117th CONGRESS
2d Session

S.

To amend the Securities Exchange Act of 1934 to prohibit certain securities trading and related communications by those who possess material, nonpublic information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Reed (for himself and Mr. Menendez) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Securities Exchange Act of 1934 to prohibit certain securities trading and related communications by those who possess material, nonpublic information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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 (15 U.S.C. 78p) the following:

“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 if that person, at the time the person takes such an action—

“(1) has access to information relating to such security, security-based swap, or security-based swap agreement that is material and nonpublic and is aware (including if the person consciously avoids being aware), or recklessly disregards, that such information is material and nonpublic; and

“(2) is aware (including if the person consciously avoids being aware), or recklessly disregards, that—

“(A) the information described in paragraph (1) has been obtained wrongfully; or

“(B) the purchase, sale, or entry would constitute wrongful trading on the information described in paragraph (1).
“(b) Prohibition Against the Wrongful Communication of Certain Material, Nonpublic Information.—It shall be unlawful for any person, the purchase or sale of a security or security-based swap (or entry into a security-based swap agreement) by which would violate subsection (a), to wrongfully communicate material, nonpublic information relating to that security, security-based swap, or security-based swap agreement to any other person, if—

“(1) the person communicating the information, at the time the person communicates the information, is aware (including if the person consciously avoids being aware), or recklessly disregards, that such communication would result in such a purchase, sale, or entry; and

“(2) any recipient of the wrongfully communicated information 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, based on that communication.

“(c) Standard and Knowledge Requirement.—

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

“(A) theft, conversion, bribery, misrepresentation, espionage (through electronic or other means), or other unauthorized access of the information;

“(B) a violation of any Federal law protecting—

“(i) computer data; or

“(ii) the intellectual property or privacy of computer users;

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

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

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

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

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

“(d) 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 the Com-
mission considers necessary or appropriate in fur-
therance of the purposes of this title.

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

“(e) RULE OF CONSTRUCTION.—The rights and remedies provided by this section shall be in addition to any and all other rights and remedies that may exist at law or in equity (without regard to whether such a right or remedy is provided under this Act) with respect to an action by a person to—

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

“(2) communicate material, nonpublic information relating to a security, security-based swap, or security-based swap agreement.”.


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

(3) in section 21A (15 U.S.C. 78u–1)—
(A) in subsection (g)(1), by striking “section 10(b) and Rule 10b–5 thereunder” and inserting “section 10(b), Rule 10b–5 thereunder, and section 16A”; and

(B) in subsection (h)(1), by striking “section 10(b), and Rule 10b–5 thereunder” and inserting “section 10(b), Rule 10b–5 thereunder, and section 16A”; and

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

(1)