

NOVEMBER 22, 2019

**RULES COMMITTEE PRINT 116–39**  
**TEXT OF H.R. 2534, THE INSIDER TRADING**  
**PROHIBITION ACT**

[Showing the text of H.R. 2534, as reported by the Committee  
on Financial Services, with modifications]

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 relating to the market for such security, security-based  
18 swap, or security-based swap agreement, if such person

1 knows, or recklessly disregards, that such information has  
2 been obtained wrongfully, or that such purchase or sale  
3 would constitute a wrongful use of such information.

4 “(b) PROHIBITION AGAINST THE WRONGFUL COM-  
5 MUNICATION OF CERTAIN MATERIAL, NONPUBLIC INFOR-  
6 MATION.—It shall be unlawful for any person whose own  
7 purchase or sale of a security, security-based swap, or  
8 entry into a security-based swap agreement would violate  
9 subsection (a), wrongfully to communicate material, non-  
10 public information relating to such security, security-based  
11 swap, or security-based swap agreement, or relating to the  
12 market for such security, security-based swap, or security-  
13 based swap agreement, to any other person if—

14 “(1) the other person—

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

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

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

1 “(c) STANDARD AND KNOWLEDGE REQUIREMENT.—

2 “(1) STANDARD.—For purposes of this section,  
3 trading while aware of material, nonpublic informa-  
4 tion under subsection (a) or communicating material  
5 nonpublic information under subsection (b) is wrong-  
6 ful only if the information has been obtained by, or  
7 its communication or use would constitute, directly  
8 or indirectly—

9 “(A) theft, bribery, misrepresentation, or  
10 espionage (through electronic or other means);

11 “(B) a violation of any Federal law pro-  
12 tecting computer data or the intellectual prop-  
13 erty or privacy of computer users;

14 “(C) conversion, misappropriation, or other  
15 unauthorized and deceptive taking of such in-  
16 formation; or

17 “(D) a breach of any fiduciary duty, a  
18 breach of a confidentiality agreement, a breach  
19 of contract, a breach of any code of conduct or  
20 ethics policy, or a breach of any other personal  
21 or other relationship of trust and confidence.

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

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

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

18 “(e) AFFIRMATIVE DEFENSES.—

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

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

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

12          “(f) RULE OF CONSTRUCTION.—Section 10(b) and  
13          14(e) and any judicial precedents from judicial decisions  
14          under such sections shall apply to the purchase or sale  
15          of or entry into, any security, security-based swap, or se-  
16          curity-based swap agreement to the extent such decisions  
17          do not conflict with the provisions of this section.”.

18          (b) COMMISSION REVIEW OF RULE 10B-5-1.—Not  
19          later than 180 days after the date of the enactment of  
20          this Act, the Securities and Exchange Commission shall  
21          review Rule 10b-5-1 (17 C.F.R. 240.10b5-1) and make  
22          any modifications the Securities and Exchange Commis-  
23          sion determines necessary or appropriate because of the  
24          amendment to the Securities Exchange Act of 1934 made  
25          by this Act.

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

4 (1) in section 21(d)(2), by inserting “, section  
5 16A of this title” after “section 10(b) of this title,”;

6 (2) in section 21A—

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

9 (B) in subsection (h)(1), by inserting “and  
10 section 16A,” after “thereunder,”; and

11 (3) in section 21C(f), by inserting “or section  
12 16A,” after “section 10(b)”.

