United States Senate
Committee on Homeland Security and Governmental Affairs
Chairman Joseph I. Lieberman, ID-Conn.

Opening Statement of Chairman Joseph Lieberman
Homeland Security and Governmental Affairs Committee
STOCK Act Markup
Washington, DC
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As Prepared for Delivery

Good morning, the markup will come to order. I want to welcome everybody to what will probably be our final mark-up of the year. I want to thank Senator Collins and all the members of the Committee for all the work we've done together. It's been a relatively non-productive year for Congress, but it's been a productive year for this Committee and it's due to all the work that all of us have done together.

On a point of personal privilege, I want to say that this is the last mark up that will be attended by the incomparable Tony Coe. This is not only Tony's last markup, today marks his 30th year with the Senate Legislative Counsel's office. He has been absolutely indispensible to our Committee as its chief point of contact with Leg Counsel. He has worked every one of our business meetings and on most of the bills this Committee has produced over the last decade.

He is retiring at the end of the year, and I hope he'll do so secure in the knowledge that he has contributed enormously to the work of the Committee and the Senate as a whole and the well-being of the country as a whole. We are always sorry to see exemplary public servants go, but this is a particularly poignant departure because it is so close to home. So I would say on behalf of the entire committee, Tony, we wish you the very best as you embark on the next great chapter of your life.

The key item on our agenda today is the Stop Trading on Congressional Knowledge Act of 2012 – the STOCK Act. The bill is critical to helping restore the public's faith in Congress.

There have been a series of investigative reports that attracted a lot of attention and raised concerns both inside and outside of Congress. Senators Kirsten Gillibrand of New York and Scott Brown of Massachusetts both introduced forms of the STOCK Act to respond to this problem. I applaud them for doing that. We heard some really excellent testimony a week or so ago about how best to deal with this problem.

We have built on their work to produce a bill that forbids members of Congress and their staffs from profiting in any way from the information they obtain as part of the job that is not public and to which few others have access.

As everyone knows, perceptions sometimes can trump reality. And the perception is out there that members of Congress and their staffs not only trade on the information to which they have access as a part of the job, but that we have actively exempted ourselves from insider trading laws.

Of course, this is not true. The fact is, there is no explicit prohibition in our laws against insider trading by anyone including members of Congress and the term "insider trading" is never mentioned in statute. Instead, the Securities and Exchange Commission and the Justice Department investigate and prosecute insider trading cases based on general anti-fraud provisions contained in the Securities Exchange Act of 1934. But there is no exemption for members of Congress.

When we held a hearing on this topic, the SEC said in written testimony submitted for the record that it currently has the authority it needs to investigate insider trading cases, declaring that – quote - "trading by Congressional Members or their staffs is not exempt from the federal securities laws, including the insider trading prohibitions." End quote.

But another witness at our hearing Georgetown University Law Professor Donald Langevort testified, and I quote: "It is possible that courts would rule that current insider trading law adequately proscribes all abusive trading in securities on Capitol Hill. . . . But there is sufficient doubt." End quote.

There is real concern whether someone could successfully pursue a case against a member of Congress or staff. We have clarified what some perceived as an ambiguity in the law by explicitly stating that Members of Congress and our staffs have a duty of trust to the institution, to the U.S. Government, and to the American people – a duty that they violate by trading on information they may gain by virtue of their position.

The bill also directs the House and Senate Ethics Committee to issue rules on that general prohibition. The bill also, importantly, states that the general prohibition against using non-public information for personal benefits constitutes a duty of trust and confidence on the part of members of Congress and their staffs. This is key because the argument that insider trading laws do not now apply to members of Congress is based on ambiguity about whether members owe a duty of trust and confidence.

Of course we all owe that to our constituents and the constitution, but it's very different from the duty of trust a business executive has. We have to explicitly state this to ensure there is no more ambiguity in the laws.

We also include reporting requirements of financial transactions of members and staff. While some groups recommended a period as short as two days, we settled on a window of 30 days instead of the current annual requirement.

Another section of the bill proposed to regulate purveyors of "political intelligence" as lobbyists are regulated now. It was our conclusion that this involves complicated questions and is quite different from lobbying. Those involved in gaining and presumably selling political intelligence try to collect information and analyze it, not influence Congress. There are first amendment implications—a lot of people call all the time and you wouldn't want them to be subject to prosecution of they don't register. So it's our recommendation that we not put off forever dealing with this question, but we delay acting on it until we can gather more information and build a record. I presume if we do treat those who gather and sell information about what's happening here as lobbyists it will be subject to a court challenge and I want to build some sort of legislative history before we do that. So we ask for a GAO study of what's happening and it's my intention to hold a hearing shortly after we get back and return when we're ready to deal with this question in a more thoughtful way. Bottom line, it's important because of all the public agitation that we legislate on what we're prepared to do quickly and come back later and act on the political intelligence when we're prepared to do that.

This legislation will help to dispel false perceptions and ensure that regulators and law enforcers have the tools they need to pursue members of Congress who defy the public trust by using insider information for personal gain.

Adopting this language, I hope, will help to repair the breach of trust that exists today between our government and our people.

Thank you all.

Senator Collins?