[DISCUSSION DRAFT]

116TH 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”.
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 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 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 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 foresee-
able.

“(c) STANDARD AND KNOWLEDGE REQUIREMENT.—

“(1) STANDARD.—For purposes of this section,
trading while in possession of material, nonpublic in-
formation 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, di-
rectly 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 possession 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 of such information or making the communication, as the case may be, was aware, consciously 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, prof-
it from, or directly or indirectly induce the acts constitu-
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 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.

“(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 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)”.

(c) SENSE OF CONGRESS.—It is the sense of the Congress that the amendments made by this Act are intended to supercede section 10(b) or 14e of the Securities Exchange Act of 1934 with regard to the wrongful use or wrongful communication of material, nonpublic information in connection with the purchase or sale of securities, security-based swaps, and security-based swap agreements.