

# "Political Intelligence" Activities and the STOCK Act

February 6, 2012

On February 2, 2012, the Senate, by a 96 to 3 vote, passed *S. 2038* - The Stop Trading on Congressional Knowledge (STOCK) Act of 2012 - "To prohibit members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes." As passed, *S. 2038* includes an amendment offered by Senator Charles Grassley (R-IA) which re-instated into the bill a detailed regulatory scheme requiring the registration of **"political intelligence consultants"** - *and their employers* - and the disclosure of **"political intelligence activities"** (that is, all activities in support of **"political intelligence contacts"**) under the Lobbying Disclosure Act (LDA).

The "political intelligence" provisions of *S. 2038* reach individuals ("political intelligence consultants") and firms who, on behalf of a client, engage in "political intelligence contacts" by obtaining information - in any form and through any medium - from Executive branch or Legislative branch officials "for use in analyzing securities or commodities markets, or in informing investment decisions."

The scope of the term "political intelligence contact" is potentially extremely broad. Although some of the public discussion surrounding the STOCK Act suggests that covered "political intelligence contacts" were intended to be limited to contacts to or from hedge fund representatives, there is nothing in the language of the legislation itself - and no actual legislative history - that reflects such a limitation. Does "political intelligence contact" reach the routine activities of research analysts? Does it reach any contact the information derived from which is used to inform a corporation's decisions regarding when, where, and how to make capital investments? If the "political intelligence" regulation provisions of *S. 2038* are enacted into law,

## Authors

Robert L. Walker  
Of Counsel, Deputy General Counsel  
202.719.7585  
rlwalker@wiley.law  
Michael E. Toner  
Partner  
202.719.7545  
mtoner@wiley.law  
D. Mark Renaud  
Partner  
202.719.7405  
mrenaud@wiley.law  
Caleb P. Burns  
Partner  
202.719.7451  
cburns@wiley.law

## Practice Areas

Election Law & Government Ethics

these are among the many important points of interpretation and application that informal guidance issued by the Secretary of the Senate and the Clerk of the House must address.

It is important to note that *S. 2038* basically grafts the new "political intelligence" provisions onto the already-existing regulatory framework of the LDA, so that, as with the provisions of the LDA covering lobbying activity, an organization with just one employee who acts as a "political intelligence consultant" only on its own behalf would be both a client and an employer of such a consultant. This organization would then be required to register with the Secretary of the Senate and the Clerk of the House and would be subject to the same disclosure requirements to which lobbyist-registrants under the LDA are currently subject, including:

- **Quarterly disclosure** (on Form LD-2) of the "issue areas" of the organizations "political intelligence activities," of the house of Congress and/or federal agencies contacted, of employees who acted as "political intelligence consultants," and of the total expenses incurred in connection with "political intelligence activities."
- **Semi-annual disclosure** (on Form LD-203) of certain contributions, including, for example, political contributions and contributions to events honoring or recognizing covered executive or legislative branch officials. These disclosures would have to be made both by individual "political intelligence consultants" and by their employing organization. Similarly, both individual "political intelligence consultants" and their employing organizations would be required to certify semi-annually that they have read and are familiar with congressional gift rules and have not knowingly made a gift in violation thereof.

If an organization - for example, a firm in the securities or financial services industries - has *multiple* clients, and the firm uses information derived from "political intelligence contacts" in analyzing securities or commodities markets, or in informing investment decisions, for these clients, then it appears the language of *S. 2038* would require the organization to file a separate registration with the Secretary of the Senate and the Clerk of the House - and to file separate quarterly disclosures - for *each* such client. Under the legislation, such an organization would be considered a **"political intelligence firm."**

The "political intelligence" provisions of *S. 2038* have a hair-trigger registration threshold. A "political intelligence consultant" is any person employed or retained for compensation for services that include *only one* (or more) "political intelligence contacts." Unlike the definition of "lobbyist" under the LDA, there is no additional requirement that the individual be engaged in "political intelligence activities" for at least 20 percent of his or time for the client in a quarterly period. Only one category of communication to or from government officials is excepted from the potential scope of "political intelligence contact": the term does not include communications made by or to a representative of the media for the purpose of "gathering and disseminating news and information to the public."

*S. 2038*, however, does provide exemptions from registration and reporting requirements for:

- an organization (whose employees engage in lobbying and political intelligence activities on its own behalf only) where total expenses in connection with lobbying activities *and* "political intelligence

activities" do not exceed or are not expected to exceed \$11,500 (subject to periodic adjustment) in the period during which registration would otherwise be required; or

- a "political intelligence firm" in connection with any client from whom income related to lobbying activities *and* "political intelligence activities" does not exceed and is not expected to exceed \$3,000 (subject to periodic adjustment) in the period during which registration would otherwise be required.

News reports indicate that, following Senate passage of *S. 2038*, the House version of the STOCK Act - *H.R. 1148* - will be acted on promptly by the House, perhaps as soon as February 8th. This House version already contains "political intelligence" provisions substantially similar to the ones in *S. 2038*. President Obama has pledged swift signing of any bill that comes to his desk. So, barring removal or amendment of the "political intelligence" provisions in a House-Senate conference, the unprecedented - and potentially far-reaching - regulation of "political intelligence activities" may soon be in place.