

117TH CONGRESS
1ST SESSION

H. R. 2655

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

APRIL 19, 2021

Mr. HIMES (for himself and Mrs. CAROLYN B. MALONEY of New York) introduced the following bill; which was referred to the Committee on Financial Services

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”.

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

7 (a) IN GENERAL.—The Securities Exchange Act of
8 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
9 section 16 the following new section:

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

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

18 “(b) PROHIBITION AGAINST THE WRONGFUL COM-
19 MUNICATION OF CERTAIN MATERIAL, NONPUBLIC INFOR-
20 MATION.—It shall be unlawful for any person whose own
21 purchase or sale of a security, security-based swap, or
22 entry into a security-based swap agreement would violate
23 subsection (a), wrongfully to communicate material, non-
24 public information relating to such security, security-based
25 swap, or security-based swap agreement, or any nonpublic
26 information, from whatever source, that has, or would rea-

1 sonably be expected to have, a material effect on the mar-
2 ket price of any such security, security-based swap, or se-
3 curity-based swap agreement, to any other person if—

4 “(1) the other person—

5 “(A) purchases, sells, or causes the pur-
6 chase or sale of, any security or security-based
7 swap or enters into or causes the entry into any
8 security-based swap agreement, to which such
9 communication relates; or

10 “(B) communicates the information to an-
11 other person who makes or causes such a pur-
12 chase, sale, or entry while aware of such infor-
13 mation; and

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

16 “(c) STANDARD AND KNOWLEDGE REQUIREMENT.—

17 “(1) STANDARD.—For purposes of this section,
18 trading while aware of material, nonpublic informa-
19 tion under subsection (a) or communicating material
20 nonpublic information under subsection (b) is wrong-
21 ful only if the information has been obtained by, or
22 its communication or use would constitute, directly
23 or indirectly—

24 “(A) theft, bribery, misrepresentation, or
25 espionage (through electronic or other means);

1 “(B) a violation of any Federal law pro-
2 tecting computer data or the intellectual prop-
3 erty or privacy of computer users;

4 “(C) conversion, misappropriation, or other
5 unauthorized and deceptive taking of such in-
6 formation; or

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

16 “(2) KNOWLEDGE REQUIREMENT.—It shall not
17 be necessary that the person trading while aware of
18 such information (as proscribed by subsection (a)),
19 or making the communication (as proscribed by sub-
20 section (b)), knows the specific means by which the
21 information was obtained or communicated, or
22 whether any personal benefit was paid or promised
23 by or to any person in the chain of communication,
24 so long as the person trading while aware of such in-
25 formation or making the communication, as the case

1 may be, was aware, consciously avoided being aware,
2 or recklessly disregarded that such information was
3 wrongfully obtained, improperly used, or wrongfully
4 communicated.

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

12 “(e) AFFIRMATIVE DEFENSES.—

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

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

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

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

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

17 (1) in section 21(d)(2), by inserting “, section
18 16A of this title” after “section 10(b) of this title,”;

19 (2) in section 21A—

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

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

- 1 (3) in section 21C(f), by inserting “or section
- 2 16A,” after “section 10(b)”.

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