

GAO Report Highlights Concerns Over Political Intelligence Disclosure

April 4, 2013

On April 4, 2013, the U.S. Government Accountability Office released its highly anticipated [report](#) on the so-called “political intelligence” industry. The report was mandated by the Stop Trading on Congressional Knowledge Act (the “STOCK Act”) enacted in early 2012. Although the report briefly notes that new legislation requiring disclosure of political intelligence-gathering activities could enhance transparency and aid the SEC’s enforcement of insider trading laws, the report extensively questions the value of such disclosure and details the significant interpretive, legal, and administrative challenges that such legislation would present (as we [highlighted in a previous client alert](#)).

Notwithstanding these significant challenges, the GAO report has already generated additional calls for regulation of the political intelligence industry. Senator Grassley (R-IA) and Representative Slaughter (D-NY) issued a [joint statement earlier today](#) promising to “re-introduce” legislation to require political intelligence professionals “to register and disclose” their activities to the public. Senator Grassley sponsored a provision in the initial version of the STOCK Act, which overwhelmingly passed 96-3 in the U.S. Senate, that would have required “political intelligence consultants” to comply with most registration and reporting obligations imposed on lobbyists under the federal Lobbying Disclosure Act (“LDA”). The House ultimately rejected Senator Grassley’s provision, and Congress instead directed the GAO to study the political intelligence industry and issue today’s report.

The forthcoming Grassley-Slaughter legislation will presumably again propose to require firms and individuals that gather political intelligence to register and report under the LDA. [As we previously noted](#), treating political intelligence consultants as “lobbyists” raises several issues. It is unclear whether Senator Grassley and Representative Slaughter will address these concerns in their forthcoming legislation.

Report Highlights

The GAO interviewed political intelligence firms, law firms, legal experts, one media organization, trade associations, one financial services firm, several non-governmental citizen advocacy or protection organizations, one academic researcher, and several governmental entities. Notable excerpts from the report include:

- “The extent to which investment decisions are based on a single piece of political intelligence would be extremely difficult to measure.”
- “The prevalence of the sale of political intelligence is not known and is therefore difficult to quantify, as political intelligence information gathering and dissemination is often bundled with other information sources”
- “[C]onsensus among political intelligence firms does not exist regarding some terms used in the STOCK Act definition of political intelligence.”

- “[A]ll three interviewees with broad public policy expertise questioned whether requiring disclosure would be a matter of promoting transparency without a compelling public purpose and were not certain what specific problem disclosure would resolve.”
- “[A]ccording to SEC officials, disclosure could help them accomplish their mission. For example, SEC officials told us that disclosure of more information could allow enforcement staff to identify relationships or make connections between various individuals involved in an investigation of potential insider trading.”
- “[A]nother potential benefit cited by SEC officials was that disclosure could potentially lead to investor protections as the nature and timing of the flow of information between a government official, a political intelligence firm, and an investor is made public through disclosure. . . . However, for political intelligence it is uncertain how helpful disclosure would be to an investor given the pace of market movements.”
- The report also notes several “practical issues” that would need to be resolved in any legislation:
 - Clarifying “whether disclosure is required for the range of decisions that an investor can make including internal business decisions and a decision to do nothing”;
 - Establishing who would administer and enforce registration and reporting requirements;
 - Identifying the “elements and characteristics” of disclosure;
 - Addressing concerns over the exposure of clients and clients’ interests; the need for a media exception; and
 - Addressing First Amendment concerns, including the “chilling effect or slowing of communications between government, media, and political intelligence firms.”

If you have any questions about this Alert, please contact a member of Caplin & Drysdale's Political Law Group.

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