

116TH CONGRESS
1ST SESSION

H. R. 2534

IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2019

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

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,*

1 **SECTION 1 SHORT TITLE.**

2 This Act may be cited as the “Insider Trading Prohi-
3 bition Act”.

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

5 (a) IN GENERAL.—The Securities Exchange Act of
6 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
7 section 16 the following new section:

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

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

25 “(b) PROHIBITION AGAINST THE WRONGFUL COM-
26 MUNICATION OF CERTAIN MATERIAL, NONPUBLIC INFOR-

1 MATION.—It shall be unlawful for any person whose own
2 purchase or sale of a security, security-based swap, or
3 entry into a security-based swap agreement would violate
4 subsection (a), wrongfully to communicate material, non-
5 public information relating to such security, security-based
6 swap, or security-based swap agreement, or any nonpublic
7 information, from whatever source, that has, or would rea-
8 sonably be expected to have, a material effect on the mar-
9 ket price of any such security, security-based swap, or se-
10 curity-based swap agreement, to any other person if—

11 “(1) the other person—

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

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

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

23 “(c) STANDARD AND KNOWLEDGE REQUIREMENT.—

24 “(1) STANDARD.—For purposes of this section,
25 trading while aware of material, nonpublic informa-

1 tion under subsection (a) or communicating material
2 nonpublic information under subsection (b) is wrong-
3 ful only if the information has been obtained by, or
4 its communication or use would constitute, directly
5 or indirectly—

6 “(A) theft, bribery, misrepresentation, or
7 espionage (through electronic or other means);

8 “(B) a violation of any Federal law pro-
9 tecting computer data or the intellectual prop-
10 erty or privacy of computer users;

11 “(C) conversion, misappropriation, or other
12 unauthorized and deceptive taking of such in-
13 formation; or

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

23 “(2) KNOWLEDGE REQUIREMENT.—It shall not
24 be necessary that the person trading while aware of
25 such information (as proscribed by subsection (a)),

1 or making the communication (as proscribed by sub-
2 section (b)), knows the specific means by which the
3 information was obtained or communicated, or
4 whether any personal benefit was paid or promised
5 by or to any person in the chain of communication,
6 so long as the person trading while aware of such in-
7 formation or making the communication, as the case
8 may be, was aware, consciously avoided being aware,
9 or recklessly disregarded that such information was
10 wrongfully obtained, improperly used, or wrongfully
11 communicated.

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

19 “(e) AFFIRMATIVE DEFENSES.—

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

1 siders necessary or appropriate in furtherance of the
2 purposes of this title.

3 “(2) DIRECTED TRADING.—The prohibitions of
4 this section shall not apply to any person who acts
5 at the specific direction of, and solely for the ac-
6 count of another person whose own securities trad-
7 ing, or communications of material, nonpublic infor-
8 mation, would be lawful under this section.

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

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

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

