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The Impact of the STOCK Act on Stock Trading Activity by U.S. Senators, 2009 – 2015

A significant improvement, but the ethics law needs to be strengthened

Acknowledgments

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The STOCK Act (Stop Trading on Congressional Knowledge Act of 2012) was signed into law on April 4, 2012. The law made it clear for the first time that the laws against insider trading apply to members of Congress and congressional staff using information gleaned in their official capacities and established additional disclosure requirements of stock trading activity in Congress to help monitor compliance.

After compiling a database of stock trading activity by members of the U.S. Senate from 2009 through 2015 – three years before and after implementation of the STOCK Act – Public Citizen has found that the law appears to have had a dramatic impact on stock trading activity. Both the transaction values of stock trades, and the number of stock transactions, have significantly declined since passage of the STOCK Act.

The primary goal of the STOCK Act has always been to reduce congressional insider trading, not reduce stock trading activity *per se*. Given the primary goal, several problems persist – most notably, many individual senators continue to be very active in the stock market and often trade stocks in businesses that they oversee in their official capacity. Furthermore, Congress severely weakened the quality of the disclosure regime for congressional stock trades, and eliminated it altogether for the secretive “political intelligence industry,” Wall Street operatives and lobbyists who roam the halls of Congress for information related to the stock market.

Public Citizen proposes several reforms to strengthen the STOCK Act. These include:

- Ban trading stocks in businesses that members oversee in their official capacity.
- Enhance the on-line disclosure system to be searchable, sortable and downloadable, and include senior congressional staff.
- Provide disclosure of the activities of the “political intelligence industry.”

A. History of the STOCK Act

First introduced by Reps. Brian Baird (D-Wash.) and Louise Slaughter (D-N.Y.) in 2006, the STOCK Act gathered little traction in Congress. The measure attracted only 14 co-sponsors that year. It was not until a dramatic “60 Minutes” expose aired in 2011 that highlighted the extent of insider trading by members of Congress that the legislation rapidly gained congressional attention.¹ The number of co-sponsors on the House bill went from nine to 131 in a matter of days and two versions of the legislation were introduced in the senate for the first time. Months later, the STOCK Act passed in the House by a vote of 417-2 and in the Senate by a vote of 96-3.

The original legislation contained the three key pillars. These included:

- Clarifying that the laws against insider trading apply to members of Congress and congressional staff.

¹ Stephanie Condon, “Senators introduce ‘STOCK Act’ to stop insider trading in Congress,” CBS News (Nov. 15, 2011), available at: <http://www.cbsnews.com/news/senators-introduce-stock-act-to-stop-insider-trading-in-congress/>

- Mandating real-time disclosure of stock trades by members of Congress and senior staff, posted on the Internet in a “searchable, sortable and downloadable” format.
- Requiring Wall Street operatives and lobbyists who gather congressional information for trading purposes, called “political intelligence consultants,” to register and disclose their activities and clients under the disclosure system of the Lobbying Disclosure Act (LDA).

When the STOCK Act finally gained serious momentum in 2011, the legislation was to expand the on-line disclosure requirement of stock trading activity to include some 28,000 employees of the executive branch as well as Congress. Another amendment to the STOCK Act deleted the disclosure requirement for political intelligence consultants. The final legislation approved in 2012 contained the clarification that insider trading laws apply to Congress and a vastly expanded on-line disclosure requirement of trading activity in Congress and the executive branch.

The vastly expanded requirement for on-line disclosure requirement for some 28,000 executive branch employees soon became problematic. This universe captured many security officials and ambassadors in foreign countries, raising security concerns. A reasonable solution would have been to rein in the scope of on-line disclosures for executive branch personnel by excluding those with genuine safety issues. Instead Congress over-reacted and approved legislation in 2013 with no reading of the bill and no debate that slashed the number of executive branch employees subject to on-line disclosure to about 70, consisting of cabinet officials who are severely restricted from trading on the stock market anyway. The new bill also eliminated the requirement that congressional staff trades to be reported online, and ended the plans to create a “searchable, sortable and downloadable” database to present the trades of those officials who remained covered by the law.²

As it stands today, the STOCK Act still bans congressional insider trading, but only a relatively small group of public officials are required to provide timely disclosure of their stock trading activities and these on-line disclosures are no longer sortable and downloadable. To uncover recent stock trading activity in Congress, for example, the data now consists merely of .pdf snapshots of the filings and must be accessed on a case-by-case basis – a transparency system antiquated by design.³

B. Impact of the STOCK Act on Trading Activity

Questionable and ongoing trading activity by some members of Congress, such as Rep. Chris Collins (R-N.Y.) and former Rep. Tom Price (R-Ga.), have renewed concerns about congressional insider trading. News accounts have documented several instances of members trading stocks in

