

March 31, 2006

## Proposed Legislation on Congressional “Insider Trading” Could Have Far-Reaching Impact on Lobbyists

### House Bill Bars Trading on and Disclosure of Nonpublic Information Obtained on Capitol Hill by Members, Staff, Lobbyists, and Others

On March 28, 2006, two Democratic House members introduced legislation intended to curb alleged “insider trading” by Members, Congressional staff and any other individuals (including lobbyists) who receive nonpublic information about pending or proposed legislation from within Congress. If enacted, this bill would create potentially significant legal exposure for lobbyists and others who routinely discuss pending or proposed legislation with Members and staff.

H.R. 5015, introduced by Rep. Louise Slaughter (D-NY), the Ranking Member of the House Rules Committee, and Rep. Brian Baird (D-WA), would direct the Securities and Exchange Commission to, among other things:

1. Prohibit Members or employees of Congress from buying or selling stocks, bonds, or commodities futures based on material nonpublic information relating to any pending or prospective legislative action that they obtained through their official duties;
2. Prohibit any individuals outside Congress from buying or selling stocks, bonds, or commodities futures based on material nonpublic information relating to any pending or prospective legislative action knowingly obtained from within the Congress;
3. Prohibit Members, employees, or any persons with material nonpublic information relating to any pending or prospective legislative action obtained from within Congress from disclosing that information if they believe it will be used to buy or sell stocks, bonds, or commodities futures; and
4. Require firms that specialize in “political intelligence” gathering to register with the House and Senate, as lobbying firms are presently required to do. This could apply to a variety of financial services consulting firms.

The proposed insider trading legislation, referred to as the Stop Trading on Congressional Knowledge (“STOCK”) Act, is likely to be considered by the House in the coming weeks as it considers a multitude of ethics reform proposals in the wake of the Senate’s passage on March 29, 2006 of S. 2349, the Legislative Transparency and Accountability Act of 2006.

## Potential Impact of Insider Trading Ban on Communications with Congressional Members and Staff

Although other ethics reform proposals likely to be enacted in the coming months will expand lobbying disclosure obligations and possibly curb lobbyist-provided gifts, the STOCK Act could have a direct, chilling effect on the free interchange of information between the Hill and outside lobbyists.

In its most far-reaching provision, H.R. 5015 would prohibit Members and staff, as well as individuals off the Hill, from disclosing material nonpublic information obtained on the Hill regarding legislation if they have reason to believe that the information will be used to buy or sell securities. This means that Members and staff would have to think twice before sharing otherwise confidential information with any lobbyist or other individual who might conceivably use the information for personal investment purposes. Given that this would be a criminal provision, some Members and staffers might be expected to curtail the sharing of valuable information related to legislation. Moreover, a lobbyist who learned confidential information from a Member or staffer would be at risk if they shared that information with others who then traded on the information.

### Ethics Reform Legislation Moves Forward

As has been widely reported, the Senate ethics reform legislation, S. 2349, includes, among other things, provisions increasing the substance and frequency of lobbying disclosure, imposing a ban on gifts from lobbyists and new travel limitations, and extending post-employment restrictions. The road to passage in the House and any future House-Senate conference, as well as the substance of the final signed legislation, remains uncertain at this time. We will provide an analysis of the final legislation in future E-Alerts once it is enacted.

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