

117TH CONGRESS  
2D SESSION

# S. 3990

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

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## IN THE SENATE OF THE UNITED STATES

APRIL 4 (legislative day, MARCH 31), 2022

Mr. REED (for himself and Mr. MENENDEZ) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## 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, and for other purposes.

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”.

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

2 (a) IN GENERAL.—The Securities Exchange Act of  
3 1934 (15 U.S.C. 78a et seq.) is amended by inserting after  
4 section 16 (15 U.S.C. 78p) the following:

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

6 “(a) PROHIBITION AGAINST TRADING SECURITIES  
7 WHILE AWARE OF MATERIAL, NONPUBLIC INFORMA-  
8 TION.—It shall be unlawful for any person, directly or in-  
9 directly, to purchase, sell, or enter into, or cause the pur-  
10 chase or sale of, or entry into, any security, security-based  
11 swap, or security-based swap agreement if that person, at  
12 the time the person takes such an action—

13 “(1) has access to information relating to such  
14 security, security-based swap, or security-based swap  
15 agreement that is material and nonpublic and is  
16 aware (including if the person consciously avoids  
17 being aware), or recklessly disregards, that such in-  
18 formation is material and nonpublic; and

19 “(2) is aware (including if the person con-  
20 sciously avoids being aware), or recklessly dis-  
21 regards, that—

22 “(A) the information described in para-  
23 graph (1) has been obtained wrongfully; or

24 “(B) the purchase, sale, or entry would  
25 constitute wrongful trading on the information  
26 described in paragraph (1).

1       “(b) PROHIBITION AGAINST THE WRONGFUL COM-  
 2       MUNICATION OF CERTAIN MATERIAL, NONPUBLIC INFOR-  
 3       MATION.—It shall be unlawful for any person, the pur-  
 4       chase or sale of a security or security-based swap (or entry  
 5       into a security-based swap agreement) by which would vio-  
 6       late subsection (a), to wrongfully communicate material,  
 7       nonpublic information relating to that security, security-  
 8       based swap, or security-based swap agreement to any  
 9       other person, if—

10           “(1) the person communicating the information,  
 11           at the time the person communicates the informa-  
 12           tion, is aware (including if the person consciously  
 13           avoids being aware), or recklessly disregards, that  
 14           such communication would result in such a pur-  
 15           chase, sale, or entry; and

16           “(2) any recipient of the wrongfully commu-  
 17           nicated information purchases, sells, or causes the  
 18           purchase or sale of any security or security-based  
 19           swap, or enters into (or causes the entry into) any  
 20           security-based swap agreement, based on that com-  
 21           munication.

22       “(c) STANDARD AND KNOWLEDGE REQUIREMENT.—

23           “(1) STANDARD.—For purposes of this section,  
 24           trading while aware of material, nonpublic informa-  
 25           tion under subsection (a), or communicating mate-

1       rial, nonpublic information under subsection (b), is  
2       wrongful only if the information has been obtained  
3       by, or the communication or trading on the informa-  
4       tion would constitute, directly or indirectly—

5               “(A) theft, conversion, bribery, misrepre-  
6               sentation, espionage (through electronic or  
7               other means), or other unauthorized access of  
8               the information;

9               “(B) a violation of any Federal law pro-  
10              tecting—

11                   “(i) computer data; or

12                   “(ii) the intellectual property or pri-  
13                  vacy of computer users;

14               “(C) misappropriation from a source of the  
15              information; or

16               “(D) a breach of any fiduciary duty to  
17              shareholders of an issuer for a direct or indirect  
18              personal benefit, including—

19                   “(i) an existing or future pecuniary  
20                  gain or reputational benefit; or

21                   “(ii) a gift of confidential information  
22                  to a relative or friend.

23               “(2) KNOWLEDGE REQUIREMENT.—It shall not  
24              be necessary that a person trading while aware of  
25              information in violation of subsection (a), or making

1 a communication in violation of subsection (b),  
2 knows the specific means by which the information  
3 was obtained or communicated or traded on, or the  
4 specific benefit described in paragraph (1)(D) that  
5 was received, paid, or promised by or to any person  
6 in the chain of communication, if the person trading  
7 while aware of the information or making the com-  
8 munication, as applicable, at the time the person  
9 makes the trade or communicates the information, is  
10 aware (including if the person consciously avoids  
11 being aware), or recklessly disregards, that the in-  
12 formation was wrongfully obtained, wrongfully trad-  
13 ed on, or wrongfully communicated.

14 “(d) AFFIRMATIVE DEFENSES.—

15 “(1) IN GENERAL.—The Commission may, by  
16 rule or by order, exempt any person, security, or  
17 transaction, or any class of persons, securities, or  
18 transactions, from any or all of the provisions of this  
19 section, upon such terms and conditions as the Com-  
20 mission considers necessary or appropriate in fur-  
21 therance of the purposes of this title.

22 “(2) RULE 10B5-1 COMPLIANT TRANS-  
23 ACTIONS.—The prohibitions of this section shall not  
24 apply to any transaction that satisfies the require-

1       ments of section 240.10b5–1 of title 17, Code of  
2       Federal Regulations, or any successor regulation.

3       “(e) RULE OF CONSTRUCTION.—The rights and rem-  
4       edies provided by this section shall be in addition to any  
5       and all other rights and remedies that may exist at law  
6       or in equity (without regard to whether such a right or  
7       remedy is provided under this Act) with respect to an ac-  
8       tion by a person to—

9               “(1) purchase, sell, or enter into a security, se-  
10       curity-based swap, or security-based swap agreement  
11       while aware of material, nonpublic information; or

12               “(2) communicate material, nonpublic informa-  
13       tion relating to a security, security-based swap, or  
14       security-based swap agreement.”.

15       (b) CONFORMING AMENDMENTS.—The Securities  
16       Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amend-  
17       ed—

18               (1) in section 3(a)(78)(A) (15 U.S.C.  
19       78c(a)(78)(A)), by inserting “16A,” after “16,”;

20               (2) in section 21(d)(2) (15 U.S.C. 78u(d)(2)),  
21       by striking “or the rules or regulations thereunder”  
22       and inserting “, section 16A of this title, or the  
23       rules or regulations under either such section”;

24               (3) in section 21A (15 U.S.C. 78u–1)—

1           (A) in subsection (g)(1), by striking “sec-  
2           tion 10(b) and Rule 10b–5 thereunder” and in-  
3           serting “section 10(b), Rule 10b–5 thereunder,  
4           and section 16A”; and

5           (B) in subsection (h)(1), by striking “sec-  
6           tion 10(b), and Rule 10b–5 thereunder” and in-  
7           serting “section 10(b), Rule 10b–5 thereunder,  
8           and section 16A”; and

9           (4) in section 21C(f) (15 U.S.C. 78u–3(f)), by  
10          striking “or the rules or regulations thereunder” and  
11          inserting “, section 16A, or the rules or regulations  
12          under either such section”.

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