

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. _____
OFFERED BY MR. GREEN OF TEXAS

Strike all after the enacting clause and insert the following:

1 **SECTION 1. PROHIBITION ON TRADING AHEAD BY MARKET**
2 **MAKERS.**

3 (a) IN GENERAL.—Section 15 of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78o) is amended by adding
5 at the end the following:

6 “(p) PROHIBITION ON TRADING AHEAD BY MARKET
7 MAKERS.—

8 “(1) IN GENERAL.—With respect to a person
9 acting in the capacity of a market maker, if the per-
10 son accepts an order with respect to a security from
11 a customer, including a broker or dealer—

12 “(A) the market maker has a duty of trust
13 and loyalty to the customer arising from the re-
14 ceipt of such order; and

15 “(B) the information in such order is ma-
16 terial, non-public information that may be used
17 only in furtherance of executing such cus-
18 tomer’s order.

1 “(2) ANNUAL CEO CERTIFICATION.—The Chief
2 Executive Officer of each person that acts in the ca-
3 pacity of a market maker shall issue an annual cer-
4 tification to the Commission, in such form and man-
5 ner as the Commission may prescribe by rule, that
6 certifies that—

7 “(A) the person has performed reasonable
8 due diligence during the reporting period to en-
9 sure that the person has not violated the duty
10 of trust and loyalty described under paragraph
11 (1)(A) or used the information described under
12 paragraph (1)(B) in a prohibited fashion; and

13 “(B) the person has not violated the duty
14 of trust and loyalty described under paragraph
15 (1)(A) or used the information described under
16 paragraph (1)(B) in a prohibited fashion during
17 the reporting period.

18 “(3) PERSONAL LIABILITY.—

19 “(A) FINE FOR INDIVIDUAL VIOLA-
20 TIONS.—Any associated person of a market
21 maker who knowingly and willfully causes the
22 market maker to violate the duty of trust and
23 loyalty described under paragraph (1)(A) or use
24 the information described under paragraph
25 (1)(B) in a prohibited fashion (or who directs

1 another agent or associated person of the mar-
2 ket maker to commit such a violation or prohib-
3 ited use or engage in such acts that result in
4 the associated person being personally unjustly
5 enriched) shall be fined in an amount equal to
6 the greater of—

7 “(i) two times the amount of profit
8 realized by reason of such violation or pro-
9 hibited use; or

10 “(ii) \$50,000.

11 “(B) COURSE OF CONDUCT.—Any associ-
12 ated person of a market maker who knowingly
13 and willfully causes the market maker to en-
14 gage in a course of conduct of knowingly and
15 willfully violating the duty of trust and loyalty
16 described under paragraph (1)(A) or using the
17 information described under paragraph (1)(B)
18 in a prohibited fashion (or who directs another
19 agent or associated person of the market maker
20 to commit such a violation or prohibited use or
21 engage in such acts that result in the associated
22 person being personally unjustly enriched) shall
23 be—

24 “(i) fined in an amount not to exceed
25 200 percent of the compensation (including

1 stock options awarded as compensation)
2 received by such associated person from
3 the market maker—

4 “(I) during the time period in
5 which the violations or prohibited uses
6 occurred; or

7 “(II) in the one to three year
8 time period preceding the date on
9 which the violations or prohibited uses
10 were discovered; and

11 “(ii) imprisoned for not more than 5
12 years.

13 “(C) ASSOCIATED PERSON DEFINED.—The
14 term ‘associated person’ means an associated
15 person of a broker or dealer.

16 “(4) RULEMAKING.—Not later than the end of
17 the 90-day period beginning on the date of enact-
18 ment of this subsection, the Commission—

19 “(A) shall issue rules to carry out this sub-
20 section; and

21 “(B) may provide exemptions from the re-
22 quirements of this subsection, by rule, if the
23 Commission determines that such exemptions
24 would promote market integrity and are nec-

1 essary or appropriate in the public interest or
2 for the protection of investors.”.

3 (b) SENSE OF CONGRESS.—It is the sense of the
4 Congress that the prohibitions added by this section
5 should complement, and not replace, existing rules of self-
6 regulatory organizations applicable to their members, in-
7 cluding brokers and dealers.

8 (c) EFFECTIVE DATE.—Section 15(p) of the Securi-
9 ties Exchange Act of 1934, as added by subsection (a),
10 shall take effect after the end of the 180-day period begin-
11 ning on the date of enactment of this Act.

