

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO
H.R. _____
OFFERED BY MR. HIMES OF CONNECTICUT

Strike all after the enacting clause and insert the following:

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 IN POSSESSION OF MATERIAL, NONPUBLIC IN-
11 FORMATION.—It shall be unlawful for any person, directly
12 or indirectly, to purchase, sell, or enter into, or cause the
13 purchase or sale of or entry into, any security, security-
14 based swap, or security-based swap agreement, while in
15 possession of material, nonpublic information relating to
16 such security, security-based swap, or security-based swap
17 agreement, or relating to the market for such security, se-
18 curity-based swap, or security-based swap agreement, if

1 such person knows, or recklessly disregards, that such in-
2 formation has been obtained wrongfully, or that such pur-
3 chase or sale would constitute a wrongful use of such in-
4 formation.

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

16 “(1) the other person—

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

22 “(B) communicates the information to an-
23 other person who makes or causes such a pur-
24 chase, sale, or entry while in possession of such
25 information; and

1 “(2) such a purchase, sale, or entry while in
2 possession of such information is reasonably foresee-
3 able.

4 “(c) STANDARD AND KNOWLEDGE REQUIREMENT.—

5 “(1) STANDARD.—For purposes of this section,
6 trading while in possession of material, nonpublic in-
7 formation under subsection (a) or communicating
8 material nonpublic information under subsection (b)
9 is wrongful only if the information has been obtained
10 by, or its communication or use would constitute, di-
11 rectly or indirectly—

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

14 “(B) a violation of any Federal law pro-
15 tecting computer data or the intellectual prop-
16 erty or privacy of computer users;

17 “(C) conversion, misappropriation, or other
18 unauthorized and deceptive taking of such in-
19 formation; or

20 “(D) a breach of any fiduciary duty, a
21 breach of a confidentiality agreement, a breach
22 of contract, or a breach of any other personal
23 or other relationship of trust and confidence.

24 “(2) KNOWLEDGE REQUIREMENT.—It shall not
25 be necessary that the person trading while in posses-

1 sion of such information (as proscribed by sub-
2 section (a)), or making the communication (as pro-
3 scribed by subsection (b)), knows the specific means
4 by which the information was obtained or commu-
5 nicated, or whether any personal benefit was paid or
6 promised by or to any person in the chain of com-
7 munication, so long as the person trading while in
8 possession of such information or making the com-
9 munication, as the case may be, was aware, con-
10 sciously avoided being aware, or recklessly dis-
11 regarded that such information was wrongfully ob-
12 tained or communicated.

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

20 “(e) EXEMPTED TRANSACTIONS.—

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

1 siders necessary or appropriate, if the Commission
2 determines that such action is not inconsistent with
3 the purposes of this section. The prohibitions of this
4 section shall not apply to any person who acts at the
5 specific direction of, and solely for the account of, a
6 person whose own securities trading, or communica-
7 tions of material, nonpublic information, would be
8 lawful under this section.

9 “(2) AUTOMATIC TRADING.—

10 “(A) IN GENERAL.—Not later than 180
11 days after the date of the enactment of this sec-
12 tion, the Commission shall determine if any
13 automatic trading transactions should be ex-
14 empted from any of the provisions of this sec-
15 tion and shall make such determination avail-
16 able to the public, including on the website of
17 the Commission.

18 “(B) INTERIM APPLICATION.—During the
19 period between the date of the enactment of
20 this section and the date on which the Commis-
21 sion makes a determination pursuant to sub-
22 paragraph (A), automatic trading transactions
23 shall be exempted from the provisions of this
24 section.

1 “(C) AUTOMATIC TRADING TRANSACTION
2 DEFINED.—For the purposes of this paragraph,
3 the term ‘automatic trading transaction’ means
4 any purchase or sale of a security, security-
5 based swap, or security-based swap agreement
6 that—

7 “(i) occurs automatically; or

8 “(ii) is made pursuant to an advance
9 election.”.

10 (b) CONFORMING AMENDMENTS.—The Securities
11 Exchange Act of 1934 (15 U.S.C. 78a et seq.) is further
12 amended—

13 (1) in section 21(d)(2), by inserting “, section
14 16A of this title” after “section 10(b) of this title,”;

15 (2) in section 21A—

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

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

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

