

## [Securities Regulation Daily Wrap Up, TOP STORY—House again leads off with passage of bill targeting corporate insiders, \(Apr. 21, 2021\)](#)

Securities Regulation Daily Wrap Up

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By [Mark S. Nelson, J.D.](#)

Legislation passed by the House would curb abuse of Rule 10b5-1 trading plans, protect senior investors, and mandate SEC-CFTC cooperation on regulation of digital assets.

The House has re-sent bills on corporate insider trading and senior citizen investors to the Senate. Both bills had passed with large majorities in the last Congress and continue a recent trend of congressional interest in senior investors and curbing insider trading that can occur in Rule 10b5-1 plans, although in the latter case without tackling the larger question of how to define insider trading under federal law. A third bill would push the SEC and the CFTC to work together to solve jurisdictional problems that have resulted in a bifurcated approach by the two financial markets overseers to the regulation of digital assets. The three securities bills were bundled with numerous other bills subject to a vote under a suspension of the rules that were passed en bloc by a vote of [355-69](#).

**Insiders.** The Promoting Transparent Standards for Corporate Insiders Act ([H.R. 1528](#)), sponsored by House Financial Services Committee Chair Maxine Waters (D-Calif), passed the House with ease for the second time. The bill was previously introduced and passed the House in the last Congress by a vote of [413-3](#).

The bill would require the SEC to study the misuse of Rule 10b5-1 trading plans by corporate executives. Specifically, the bill would have SEC staff review numerous aspects of trading plans, including limits on the use of multiple trading plans, a mandated delay between adoption of a trading plan and the execution of the first trade under the plan, and to require greater board oversight of trading plans. The SEC would have to issue a report within one year after enactment. The Commission would then be required to amend applicable regulations to implement recommendations set forth in the report.

The impetus for earlier version of the bill arose from allegations that Intel's CEO used Rule 10b5-1 trading plans to shield profits at a time when the security of Intel microprocessor chips had come under scrutiny (See, e.g., the [January 2018 letter](#) from Senate Banking Committee Members Jack Reed (D-RI) and John Kennedy (R-La) calling for SEC and Department of Justice investigations).

During House debate, Democratic floor manager Rep. Ed Perlmutter (D-Colo), emphasized the ways in which executives may be using Rule 10b5-1 plans to shield insider trading. He cited examples from the COVID-19 pandemic that may appear to be similar to the Intel episode from several years ago. Said Rep. Perlmutter, "For instance, shortly after Moderna announced positive results for its vaccine, the pharmaceutical company's CEO altered his trading plan to increase the number of shares sold through the plan. Shortly thereafter, he sold shares for millions of dollars in profit." Perlmutter added: "Similarly, on the same day Pfizer announced positive data regarding its vaccine, Pfizer's CEO sold more than \$5 million worth of shares as part of his trading plan."

House FSC Ranking Member McHenry emphasized the balanced nature of the bill: "It protects retail investors in the market from illicit insider trading while, at the same time, ensuring that the rules governing insider trading are clear, fair, and not prohibitively onerous."

**Senior investors.** The National Senior Investor Initiative (Senior Security) Act of 2021 ([H.R. 1565](#)), sponsored by Rep. Josh Gottheimer (D-NJ), was once again easily passed by the full House. The bill had passed the House in the last Congress by a vote of [392-20](#). In the Senate, Sens. Kyrsten Sinema (D-Ariz) and Susan Collins (R-Maine) are [sponsoring](#) companion legislation.

The Senior Security Act would create within the SEC a Senior Investor Task Force that would identify financial issues affecting seniors and make recommendations to amend regulations to better protect senior citizen investors, who would be defined as persons over the age of 65 years. The task force would have to issue a report to Congress every two years until the sunset of the task force 10 years after enactment. The Government Accountability Office also would have to study the financial exploitation of seniors and issue a report within two years of enactment.

The [North American Securities Administrators Association](#) and the [Securities Industry and Financial Markets Association](#) have both expressed support for the Senior Security Act.

Representative Ayanna Pressley (D-Mass) told members from the floor that seniors are "disproportionately vulnerable to investment-related frauds," leading a debate laden with statistics about fraud committed against seniors. Pressley cited data from 2017 showing that 2,100 state civil and criminal enforcement actions netted \$486 million in restitution and \$79 million in fines and/or penalties.

