~AWARE OF MATERIAL, NONPUBLIC INFORMATION.— It shall be unlawful for any person, directly or indirectly, to purchase, sell, or enter into, or cause the purchase or sale of or entry into, any security, security-based swap, or security-based swap agreement, while ~~in possession~~aware of material, nonpublic information relating to such security, security-based swap, or security-based swap agreement, or relating to the market for such security, security-based swap, or security-based swap agreement, if such person knows, or recklessly disregards, that such information has been obtained wrongfully, or that such purchase or sale would constitute a wrongful use of such information.

"(b) PROHIBITION AGAINST THE WRONGFUL COMMUNICATION OF CERTAIN MATERIAL, NONPUBLIC INFORMATION.— It shall be unlawful for any person whose own purchase or sale of a security, security-based swap, or entry into a security-based swap agreement would violate subsection (a) (~~referred to in this subsection as the 'communicating person'~~), wrongfully to communicate material, nonpublic information relating to such security, security-based swap, or security-based swap agreement, or relating to the market for such security, security-based swap, or security-based swap agreement, to any other person if—

"(1) the other person—

"(A) purchases, sells, or causes the purchase or sale of, any security or security-based swap or enters into or causes the entry into any security-based swap agreement, to which such communication relates; or

"(B) communicates the information to another person who makes or causes such a purchase, sale, or entry while ~~in possession~~aware of such information; and

"(2) such a purchase, sale, or entry while ~~in possession~~aware of such information is reasonably foreseeable.

"(c) STANDARD AND KNOWLEDGE REQUIREMENT.—

"(1) STANDARD.— For purposes of this section, trading while ~~in possession~~aware of material, nonpublic information under subsection (a) or communicating material nonpublic information under subsection (b) is wrongful only if the information has been obtained by, or its communication or use would constitute, directly or indirectly—

"(A) theft, bribery, misrepresentation, or espionage (through electronic or other means);

"(B) a violation of any Federal law protecting computer data or the intellectual property or privacy of computer users;

"(C) conversion, misappropriation, or other unauthorized and deceptive taking of such information; or

"(D) a breach of any fiduciary duty, a breach of a confidentiality agreement, a breach of contract, a breach of any code of conduct or ethics policy, or a breach of any other personal or other relationship of trust and confidence.

"(2) KNOWLEDGE REQUIREMENT.— It shall not be necessary that the person trading while ~~in possession~~ aware of such information (as proscribed by subsection (a)), or making the communication (as proscribed by subsection (b)), knows the specific means by which the information was obtained or communicated, or whether any personal benefit was paid or promised by or to any person in the chain of communication, so long as the person trading while ~~in possession~~ aware of such information or making the communication, as the case may be, was aware, consciously avoided being aware, or recklessly disregarded that such information was wrongfully obtained ~~or~~ improperly used, or wrongfully communicated.

"(d) DERIVATIVE LIABILITY.— Except as provided in section 20(a), no person shall be liable under this section solely by reason of the fact that such person controls or employs a person who has violated this section, if such controlling person or employer did not participate in, ~~profit from,~~ or directly or indirectly induce the acts constituting ~~the~~ a violation of this section.

"(e) ~~EXEMPTED TRANSACTION~~ AFFIRMATIVE DEFENSES.—

"(1) IN GENERAL.— The Commission may, by rule or by order, exempt any person, security, or transaction, or any class of persons, securities, or transactions, from any or all of the provisions of this section, upon such terms and conditions as it considers necessary or appropriate, ~~if the Commission determines that such action is not inconsistent with the purposes of this section.~~ n furtherance of the purposes of this title.

"(2) DIRECTED TRADING.— The prohibitions of this section shall not apply to any person who acts at the specific direction of, and solely for the account of, ~~another~~ another person whose own securities trading, or communications of material, nonpublic information, would be lawful under this section.

"(2) Automatic trading.—

"(A) ~~IN GENERAL~~.— Not later than 180 days after the date of the enactment of this section, the Commission shall determine if any automatic trading transactions should be exempted from any of the provisions of this section and shall make such determination available to the public, including on the website of the Commission.

Rule 10b-5-1 compliant transactions.— The prohibitions of this section shall not apply to any transaction that satisfies the requirements of Rule 10b-5-1 (17 C.F.R. 240.10b5-1), or any successor regulation.

"(B) ~~INTERIM APPLICATION~~.— During the period between the date of the enactment of this section and the date on which the Commission makes a determination pursuant to subparagraph (A), automatic trading transactions shall be exempted from the provisions of this section.

"(C) ~~AUTOMATIC TRADING TRANSACTION DEFINED~~.— For the purposes of this paragraph, the term 'automatic trading transaction' means any purchase ~~or~~ Rule of construction.—Section 10(b) and 14(e) and any judicial precedents from judicial decisions under such sections shall apply to the purchase or sale of or entry into, any security, security-based swap, or security-based swap agreement to the extent such decisions do not conflict with the provisions of this section.

"(b) COMMISSION REVIEW OF RULE 10B-5-1.— Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission shall ~~of a security, security-based swap, or security-based swap agreement that~~

"(i) ~~occurs automatically; or~~

"(ii) ~~is made pursuant to an advance election.~~

l review Rule 10b-5-1 (17 C.F.R. 240.10b5-1) and make any modifications the Securities and Exchange Commission determines necessary or appropriate because of the amendment to the Securities Exchange Act of 1934 made by this Act.

"(c) ~~Conforming amendments~~.— The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is further amended—

(1) in section 21(d)(2), by inserting ", section 16A of this title" after "section 10(b) of this title";

(2) in section 21A—

(A) in subsection (g)(1), by inserting "and section 16A," after "thereunder,"; and

(B) in subsection (h)(1), by inserting "and section 16A, " after "thereunder,"; and
(3) in section 21C(f), by inserting "or section 16A," after "section 10(b)".

