

Client Alert

Government Advocacy & Public Policy Practice Group

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Fortune 500 CEOs Receive Request Letter on Cybersecurity From Senator Rockefeller

“The cyber threat we face is unprecedented and we need an innovative and cooperative approach between the private sector and the federal government to protect the country from it.”

—Sen. John D. Rockefeller IV (D-WV)

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Yesterday, Senator John Rockefeller, Chairman of the Senate Committee on Commerce, Science, and Transportation, issued a letter to the Chief Executive Officer of every Fortune 500 company seeking information about company cybersecurity practices and their views on pending federal legislation related to cybersecurity.ⁱ

Senator Rockefeller’s letter focused on the Senate’s recent inability to pass the Cybersecurity Act of 2012,ⁱⁱ which the Senator said he sponsored “to create a voluntary program that would empower the private sector to collaborate with the federal government to develop dynamic and adaptable voluntary cybersecurity practices for companies to implement as they see fit.”

- The Cybersecurity Act would have required the Department of Homeland Security (DHS) to conduct risk assessments to identify the most significant cyber threats and then establish cybersecurity performance requirements for “critical infrastructure systems and assets whose disruption could result in severe degradation of national security, catastrophic economic damage, or the interruption of life-sustaining services sufficient to cause mass casualties or mass evacuations.”
- Under the legislation, owners of critical infrastructure would have been given flexibility to meet the performance requirements as they saw fit, and assets that were already “appropriately secured” would have been exempted from the requirements.
- The legislation would have also created a “cybersecurity exchange,” through which public and private sector entities could have shared information about cyber threats, while ensuring that privacy is protected.

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Senator Rockefeller's letter to the Fortune 500 follows a letter sent by the lead sponsors of the Cybersecurity Act in July to the U.S. Chamber of Commerce.ⁱⁱⁱ While Senator Rockefeller and some of his colleagues are now urging President Obama to sign an Executive Order that will direct the promulgation of voluntary cybersecurity standards, the Chairman stated that the effects of an Executive Order would be limited compared to the Cybersecurity Act. Consequently, the Chairman wrote in his letter that legislation is still needed. He specifically solicited the comments of the Fortune 500 CEOs regarding their views on cybersecurity.

Against this backdrop, the Chairman's letter seeks answers from the Chief Executive Officers of the Fortune 500 to eight questions regarding their cybersecurity practices and their concerns, if any, about the Cybersecurity Act.

Chairman Rockefeller's request for information does not legally compel companies to respond, but a Committee spokesman has stated that the Committee expects to hear from each company.^{iv}

What's Next

While Senator Rockefeller's letter appears to be more focused on securing support from Fortune 500 companies for his policy initiatives, and less on investigative probing, it is still too early to say where this will lead. The Chairman's letter emphasizes his concern about previous efforts to block the legislation and suggests he may be looking to obtain support from CEOs for the next push to enact the Cybersecurity Act.

It is also possible—consistent with Committee action in other investigations and inquiries—that the Committee is gathering information that may eventually surface at a Committee hearing, in a Committee or staff report, or during Senate debate. With this in mind, it is prudent, as with any Congressional request, to proceed carefully and to respond with a well-considered, accurate response. Given the potential for follow-up activity once the Committee has received responses, it will be necessary to monitor closely ongoing legislative and Committee developments.

Recommendations

King & Spalding is particularly well-equipped to advise and assist Fortune 500 companies that have received Chairman Rockefeller's letter, which may prompt additional inquiries from Congress, regulators, and the media. The firm's considerable experience in congressional investigations and crisis management can reduce the adverse impact that this kind of inquiry can have on a business.

King & Spalding has one of Washington's most active and respected congressional investigations and government relations practices. For the fifth consecutive year, King & Spalding's government relations practice was recognized in 2012 by *Chambers USA: America's Leading Lawyers for Business*. According to *Chambers*, "Congressional investigations and lobbying are two of the strongest components of this practice."

Our team of lawyers understands the congressional investigative process because they have been on both sides of the table: we have conducted high-profile congressional and government investigations and we have also provided effective representation to clients who are the targets of such investigations:

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- Ted Hester leads the firm’s congressional investigations practice and, according to *Chambers USA*, “is renowned for his work on congressional committee hearings and oversight investigations”;
- Robert Ehrlich served while a Member of Congress on two of the key House oversight committees, the Energy and Commerce Committee and the Government Reform and Oversight Committee, in addition to his service as Governor, state legislator, and civil litigator;
- Eleanor Hill, an experienced federal prosecutor, trial lawyer, and former Department of Defense Inspector General, served as Staff Director of the Senate’s Permanent Subcommittee on Investigations and then as Staff Director of the Joint Congressional Inquiry on the terrorist attacks of September 11, 2001;
- Dan Donovan served as Senior Investigative Counsel to the Chairman of the Senate Committee on Finance for four years, and managed congressional investigations and oversight hearings in the U.S. Senate for eight years; and
- J. C. Boggs served as Counsel to the Senate Governmental Affairs Committee, including its Permanent Subcommittee on Investigations, and has been recognized by *Chambers USA* as “one of the most proficient attorneys on the scene.”

King & Spalding helps clients effectively respond to Congressional inquiries, while minimizing the considerable legal and public relations risks that these kinds of investigations can pose for both businesses and individuals. Our team of former Congressional investigators, prosecutors, and enforcement officials allow us to provide company management and boards of directors with sound legal judgment and to manage the results of investigations both internally and in response to Congress, regulators, and prosecutors.

Celebrating more than 125 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 800 lawyers in 17 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality and dedication to understanding the business and culture of its clients. More information is available at www.kslaw.com.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice.

ⁱ See, e.g., Letter from Sen. John D. Rockefeller IV, Chairman, Senate Committee on Commerce, Science, and Transportation to Virginia M. Rometty, President and Chief Executive Officer, International Business Machines (Sept. 19, 2012) available at http://commerce.senate.gov/public/?a=Files.Serve&File_id=396eb5d5-23a4-4488-a67c-d45f62bbf9e5.

ⁱⁱ See, The Cybersecurity Act of 2012, S. 3414, 112th Congress (2012) available at <http://www.govtrack.us/congress/bills/112/s3414/text>.

ⁱⁱⁱ Jennifer Martinez, *Lieberman and Cybersecurity Bill Co-Sponsors Hit Back at Chamber*, THE HILL, July 30, 2012, available at <http://thehill.com/blogs/hillicon-valley/technology/240965-lieberman-and-cybersecurity-bill-co-sponsors-hit-back-at-chamber>.

^{iv} “‘When a member of Congress sends a letter asking for information, the assumption is that letter will be responded to,’ said committee spokesman Vincent Morris. ‘I’d be very surprised if they did not respond.’” Siobhan Gorman, *Senator Presses On Cybersecurity*, WALL STREET JOURNAL, Sept. 19, 2012, at B4.