

## Himes Introduces Bipartisan Bill to Define and Prohibit Illegal Insider Trading

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WASHINGTON, DC—Congressman Jim Himes (CT-4), a member of the House Financial Services Committee, introduced bipartisan legislation today to establish an explicit statutory ban on insider trading. The *Insider Trading Prohibition Act* makes it a federal crime to trade a security based on material, nonpublic information that was wrongfully obtained, ending decades of ambiguity for a crime that has never been clearly defined by law. Reps. Steve Womack (R-AR), Carolyn Maloney (D-NY) and Emanuel Cleaver (D-MO) are the lead cosponsors of the legislation.

The fairness, integrity and safety of America's financial markets are severely weakened when corporate insiders and others who wrongfully obtain inside information misuse it, profiting at the expense of other investors and the market as a whole. The lack of a federal insider trading law has forced the Securities and Exchange Commission (SEC) and Department of Justice (DOJ) to rely on general anti-fraud statutes and decades of case law subject to interpretation by individual judges.

"The absence of a clear statutory prohibition on insider trading has left us with an amorphous body of case law instead of bright lines around what's legal and what isn't," **Himes said**. "This haziness opens the door to letting wrongdoers walk free, and provides uncertainty to those who are genuinely trying to operate within the bounds of the law. This isn't a partisan issue - no one should profit from illegally obtained information. The need for a clear definition of insider trading is particularly important in an era in which complex trades and information literally move at the speed of light. This legislation explicitly defines insider trading and will help ensure that bad actors are held accountable, protect legitimate investors and strengthen confidence and safety in our markets."

"Those who commit insider trading crimes not only cause everyday investors to lose faith in the market, but they commit theft against the companies on which they trade," **Womack said**. "This is a common-sense piece of legislation built on years of precedent in the courts, and I am proud to join my friend, Jim Himes, in this effort."

"This bill fills a critical hole in insider trading law, and provides a clear, consistent definition of insider trading that will improve the fairness and integrity of the markets. Confidence is a critical ingredient of effective and efficient markets, and this bill will provide ordinary investors with the confidence they need to invest in our markets. I applaud Congressman Himes for his tremendous leadership on this issue," **said Maloney, Ranking Member of the Capital Markets and Government Sponsored Enterprises Subcommittee of the House Financial Services Committee**.

The development of the law over time on a case-by-case basis has resulted in legal standards that have become ambiguous and problematic. Most recently, in *United States v. Newman*, the U.S. Court of Appeals for the Second Circuit reversed the 2013 insider trading convictions of two hedge fund managers who traded on inside information because the government could not prove that the information was passed along by someone who received a personal benefit for doing so.

It is past time for Congress to provide direction in this area, as there exists a fundamental disadvantage in prosecuting a crime that has never been properly defined. The *Insider Trading Prohibition Act* establishes a statutory prohibition on insider trading, codifying and clarifying the overarching principles on insider trading set forth by courts, the SEC and the DOJ, while eliminating the ambiguities that have existed in the case-by-case evolution of the law in this area.

“Insider trading is a chronic problem that hurts our nation’s investors by undercutting the fairness, integrity and safety of the financial markets,” **said Congresswoman Maxine Waters (D-CA), Ranking Member of the House Financial Services Committee.** “I commend Congressman Himes and other Democrats on the Committee for crafting legislative proposals to preserve and enhance investor protections following several problematic court decisions. Importantly, these proposals seek to protect our workers, families and seniors who are increasingly relying on investments in retirement.”

“In my judgment, Congressman Himes has performed a real service in producing a draft bill to codify the prohibition on insider trading in a manner that is tough, effective and fair,” **said John C. Coffee Jr., a professor and expert in securities law at Columbia Law School.** “It closes the loophole created by the Newman decision, updates the law to cover computer hacking and other newer forms of misappropriation, but does not overcriminalize. Unlike some other bills, it allows security analysts and investment advisers to plan their affairs so that they do not unknowingly violate a criminal statute that has very shadowy edges. His draft is proof that a law can be written that is both tough and fair.”

### ***The Insider Trading Prohibition Act:***

- Makes it unlawful for a person to trade on material, nonpublic information when the information was wrongfully obtained, or when the use of such information to make a trade would be deemed wrongful;
- Makes it unlawful for a person who wrongfully obtains material, nonpublic information to communicate that “tip” to another person when it is reasonably foreseeable that the person is likely to trade on that information;
  - The bill defines “wrongful” as information that has been obtained through “theft, bribery, misrepresentation or espionage, a violation of any federal law protecting computer data or the intellectual property or privacy of computer users, conversion, misappropriation or other unauthorized and deceptive taking of such information, or a breach of any fiduciary duty or any other personal or other relationship of trust and confidence.”
- Removes the requirement outlined in Newman that a person who receives a “tip” (a “tippee”) and trades on that information have any knowledge that the “tipper” received a personal benefit, so long as the tippee was aware, or recklessly disregarded, that the information was wrongfully obtained or communicated.
- Authorizes the SEC to exempt any person or transaction from liability under this bill at the Commission’s discretion.

The text of the legislation is available [here](#).