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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]

SECTION 1 SHORT TITLE.

This Act may be cited as the “Insider Trading Prohibition Act”.

SEC. 2. PROHIBITION ON INSIDER TRADING.

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

“SEC. 16A. PROHIBITION ON INSIDER TRADING.

“(a) Prohibition Against Trading Securities While Aware of Material, Nonpublic Information.—It shall be unlawful for any person, directly or indirectly, to purchase, sell, or enter into, or cause the purchase or sale of or entry into, any security, security-based swap, or security-based swap agreement, while aware of material, nonpublic information relating to such security, security-based swap, or security-based swap agreement, or relating to the market for such security, security-based swap, or security-based swap agreement, if such person...
knows, or recklessly disregards, that such information has been obtained wrongfully, or that such purchase or sale would constitute a wrongful use of such information.

“(b) Prohibition Against the Wrongful Communication of Certain Material, Nonpublic Information.—It shall be unlawful for any person whose own purchase or sale of a security, security-based swap, or entry into a security-based swap agreement would violate subsection (a), wrongfully to communicate material, non-public information relating to such security, security-based swap, or security-based swap agreement, or relating to the market for such security, security-based swap, or security-based swap agreement, to any other person if—

“(1) the other person—

“(A) purchases, sells, or causes the purchase or sale of, any security or security-based swap or enters into or causes the entry into any security-based swap agreement, to which such communication relates; or

“(B) communicates the information to another person who makes or causes such a purchase, sale, or entry while aware of such information; and

“(2) such a purchase, sale, or entry while aware of such information is reasonably foreseeable.
“(c) STANDARD AND KNOWLEDGE REQUIREMENT.—

“(1) STANDARD.—For purposes of this section, trading while aware of material, nonpublic information under subsection (a) or communicating material nonpublic information under subsection (b) is wrongful only if the information has been obtained by, or its communication or use would constitute, directly or indirectly—

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

“(B) a violation of any Federal law protecting computer data or the intellectual property or privacy of computer users;

“(C) conversion, misappropriation, or other unauthorized and deceptive taking of such information; or

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

“(2) KNOWLEDGE REQUIREMENT.—It shall not be necessary that the person trading while aware of such information (as proscribed by subsection (a)), or making the communication (as proscribed by sub-
section (b)), knows the specific means by which the
information was obtained or communicated, or
whether any personal benefit was paid or promised
by or to any person in the chain of communication,
so long as the person trading while aware of such in-
formation or making the communication, as the case
may be, was aware, consciously avoided being aware,
or recklessly disregarded that such information was
wrongfully obtained, improperly used, or wrongfully
communicated.

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

“(e) Affirmative Defenses.—

“(1) In General.—The Commission may, by
rule or by order, exempt any person, security, or
transaction, or any class of persons, securities, or
transactions, from any or all of the provisions of this
section, upon such terms and conditions as it con-
siders necessary or appropriate in furtherance of the
purposes of this title.
“(2) DIRECTED TRADING.—The prohibitions of this section shall not apply to any person who acts at the specific direction of, and solely for the account of another person whose own securities trading, or communications of material, nonpublic information, would be lawful under this section.

“(3) RULE 10B-5-1 COMPLIANT TRANSACTIONS.—The prohibitions of this section shall not apply to any transaction that satisfies the requirements of Rule 10b-5-1 (17 C.F.R. 240.10b5-1), or any successor regulation.

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

(b) COMMISSION REVIEW OF RULE 10B-5-1.—Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission shall review Rule 10b-5-1 (17 C.F.R. 240.10b5-1) and make any modifications the Securities and Exchange Commission determines necessary or appropriate because of the amendment to the Securities Exchange Act of 1934 made by this Act.
(c) CONFORMING AMENDMENTS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is further amended—

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

(2) in section 21A—

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

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

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

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