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SENATE PASSES DRAMATIC CHANGES TO LOBBYING DISCLOSURE ACT: SOME INTELLIGENCE ON THE "POLITICAL INTELLIGENCE" PROVISIONS OF THE STOCK ACT

Last Thursday night, by a vote of 96-3, the U.S. Senate passed the Stop Trading on Congressional Knowledge Act (the "STOCK Act"). While the bill's ban on insider trading by Congress has grabbed the headlines, the bill is of much more interest to the business community for a late amendment that added sweeping changes to federal lobbying law.

The bill first calls for the Comptroller General to submit to Congress a report that addresses, among other things, the potential benefits of imposing disclosure requirements on those who engage in "political intelligence activities." Curiously, however, it then goes on to impose substantial disclosure and registration requirements on those engaged in these activities without the benefit of such a report.

Under the Lobbying Disclosure Act ("LDA") as it now stands, an organization need not register with the Secretary of the Senate and Clerk of the House unless it employs an individual who (i) makes more than one federal "lobbying contact" for a client (the "client" could be the organization itself) <u>and</u> (ii) devotes 20% or more of his or her time for that client in a three-month period to federal lobbying activities. The STOCK Act would change that. If the Senate bill becomes law, some organizations would be required to register even if an employee makes <u>just one</u> lobbying contact and spends <u>no</u> time otherwise engaged in lobbying activities. As long as the information derived from the employee's lobbying contact "is intended for use in analyzing securities or commodities markets, or in informing investment decisions," the organization would have to register and file regular reports. Moreover, the employer and the employee -- called a "political intelligence consultant" -- would also have to file the same semiannual reports disclosing politically-related contributions that registrants and lobbyists must now file. Both the employer and the employee would also be required to certify in these reports that they have not given any gifts in violation of the House and Senate gift rules.

The effect of these changes would be quite significant for the business community. Hedge funds, private equity funds, and investment advisers (many of which are not currently registered under the LDA) might now be required either to register or to alter their business practices to avoid the need for registration. If, for example, a hedge fund calls a Congressional committee staffer to gather information about the status of a bill that relates to the fund's investment decisions, the fund may need to register. This would be so even if the fund was not otherwise engaged in lobbying. Moreover, the reach of the law, if enacted, would likely extend far beyond the financial services sector. For example, a company that seeks to gather information from covered federal officials regarding the likely congressional or regulatory reaction to a proposed merger or acquisition might be required to register.

The House is widely expected to pass a counterpart to the STOCK Act and the President has signaled a desire to enact a Congressional insider trading reform law. Whether that law will include the

"political intelligence" provisions included in the Senate bill remains to be seen. We are closely monitoring developments and are available to advise on the likely impact on your organization.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our election and political law practice group:

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