

AMENDMENT TO THE RULES COMMITTEE PRINT

117-54

OFFERED BY MR. HIMES OF CONNECTICUT

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

1 SEC. 5403. 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

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

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

6 “(B) the purchase, sale, or entry would
7 constitute wrongful trading on the information
8 described in paragraph (1).

9 “(b) PROHIBITION AGAINST THE WRONGFUL COM-
10 MUNICATION OF CERTAIN MATERIAL, NONPUBLIC INFOR-
11 MATION.—It shall be unlawful for any person, the pur-
12 chase or sale of a security or security-based swap (or entry
13 into a security-based swap agreement) by which would vio-
14 late subsection (a), to wrongfully communicate material,
15 nonpublic information relating to that security, security-
16 based swap, or security-based swap agreement to any
17 other person, if—

18 “(1) the person communicating the information,
19 at the time the person communicates the informa-
20 tion, is aware (including if the person consciously
21 avoids being aware), or recklessly disregards, that
22 such communication would result in such a pur-
23 chase, sale, or entry; and

24 “(2) any recipient of the wrongfully commu-
25 nicated information purchases, sells, or causes the

1 purchase or sale of any security or security-based
2 swap, or enters into (or causes the entry into) any
3 security-based swap agreement, based on that com-
4 munication.

5 “(c) STANDARD AND KNOWLEDGE REQUIREMENT.—

6 “(1) STANDARD.—For purposes of this section,
7 trading while aware of material, nonpublic informa-
8 tion under subsection (a), or communicating mate-
9 rial, nonpublic information under subsection (b), is
10 wrongful only if the information has been obtained
11 by, or the communication or trading on the informa-
12 tion would constitute, directly or indirectly—

13 “(A) theft, conversion, bribery, misrepre-
14 sentation, espionage (through electronic or
15 other means), or other unauthorized access of
16 the information;

17 “(B) a violation of any Federal law pro-
18 tecting—

19 “(i) computer data; or

20 “(ii) the intellectual property or pri-
21 vacy of computer users;

22 “(C) misappropriation from a source of the
23 information; or

1 “(D) a breach of any fiduciary duty to
2 shareholders of an issuer for a direct or indirect
3 personal benefit, including—

4 “(i) an existing or future pecuniary
5 gain or reputational benefit; or

6 “(ii) a gift of confidential information
7 to a relative or friend.

8 “(2) KNOWLEDGE REQUIREMENT.—It shall not
9 be necessary that a person trading while aware of
10 information in violation of subsection (a), or making
11 a communication in violation of subsection (b),
12 knows the specific means by which the information
13 was obtained or communicated or traded on, or the
14 specific benefit described in paragraph (1)(D) that
15 was received, paid, or promised by or to any person
16 in the chain of communication, if the person trading
17 while aware of the information or making the com-
18 munication, as applicable, at the time the person
19 makes the trade or communicates the information, is
20 aware (including if the person consciously avoids
21 being aware), or recklessly disregards, that the in-
22 formation was wrongfully obtained, wrongfully trad-
23 ed on, or wrongfully communicated.

24 “(d) AFFIRMATIVE DEFENSES.—

1 “(1) IN GENERAL.—The Commission may, by
2 rule or by order, exempt any person, security, or
3 transaction, or any class of persons, securities, or
4 transactions, from any or all of the provisions of this
5 section, upon such terms and conditions as the Com-
6 mission considers necessary or appropriate in fur-
7 therance of the purposes of this title.

8 “(2) RULE 10B5-1 COMPLIANT TRANS-
9 ACTIONS.—The prohibitions of this section shall not
10 apply to any transaction that satisfies the require-
11 ments of section 240.10b5-1 of title 17, Code of
12 Federal Regulations, or any successor regulation.

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

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

22 “(2) communicate material, nonpublic informa-
23 tion relating to a security, security-based swap, or
24 security-based swap agreement.”.

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

4 (1) in section 3(a)(78)(A) (15 U.S.C.
5 78c(a)(78)(A)), by inserting “16A,” after “16,”;

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

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

11 (A) in subsection (g)(1), by striking “sec-
12 tion 10(b) and Rule 10b–5 thereunder” and in-
13 serting “section 10(b), Rule 10b–5 thereunder,
14 and section 16A”; and

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

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

