

Policy Alert

Political Intelligence Gathering May Require LDA Registration

February 7, 2012

On February 2, 2012, the U.S. Senate passed the Stop Trading on Congressional Knowledge Act (the “STOCK Act”) to prohibit members of Congress and congressional employees from using nonpublic information for personal benefit. While the bill’s insider trading provisions have been discussed at length, an amendment to the bill requires individuals and entities in the financial services and securities industries to register under the Lobbying Disclosure Act (LDA).

The STOCK Act creates a new category of individuals and entities that must register and report their activities to the Secretary of the Senate and the Clerk of the House. Under existing law, organizations must register and report their activities under the LDA when at least one of their employees makes more than one lobbying contact **and** spends at least 20 percent or more of his or her time in a calendar quarter on lobbying activities. If the STOCK Act becomes law, an employee who makes just one contact with a covered legislative or executive branch official to gather information that will be used in “analyzing securities or commodities markets or in informing investment decisions” will have to register as a political intelligence consultant—even if the employee otherwise makes no attempt to influence the public decision-making process or if the employee spends less than 20 percent of his or her time on such activities. Once registered, the organization and the political intelligence consultants will be required to file periodic reports disclosing their activities, contacts and issues, as well as their political contributions, in the same way that federally registered organizations and lobbyists must.

The Senate bill does not define many key terms. For example, there is no definition of what it means to “analyze securities or commodities markets.” Nor is there guidance on how to determine whether the information will “inform investment decisions.” Unfortunately, at present, there is very little to be gleaned from the legislative debate regarding how broadly these provisions will be interpreted or how these provisions will be practically applied for compliance purposes.

For corporations, hedge funds, private equity funds and investment advisers, these changes are significant. Information gathering without an intent to influence has previously not required registration and disclosure under the LDA. The STOCK Act, however, will require registration when an employee calls a congressional staffer to determine the status on a bill impacting a particular industry, if that information is subsequently to be used for market analysis **or** for investment decisions—including whether or not the employee’s company proceeds with a merger or acquisition.

The version introduced in the U.S. House of Representatives has similar provisions requiring political intelligence consultants to register under the LDA. We are continuing to monitor the STOCK Act’s progress.



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