Likewise, Ranking Member McHenry said that, in the U.S., persons aged 50 or older account for 77 percent of financial assets, seniors lose \$36 billion annually from scams, and that one in five seniors are victims of financial fraud. McHenry also worried that the COVID-19 pandemic could accelerate these trends.

Representative Gottheimer, the bill's sponsor, added that only one in 24 cases of senior financial abuse are reported to enforcement authorities. The bill's cosponsor, Rep. Trey Hollingsworth (R-Ind), described one of the many scams perpetrated against seniors: "It [the bill] is for the 74-year-old Hoosier walking through our Jeffersonville office who has lost her life savings because she thought she was interfacing with the IRS."

**Digital assets.** The Eliminate Barriers to Innovation Act of 2021 ([H.R. 1602](#)), sponsored by Ranking Member McHenry, easily passed the House. The bill would direct the SEC and the CFTC to jointly establish the SEC and CFTC Working Group on Digital Assets (Working Group) within 90 days of enactment. Previously, Rep. McHenry had introduced a bill that would have required the SEC, CFTC, and federal banking regulators to create Financial Services Innovation Offices within their agencies that would have authority to conduct regulatory sandboxes via enforceable compliance agreements that would modify or waive regulatory or statutory requirements under agency's purview (See, [H.R. 4767](#) in the 116th congress).

The Working Group would have an equal number of SEC and CFTC employees appointed by each agency plus an equal number of non-government members who are to be drawn from a spectrum of fintech interests, including at least one member each from: (1) fintech companies that provide products or services related to digital assets; (2) financial firms overseen by the SEC or the CFTC; (3) academic and other research institutions that research or advocate regarding digital assets; (4) small businesses involved in fintech; (5) investor protection organizations; and (6) organizations that support historically underserved businesses. The phrase "historically-underserved businesses" would include women- and minority-owned businesses and rural businesses. The number of non-government members of the Working Group, however, may not be greater than or equal to the number of government members appointed by the SEC and CFTC; thus, assuming that at a minimum each of the six nongovernment seats is filled, the government seats would likely number at least eight in order to satisfy the equal number requirement, so the full Working Group could have a total of at least 14 members.

The Working Group would have to report on its work within one year of enactment to the relevant Congressional committees and to the SEC and the CFTC. The Working Group would sunset one year after enactment, although the chairs of the SEC and CFTC could extend the Working Group for one year, with a second report to be issued if the Working Group is extended.

The Working Group bill, if enacted, could provide a forum for the creation of recommendations to significantly update and revise existing SEC guidance on digital assets. At present, the SEC's guidance is contained in numerous staff statements, implied from enforcement actions and related court decisions or SEC administrative orders, and from correspondence between SEC staff and companies who propose to offer securities via registered or exempt offerings. Newly sworn-in SEC Chair Gary Gensler comes to the agency with a substantial

background in digital assets and is widely expected to move forward with a revamp of SEC policy at least for the purpose of providing additional clarity on the status of digital assets under federal securities laws.

Representative Perlmutter, the Democratic floor manager for the bill, characterized digital assets as a "fast-growing but poorly understood area of finance." He added that the COVID-19 pandemic's severe economic impact may have drawn some Americans into risky digital asset markets where there may be inadequate disclosure regimes to protect investors. Ranking Member McHenry said that existing securities and commodities regulations do not entirely describe the true nature of digital assets; he also lamented that the U.S. lacks a "permissive" regulatory framework for digital assets and that digital assets constitute one of the few financial technologies where the U.S. is a laggard versus the rest of the world.

Ranking Member McHenry's remarks implicitly reference long-running debates about the interactions between the SEC and the CFTC which, at one time, resulted in the Shad-Johnson Accord's division of the agencies' responsibilities for different markets. Lawmakers have even made several unsuccessful attempts to combine the two agencies, but turf battles related to Congressional oversight of the agencies often get in the way of restructuring them. With respect to digital assets, both agencies retain their separate regulatory authorities, but they have been involved in some of the same enforcement cases by bringing parallel civil charges. The agencies also have established their separate fintech focus groups, the SEC's being housed in its Strategic Hub for Innovation and Financial Technology ([FinHub](#)) and the CFTC's similar functionality being housed in its [LabCFTC](#).

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