² Tamara Keith, “How Congress quietly over-hauled its insider trading law,” NPR (April 16, 2013), available at: <http://www.npr.org/sections/itsallpolitics/2013/04/16/177496734/how-congress-quietly-overhauled-its-insider-trading-law>

³ Craig Holman, “Congressional insider trading revisited (but don’t tell anyone),” *Roll Call* (May 9, 2013), available at: http://www.rollcall.com/news/congressional_insider_trading_revisited_but_dont_tell_anyone_commentary-224674-1.html

businesses and industries that they oversee in their official capacity.⁴ In some instances members have even introduced legislation that could have an impact on the stocks in which they trade.⁵ In other instances, members with potential access to insider information have provided trading tips to family, friends and campaign contributors.⁶

Public Citizen formally requested that the Securities and Exchange Commission (SEC) and Office of Congressional Ethics (OCE) look into the stock trading activity of Rep. Collins and former Rep. Price for possible violations of the insider trading law.⁷ U.S. Attorney Preet Bharara was reportedly doing precisely that until he was fired by President Donald Trump.⁸ News accounts confirm that OCE is currently investigating the stock trading activity of Rep. Collins.⁹

One of the purposes of the disclosure requirement is to discourage members of Congress and congressional staff from trading on stocks that could pose an appearance of conflict of interest, such as those cited above. Public Citizen followed up by cataloguing stock trading activity by U.S. senators before and after passage of the STOCK Act to see the impact of the new law.

The findings are that the STOCK Act has indeed had a dramatic impact on stock trading activity among the Senate as a whole, but that there are still individual senators who remain prolific traders on the stock market and often do not seem overly concerned about the appearance of conflicts of interest.

This report showcases the impact of the STOCK Act after it became a law in 2012, by comparing financial disclosures of Senators from 2009 to 2015. Our review found that the implementation of the STOCK Act has resulted in a large decrease in the amount of money sold in stock trades and the number of transactions.

Data for this report was collected from both the Public Disclosures on the Senate website, and the Senate Office of Public Records. (Information was gathered from Senator's Annual and Termination reports). Data prior to 2012 is not required by law to be preserved. Fortunately older stock trading

⁴ Robert Faturechi, "Tom Price intervened on rule that would hurt drug prices, the same day he acquired drug stock," *ProPublica* (March 31, 2017), available at: <https://www.propublica.org/article/tom-price-intervened-rule-hurt-drug-profits-same-day-acquired-drug-stock>

⁵ Kimberly Kindy and Amy Goldstein, "HHS nominee's mix of investments, donations and legislation keeps raising questions," *Washington Post* (Jan. 23, 2017), available at: https://www.washingtonpost.com/national/health-science/hhs-nominees-mix-of-investments-donations-legislation-keeps-raising-questions/2017/01/23/c8ebe1d0-e183-11e6-a547-5fb9411d332c_story.html?utm_term=.e5f377aca22a

⁶ Jerry Zremski, "Collins shared biotech stock news with big Buffalo names," *Buffalo News* (Jan. 17, 2017), available at: <http://buffalonews.com/2017/01/19/buffalos-elite-joined-collins-australian-investment/>

⁷ Public Citizen request for an investigation by the SEC and OCE of potential insider trading by Reps. Tom Price and Chris Collins (Jan. 5, 2017), available at: <https://www.citizen.org/sites/default/files/request-for-investigation-price-collins.pdf>

