

House Overwhelmingly Passes Bill to Address 8-K Trading Gap

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On January 14, 2020, the U.S. House of Representatives passed HR 4335, the “8-K Trading Gap Act of 2019” (the “Act”) by a bipartisan vote of 384 to 7. The Act is designed to stop company insiders from trading during the 8-K trading gap, as described below. While many companies have insider trading policies in place which would already prevent such trades, a 2015 Columbia Law School paper found that insiders are more likely to engage in open market purchases of their own company’s stock when the firm is about to reveal new agreements with customers and suppliers, and that, when engaging in such purchases, insiders are correct about the directional impact of the 8-K filing more often than not.

The Act would require the SEC to adopt rules, within one year of the Act’s enactment, to require all SEC reporting companies to establish and maintain policies, controls and procedures reasonably designed to prevent their executive officers and directors from trading in or otherwise transferring the company’s securities during the 8-K trading gap, that is, between the occurrence of the event triggering the Form 8-K filing and the filing itself. For Section 7 (Regulation FD) furnished disclosures and Section 8 (Other Events) filings, the prohibition on trading would apply from the date the company determines it would disclose the event on Form 8-K. The Act gives the SEC authority to exempt certain transactions, including transactions under a 10b5-1 plan which was adopted outside of an 8-K trading gap.

The Act will now pass to the Senate, where it appears likely to pass, although the timing of passage is uncertain.

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