

[116112534E11]



(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Exchange Act of 1934 to prohibit certain securities trading and related communications by those who possess material, non-public information.

IN THE HOUSE OF REPRESENTATIVES

Mr. HIMES introduced the following bill; which was referred to the Committee
on _____

A BILL

To amend the Securities Exchange Act of 1934 to prohibit certain securities trading and related communications by those who possess material, nonpublic information.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Insider Trading Prohi-
5 bition Act”.

1 **SEC. 2. PROHIBITION ON INSIDER TRADING.**

2 (a) IN GENERAL.—The Securities Exchange Act of
3 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
4 section 16 the following new section:

5 **“SEC. 16A. PROHIBITION ON INSIDER TRADING.**

6 “(a) PROHIBITION AGAINST TRADING SECURITIES
7 WHILE AWARE OF MATERIAL, NONPUBLIC INFORMA-
8 TION.—It shall be unlawful for any person, directly or in-
9 directly, to purchase, sell, or enter into, or cause the pur-
10 chase or sale of or entry into, any security, security-based
11 swap, or security-based swap agreement, while aware of
12 material, nonpublic information relating to such security,
13 security-based swap, or security-based swap agreement, or
14 any nonpublic information, from whatever source, that
15 has, or would reasonably be expected to have, a material
16 effect on the market price of any such security, security-
17 based swap, or security-based swap agreement, if such
18 person knows, or recklessly disregards, that such informa-
19 tion has been obtained wrongfully, or that such purchase
20 or sale would constitute a wrongful use of such informa-
21 tion.

22 “(b) PROHIBITION AGAINST THE WRONGFUL COM-
23 MUNICATION OF CERTAIN MATERIAL, NONPUBLIC INFOR-
24 MATION.—It shall be unlawful for any person whose own
25 purchase or sale of a security, security-based swap, or
26 entry into a security-based swap agreement would violate

1 subsection (a), wrongfully to communicate material, non-
2 public information relating to such security, security-based
3 swap, or security-based swap agreement, or any nonpublic
4 information, from whatever source, that has, or would rea-
5 sonably be expected to have, a material effect on the mar-
6 ket price of any such security, security-based swap, or se-
7 curity-based swap agreement, to any other person if—

8 “(1) the other person—

9 “(A) purchases, sells, or causes the pur-
10 chase or sale of, any security or security-based
11 swap or enters into or causes the entry into any
12 security-based swap agreement, to which such
13 communication relates; or

14 “(B) communicates the information to an-
15 other person who makes or causes such a pur-
16 chase, sale, or entry while aware of such infor-
17 mation; and

18 “(2) such a purchase, sale, or entry while aware
19 of such information is reasonably foreseeable.

20 “(c) STANDARD AND KNOWLEDGE REQUIREMENT.—

21 “(1) STANDARD.—For purposes of this section,
22 trading while aware of material, nonpublic informa-
23 tion under subsection (a) or communicating material
24 nonpublic information under subsection (b) is wrong-
25 ful only if the information has been obtained by, or

1 its communication or use would constitute, directly
2 or indirectly—

3 “(A) theft, bribery, misrepresentation, or
4 espionage (through electronic or other means);

5 “(B) a violation of any Federal law pro-
6 tecting computer data or the intellectual prop-
7 erty or privacy of computer users;

8 “(C) conversion, misappropriation, or other
9 unauthorized and deceptive taking of such in-
10 formation; or

11 “(D) a breach of any fiduciary duty, a
12 breach of a confidentiality agreement, a breach
13 of contract, a breach of any code of conduct or
14 ethics policy, or a breach of any other personal
15 or other relationship of trust and confidence for
16 a direct or indirect personal benefit (including
17 pecuniary gain, reputational benefit, or a gift of
18 confidential information to a trading relative or
19 friend).

20 “(2) KNOWLEDGE REQUIREMENT.—It shall not
21 be necessary that the person trading while aware of
22 such information (as proscribed by subsection (a)),
23 or making the communication (as proscribed by sub-
24 section (b)), knows the specific means by which the
25 information was obtained or communicated, or

1 whether any personal benefit was paid or promised
2 by or to any person in the chain of communication,
3 so long as the person trading while aware of such in-
4 formation or making the communication, as the case
5 may be, was aware, consciously avoided being aware,
6 or recklessly disregarded that such information was
7 wrongfully obtained, improperly used, or wrongfully
8 communicated.

9 “(d) DERIVATIVE LIABILITY.—Except as provided in
10 section 20(a), no person shall be liable under this section
11 solely by reason of the fact that such person controls or
12 employs a person who has violated this section, if such
13 controlling person or employer did not participate in, or
14 directly or indirectly induce the acts constituting a viola-
15 tion of this section.

16 “(e) AFFIRMATIVE DEFENSES.—

17 “(1) IN GENERAL.—The Commission may, by
18 rule or by order, exempt any person, security, or
19 transaction, or any class of persons, securities, or
20 transactions, from any or all of the provisions of this
21 section, upon such terms and conditions as it con-
22 siders necessary or appropriate in furtherance of the
23 purposes of this title.

24 “(2) DIRECTED TRADING.—The prohibitions of
25 this section shall not apply to any person who acts

1 at the specific direction of, and solely for the ac-
2 count of another person whose own securities trad-
3 ing, or communications of material, nonpublic infor-
4 mation, would be lawful under this section.

5 “(3) RULE 10b-5-1 COMPLIANT TRANS-
6 ACTIONS.—The prohibitions of this section shall not
7 apply to any transaction that satisfies the require-
8 ments of Rule 10b-5-1 (17 CFR 240.10b5-1), or
9 any successor regulation.”.

10 (b) COMMISSION REVIEW OF RULE 10b-5-1.—Not
11 later than 180 days after the date of the enactment of
12 this Act, the Securities and Exchange Commission shall
13 review Rule 10b-5-1 (17 CFR 240.10b5-1) and make any
14 modifications the Securities and Exchange Commission
15 determines necessary or appropriate because of the
16 amendment to the Securities Exchange Act of 1934 made
17 by this Act.

18 (c) CONFORMING AMENDMENTS.—The Securities
19 Exchange Act of 1934 (15 U.S.C. 78a et seq.) is further
20 amended—

21 (1) in section 21(d)(2), by inserting “, section
22 16A of this title” after “section 10(b) of this title,”;

23 (2) in section 21A—

24 (A) in subsection (g)(1), by inserting “and
25 section 16A,” after “thereunder,”; and

1 (B) in subsection (h)(1), by inserting “and
2 section 16A,” after “thereunder;” and
3 (3) in section 21C(f), by inserting “or section
4 16A,” after “section 10(b)”.