AMENDMENT IN THE NATURE OF A SUBSTITUTE TO 
H.R. _____
OFFERED BY MR. HIMES OF CONNECTICUT

Strike all after the enacting clause and insert the following:

1 SECTION 1 SHORT TITLE.
2 This Act may be cited as the “Insider Trading Prohi-
3 bition 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 of Material, Nonpublic In-
formation.—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 of material, nonpublic information relating to
such security, security-based swap, or security-based swap
agreement, or relating to the market for such security, se-
curity-based swap, or security-based swap agreement, if
such person knows, or recklessly disregards, that such in-
formation has been obtained wrongfully, or that such pur-
chase or sale would constitute a wrongful use of such in-
formation.

“(b) Prohibition Against the Wrongful Com-
munication of Certain Material, Nonpublic Infor-
mation.—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 ‘com-
municating 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 pur-
chase 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 an-
other person who makes or causes such a pur-
chase, sale, or entry while in possession of such
information; and
“(2) such a purchase, sale, or entry while in possession of such information is reasonably foreseeable.

“(c) STANDARD AND KNOWLEDGE REQUIREMENT.—

“(1) STANDARD.—For purposes of this section, trading while in possession 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, 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 posses-
sion of such information (as proscribed by sub-
section (a)), or making the communication (as pro-
scribed by subsection (b)), knows the specific means 
by which the information was obtained or commu-
nicated, or whether any personal benefit was paid or 
promised by or to any person in the chain of com-
munication, so long as the person trading while in 
possession of such information or making the com-
munication, as the case may be, was aware, con-
sciously avoided being aware, or recklessly dis-
regarded that such information was wrongfully ob-
tained or 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, pro-
it from, or directly or indirectly induce the acts consti-
tuting the violation of this section.

“(e) EXEMPTED TRANSACTIONS.—

“(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 con-
siders necessary or appropriate, if the Commission
determines that such action is not inconsistent with
the purposes of this section. The prohibitions of this
section shall not apply to any person who acts at the
specific direction of, and solely for the account of, a
person whose own securities trading, or communica-
tions 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 sec-
tion, the Commission shall determine if any
automatic trading transactions should be ex-
empted from any of the provisions of this sec-
tion and shall make such determination avail-
able to the public, including on the website of
the Commission.

“(B) INTERIM APPLICATION.—During the
period between the date of the enactment of
this section and the date on which the Commis-
sion makes a determination pursuant to sub-
paragraph (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 sale of a security, security-based swap, or security-based swap agreement that—

“(i) occurs automatically; or

“(ii) is made pursuant to an advance election.”.

(b) 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)”.

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