

## Union Calendar No. 172

116TH CONGRESS  
1ST SESSION

# H. R. 2534

**[Report No. 116-219]**

To amend the Securities Exchange Act of 1934 to prohibit certain securities trading and related communications by those who possess material, non-public information.

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### IN THE HOUSE OF REPRESENTATIVES

MAY 7, 2019

Mr. HIMES introduced the following bill; which was referred to the Committee on Financial Services

SEPTEMBER 27, 2019

Additional sponsors: Mrs. CAROLYN B. MALONEY of New York and Mr. HECK

SEPTEMBER 27, 2019

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on May 7, 2019]

# **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:*

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

11        *“(a) PROHIBITION AGAINST TRADING SECURITIES*  
12 *WHILE IN POSSESSION OF MATERIAL, NONPUBLIC INFOR-*  
13 *MATION.—It shall be unlawful for any person, directly or*  
14 *indirectly, to purchase, sell, or enter into, or cause the pur-*  
15 *chase or sale of or entry into, any security, security-based*  
16 *swap, or security-based swap agreement, while in possession*  
17 *of material, nonpublic information relating to such secu-*  
18 *rity, security-based swap, or security-based swap agree-*  
19 *ment, or relating to the market for such security, security-*  
20 *based swap, or security-based swap agreement, if such per-*  
21 *son knows, or recklessly disregards, that such information*  
22 *has been obtained wrongfully, or that such purchase or sale*  
23 *would constitute a wrongful use of such information.*

24        *“(b) PROHIBITION AGAINST THE WRONGFUL COMMU-*  
25 *NICATION OF CERTAIN MATERIAL, NONPUBLIC INFORMA-*

1 TION.—It shall be unlawful for any person whose own pur-  
2 chase or sale of a security, security-based swap, or entry  
3 into a security-based swap agreement would violate sub-  
4 section (a) (referred to in this subsection as the ‘commu-  
5 nicating person’), wrongfully to communicate material,  
6 nonpublic information relating to such security, security-  
7 based swap, or security-based swap agreement, or relating  
8 to the market for such security, security-based swap, or se-  
9 curity-based swap agreement, to any other person if—

10 “(1) the other person—

11 “(A) purchases, sells, or causes the purchase  
12 or sale of, any security or security-based swap or  
13 enters into or causes the entry into any security-  
14 based swap agreement, to which such commu-  
15 nication relates; or

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

20 “(2) such a purchase, sale, or entry while in pos-  
21 session of such information is reasonably foreseeable.

22 “(c) STANDARD AND KNOWLEDGE REQUIREMENT.—

23 “(1) STANDARD.—For purposes of this section,  
24 trading while in possession of material, nonpublic in-  
25 formation under subsection (a) or communicating

1 *material nonpublic information under subsection (b)*  
2 *is wrongful only if the information has been obtained*  
3 *by, or its communication or use would constitute, di-*  
4 *rectly or indirectly—*

5 *“(A) theft, bribery, misrepresentation, or es-*  
6 *pionage (through electronic or other means);*

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

10 *“(C) conversion, misappropriation, or other*  
11 *unauthorized and deceptive taking of such infor-*  
12 *mation; or*

13 *“(D) a breach of any fiduciary duty, a*  
14 *breach of a confidentiality agreement, a breach*  
15 *of contract, or a breach of any other personal or*  
16 *other relationship of trust and confidence.*

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

1        *such information or making the communication, as*  
2        *the case may be, was aware, consciously avoided*  
3        *being aware, or recklessly disregarded that such infor-*  
4        *mation was wrongfully obtained or 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 em-*  
8        *plloys a person who has violated this section, if such control-*  
9        *ling person or employer did not participate in, profit from,*  
10       *or directly or indirectly induce the acts constituting the vio-*  
11       *lation of this section.*

12       *“(e) EXEMPTED TRANSACTIONS.—*

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        *siders necessary or appropriate, if the Commission*  
19        *determines that such action is not inconsistent with*  
20        *the purposes of this section. The prohibitions of this*  
21        *section shall not apply to any person who acts at the*  
22        *specific direction of, and solely for the account of, a*  
23        *person whose own securities trading, or communica-*  
24        *tions of material, nonpublic information, would be*  
25        *lawful under this section.*

1           “(2) *AUTOMATIC TRADING.*—

2                   “(A) *IN GENERAL.*—Not later than 180  
3           *days after the date of the enactment of this sec-*  
4           *tion, the Commission shall determine if any*  
5           *automatic trading transactions should be ex-*  
6           *empted from any of the provisions of this section*  
7           *and shall make such determination available to*  
8           *the public, including on the website of the Com-*  
9           *mission.*

10                   “(B) *INTERIM APPLICATION.*—During the  
11           *period between the date of the enactment of this*  
12           *section and the date on which the Commission*  
13           *makes a determination pursuant to subpara-*  
14           *graph (A), automatic trading transactions shall*  
15           *be exempted from the provisions of this section.*

16                   “(C) *AUTOMATIC TRADING TRANSACTION*  
17           *DEFINED.*—For the purposes of this paragraph,  
18           *the term ‘automatic trading transaction’ means*  
19           *any purchase or sale of a security, security-based*  
20           *swap, or security-based swap agreement that—*

21                           “(i) *occurs automatically; or*

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

1           **(b) CONFORMING AMENDMENTS.**—*The Securities Ex-*  
2 *change Act of 1934 (15 U.S.C. 78a et seq.) is further amend-*  
3 *ed—*

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)”.*



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