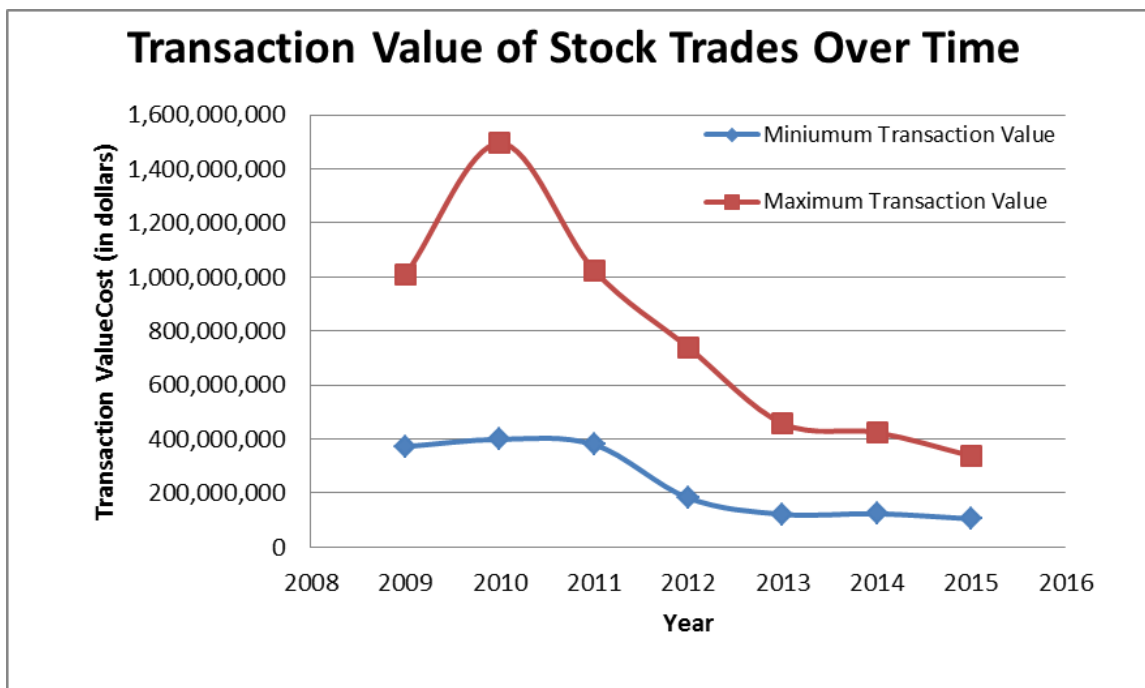
⁸ Robert Faturechi, "Fired U.S. Attorney Preet Bharara said to have been investigating HHS Secretary Tom Price," *ProPublica* (March 17, 2017), available at: <https://www.propublica.org/article/preet-bharara-fired-investigating-tom-price-hhs-stock-trading>

⁹ Robert McCarthy and Jerry Zremski, "Congressional ethics investigators interview Collins' investment partners," *Buffalo News* (May 16, 2017), available at: <http://buffalonews.com/2017/05/16/congressional-ethics-investigators-interview-collins-investment-partners/>

data was captured by the Center for Responsive Politics and made available on its web page, *opensecrets.org*. All information collected comes from Section 4 of Senator's personal financial disclosure reports.

1. *Impact on Transaction Values of Stock Trades*

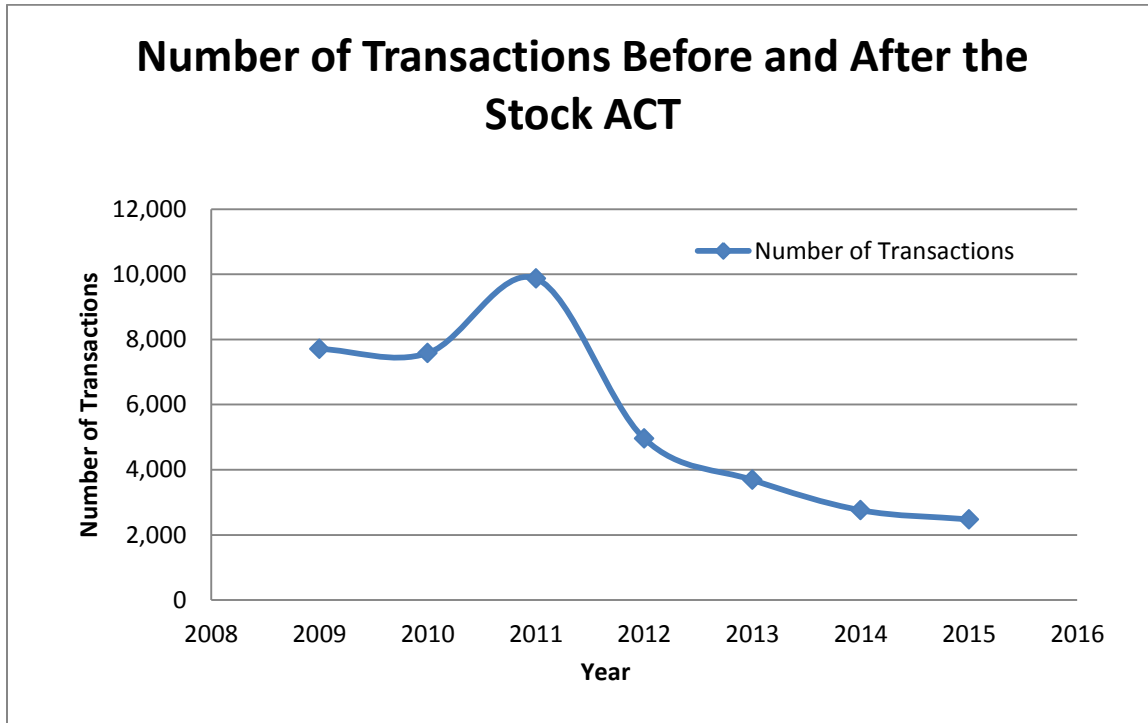
The chart below displays the transaction value over time reported by U.S. senators on their personal financial disclosure forms. Stock trade values are disclosed within a range of potential stock values (e.g., \$1,001 - \$15,000). Therefore, one can only discern a minimum and maximum transaction value for each senator. April 2012 marks the STOCK Act being signed and enacted. When the minimum and maximum values are aggregated for the three year time period before and after the STOCK Act was implemented, the comparison is dramatic. It reveals an overall decrease of 66 percent in the amount of monetary transaction value stock trades by all sitting U.S. senators.



