



Stop Trading on Congressional Knowledge Act of 2012: The STOCK Act

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Last week the Senate passed S.2038, the "**Stop Trading on Congressional Knowledge Act of 2012,**" or the "**STOCK Act.**" As discussed below, the Senate bill amends the Lobbying Disclosure Act (LDA) to significantly expand the universe of persons and entities that must register and report under the LDA. While these provisions would most directly impact financial service providers, they could also have significant LDA registration and reporting implications on other entities.

A House version of the bill that passed overwhelmingly February 9, 2012, removed Senate provisions that would require registration by persons who merely obtain information from government officials for the purpose of informing investment decisions. It remains to be seen how this conflict will be addressed during conference.

Description of the Senate Bill's LDA Amendments

Currently, the LDA requires registration and reporting by persons who make more than one "lobbying contact" and whose "lobbying activities" constitute more than 20% of their time during a reporting period. The term "lobbying contact" is defined as a communication to certain officials with regard to legislation, rules, or the administration of a federal program.

The Senate version of S. 2038 would create a new class of persons who must register and report under the LDA to be known as "political intelligence consultants." "Political intelligence consultant" is defined as a person who is employed or retained "for services that include one or more political intelligence contacts," which is a communication to certain government officials "the information derived from which is intended for use in analyzing securities or commodities markets, or in informing investment decisions."

These definitions are very broad. Unlike the LDA's definition of a traditional lobbyist, there is no applicable time threshold that must be surpassed to become a "political intelligence consultant," and only a single contact triggers the registration threshold. Further, the existing LDA definition of the term "lobbying contact" contains numerous exceptions. For example, one exception applies to an "administrative request," if the request does not include an "attempt to influence" a covered official. However, the definition of "political intelligence contact" has only one exception. Thus, simple status requests and similar administrative requests intended to be used for informing investment decisions would be "political intelligence contacts" that would trigger the registration and reporting requirements.

Impact of the Senate Bill's LDA Amendments

The Senate's proposed amendments to the LDA are aimed most directly at financial service providers and their researchers and analysts who have been perceived as harvesting information, sometimes confidential information, from covered officials for use in making investment decisions. Those persons generally are not currently required to register. Thus, the most immediate impact of the amendment would be on companies in the financial services sector which would need to assess whether any of its financial managers, researchers, or analysts fall within the definition of "political intelligence consultant" and need to register. Employees of other companies that have similar contacts with federal officials may also need to register.

Status

As noted above, the House version of S. 2038 which passed February 9, 2012, drops all of the LDA provisions. House Republicans were concerned with the reach of the LDA amendments and their possible unintended consequences. This poses a substantial hurdle for a conference between the two chambers to produce one bill.

There are other conflicts between the House and Senate bills relating to other issues. For example, the Senate version includes a number of "public corruption prosecution improvements," including a provision designed to strengthen the provision on "honest services fraud" in the wake of recent court rulings. These provision were dropped from the House bill. Also, the House bill contains a provision that prohibits certain executive branch officials from engaging in outside employment negotiations unless the employee, within three days, files a statement with their supervising ethics office regarding the communications. Such officials would also be required to recuse themselves from matters involving a potential employer whenever there is a conflict of interest or the appearance thereof.

President Obama has expressed support for a law restricting "insider trading" by Members of Congress, and therefore appears likely to sign any bill set before him. Please do not hesitate to contact us regarding how this legislation would impact your organization.