

AMENDMENT TO THE RULES COMMITTEE PRINT

117-54

OFFERED BY MR. GREEN OF TEXAS

Add at the end of title LIV of division E the following:

1 SEC. 5403. 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 paragraph (1) (or who
23 directs another agent or associated person of
24 the market maker to commit such a violation or
25 engage in such acts that result in the associated

1 person being personally unjustly enriched) shall
2 be fined in an amount equal to the greater of—

3 “(i) two times the amount of profit
4 realized by reason of such violation; or

5 “(ii) \$50,000.

6 “(B) COURSE OF CONDUCT.—Any associ-
7 ated person of a market maker who knowingly
8 and willfully causes the market maker to en-
9 gage in a course of conduct of knowingly and
10 willfully violating paragraph (1) (or who directs
11 another agent or associated person of the mar-
12 ket maker to commit such a violation or engage
13 in such acts that result in the associated person
14 being personally unjustly enriched) shall be—

15 “(i) fined in an amount not to exceed
16 200 percent of the compensation (including
17 stock options awarded as compensation)
18 received by such associated person from
19 the market maker—

20 “(I) during the time period in
21 which the violations occurred; or

22 “(II) in the one- to three-year
23 time period preceding the date on
24 which the violations were discovered;
25 and

1 “(ii) imprisoned for not more than 5
2 years.

3 “(C) ASSOCIATED PERSON DEFINED.—The
4 term ‘associated person’ means an associated
5 person of a broker or dealer.

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

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

11 “(B) may provide exemptions from the re-
12 quirements of this subsection, by rule, if the
13 Commission determines that such exemptions
14 would promote market integrity and are nec-
15 essary or appropriate in the public interest or
16 for the protection of investors.”.

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

22 (c) EFFECTIVE DATE.—Section 15(p) of the Securi-
23 ties Exchange Act of 1934, as added by subsection (a),

1 shall take effect after the end of the 180-day period begin-
2 ning on the date of enactment of this Act.