Year	Minimum Transaction Value	Maximum Transaction Value
2009	\$372,393,124	\$1,008,617,000
2010	\$399,120,582	\$1,495,559,000
2011	\$379,632,869	\$1,025,400,000
2012	\$182,031,965	\$739,515,000
2013	\$121,572,686	\$458,150,000
2014	\$123,658,757	\$424,360,000
2015	\$104,854,476	\$337,480,000

2. *Impact on Number of Stock Transactions*

The STOCK Act has also clearly had an impact on the number of stock transactions by the senate as a whole. The number of transactions has decreased by 50 percent from 2012 to 2015 and 68 percent from 2009 to 2015. Despite Congress under-cutting much of the law's disclosure regime, the STOCK Act continues to be a significant force in reducing the overall number of stock transactions by the Senate.



Year	Number of Transactions
2009	7,712
2010	7,582
2011	9,869
2012	4,955
2013	3,686
2014	2,757
2015	2,475

C. Further Improvements to Strengthen the STOCK Act

Measured in terms of the value and number of stock transactions by U.S. Senators, the STOCK Act has had a significant and meaningful impact on reining in the stock market activities of Congress and reducing the opportunities for congressional insider trading. By making it clear that the laws against insider trading apply to Congress, and providing some disclosure of congressional stock

trading activity, the STOCK Act clearly has dampened the appetite of many members of Congress for playing in the stock market.

That is a good thing.

But many problems still persist that need be addressed. First of all, while the Senate as a whole has shied away from stock trading activity, several individual members of Congress continue to be prolific players and, more troubling, prolific players in stocks that pose an apparent conflict of interest with their official duties. Sen. Bob Corker (R-Tenn.) has recently traded hundreds of thousands worth of stock in energy infrastructure businesses while sitting on the Senate Banking, Housing and Urban Affairs Committee. Sen. Thad Cochran (R-Miss.) is also a busy player in energy stocks while sitting on the Senate Appropriations Subcommittee on Energy and Water Development. Sens. Sheldon Whitehouse (D-R.I.) and Pat Toomey (R-Pa.) actively trade in health care stocks while serving on healthcare subcommittees. Sen. Tom Udall (D-N.M.) trades in natural resources and precious metals stock while on subcommittees that oversee these industries.

A separate study by *Politico* found a similarly disturbing trend. Although only three in 10 members of the House and Senate combined were active in the stock market over the last two years, a small group of very wealthy lawmakers accounted for two-thirds of those trades. Furthermore, many of these lawmakers trade stocks in businesses that they directly oversee from their perches in Congress. In some cases, the lawmakers even own significant stakes in the companies that are affected by their legislative work. Rep. Hal Rogers (R-KY), for example, traded dozens of stocks while serving as Chairman of the House Appropriations Committee. Rogers also maintained partial ownership of a bank from which he collected at least \$100,000 in dividends on the stock market. Rogers is on the front lines of deciding whether to roll back the Dodd-Frank regulations on banks, including his own bank.¹⁰

Such appearances of conflicts of interest could be vastly reduced if members of Congress, like senior executive branch employees, would be required to avoid trading in businesses that they directly oversee in their official capacity.

Secondly, the disclosure regime for stock trading activity by Congress needs to be re-established. The current limited disclosures have had a positive impact, but the disclosure system should (i) encompass senior congressional staff, many of whom are also active traders and with potential access to inside information; and (ii) be searchable, sortable and downloadable to make monitoring of congressional stock trading activity more robust and in real-time.

Finally, it is imperative to pull back the covers that cloak the “political intelligence” industry – the secretive Wall Street operatives and lobbyists who roam the halls of Congress in search of valuable information to sell on the stock market. Reps. Slaughter and John Duncan, Jr. (R-Tenn.) have re-introduced bipartisan legislation to do precisely that, known as the “Political Intelligence

¹⁰ Maggie Severns, “Reckless stock trading leaves Congress rife with conflicts,” *Politico* (May 14, 2017), available at: <http://www.politico.com/story/2017/05/14/congress-stock-trading-conflict-of-interest-rules-238033>

Transparency Act.” The Political Intelligence Transparency Act is straightforward disclosure legislation that would not prohibit or restrict political intelligence activities; instead, the measure would require full disclosure so that these activities can be monitored for compliance to the insider trading laws.