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Insider trading: Why does Congress need a separate law? [Ask a Think Tank]

By Allen McDuffee

Cassie J from San Francisco writes in the following question:

Why does Congress need a separate [law regarding insider trading](#)? Insider trading is insider trading and illegal no matter who does it, right?

Our answer comes from [Mark Calabria](#), Director of Financial Regulations Studies at the Cato Institute:

The short answer would be “yes” but questions of both enforcement and coverage may require additional statutory action.

As it relates to coverage, Congress is already under existing insider trading laws. They can no more legally benefit from inside company information than you or I. The complication comes when the actions of Congress may themselves impact the value of traded financial instruments. One could also argue the vast majority of Congressional actions have at least some impact on publicly traded stocks, as these actions can impact the economy, which can impact stock valuations. Given that most of what Congress does has an impact on the economy, where to clearly and appropriately draw this line is easier said than done.

When it comes to enforcement, two opposing possibilities arise. The first is that since the Securities and Exchange Commission is subject to both the Congressional appropriations and authorization process, can the SEC really be expected to oversee the very body that is tasked with providing SEC oversight? Is it reasonable to expect the SEC to investigate the chair of its appropriations subcommittee? And if it does, would such an investigation call into question any funding decisions made by such member? If the SEC has unchecked power to investigate Congress, would Congressional oversight of the SEC be weakened? There are not easy answers to these questions.

The second possibility is that enforcement is arbitrary or politically motivated rather than absent. A hostile administration, for instance, could use the SEC to abuse political enemies. Fear of investigation could also have detrimental effects upon political speech. A member taking to the floor to question the behavior of a corporation could clearly have a negative impact that corporation's stock price. If said member revealed his intended remarks to anyone, does that constitute sharing inside information?

The approach of the STOCK Act unfortunately leaves the SEC with both too much and too little discretion. If the problem we wish to address is the possibility that members are using their positions to enrich themselves, then a general ban on trading, via the use of a blind trust, would address this concern with little potential for abuse. Such blind trusts were defined for executive branch officials under the Ethics in Government Act of 1978. We don't debate whether the Treasury Secretary should be trading in financial stocks; we expect the Secretary to not trade at all and instead concentrate his efforts on his day job. We do, after all, elect our public officials to tend to the public's business, not spend their time day trading.

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