

## [Securities Regulation Daily Wrap Up, PUBLIC COMPANY REPORTING AND DISCLOSURE—House and Senate bills target insider trading and Form 8-K timing, \(Sept. 18, 2019\)](#)

Securities Regulation Daily Wrap Up

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Lawmakers would curb the ability of public company executives and directors to trade company stock between the time Form 8-K obligations arise and the time the form is filed or furnished.

Senator Chris Van Hollen (D-Md) and Rep. Carolyn Maloney (D-NY) have introduced bills that would ban public company executives and directors from most trading in company equity securities during the period between when a Form 8-K reporting or disclosure obligation arises and the date the company files with, or furnishes to, the SEC a Form 8-K relating to the event or disclosure. The bills expand upon the principles set forth in a [discussion draft](#) circulated by the House Financial Services Committee in April of this year.

"As we saw in the Equifax consumer data breach, big corporate executives and insiders have a clear advantage over the public when it comes to the 8-K filing," said Sen. Van Hollen in a [press release](#). "Why would we give them four full days to sell their stock before disclosing a major problem?"

**Bill mechanics.** Companies generally must file or furnish a Form 8-K within four business days of some reportable event. The 8-K Trading Gap Act of 2019 ([H.R. 4335](#); [S. 2488](#)) requires the Commission to adopt rules within one year of enactment to mandate that companies have policies, controls, and procedures reasonably designed to prohibit certain types of insider trading during this four-day period.

The trigger for the ban varies depending on the section number within Form 8-K:

- Sections 1-6 of Form 8-K—Trigger: Date a reportable event occurs.
- Sections 7-8 of Form 8-K—Trigger: Date issuer determines it will disclose an event.
- End date: In both scenarios, the end date is the date the issuer files or furnishes a Form 8-K to the SEC.

Sections 1 to 6 of Form 8-K (Items 1.01 to 6.06) deal with business and operations, financial information, securities and trading markets, matters related to accountants and financial statements, corporate governance and management, and asset-backed securities. Sections 7 and 8 (Items 7.01 and 8.01) deal with Regulation FD and other events, respectively.

**Permissible and exempted transactions.** Under both the House and Senate bills, the Commission may exempt transactions that: (1) occur automatically; (2) are made pursuant to an advance election; or (3) meet the requirements for Exchange Act Rule 10b5-1(c), although the Commission may not exempt certain written plans under Rule 10b5-1(c)(1)(i)(A)(3).

**Senate differences: investment companies and advisers.** The Senate version of the legislation would also require the Commission to exempt issuers that must have ethics codes under investment Company Act Rule 17j-1 or Investment Advisers Act Rule 204A-1. The Senate bill would further direct the Commission to exempt events listed in Sections 1-6 of Form 8-K that are announced by an issuer via a press release or other method that is "reasonably designed to provide broad, non-exclusionary distribution of the information to the public" as provided in Rule 101(e)(2) of Regulation FD.

Moreover, the Senate version of the legislation contains a rule of construction that provides that the bill would apply to sections within Form 8-K as those sections exist on the date of enactment.

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