

THE RELATIONSHIP BETWEEN MONEY MANAGERS AND CAPITOL HILL - REGULATORS AND LAWMAKERS TAKE NOTICE

The practice of money managers hiring politically savvy individuals to gather market information from lawmakers and their staffs has recently attracted the attention of the media and regulators. Recent news accounts in both *The Wall Street Journal* and *The New York Times*, for example, focused on the interrelationships between institutional money managers and congressional members, staffers, and lobbyists.

Hiring lobbyists to use their connections to influence activity on behalf of their clients is as old as the U.S. Congress. Sophisticated investors, and in particular money managers, have discovered that these political connections can be and are a rich source of information relating to pending legislation, investigations or administrative adjudications and rule-makings, all of which information can have a bearing on the movements of the securities markets. Many money managers have found lobbyists to be significant information gatherers.

Recent news stories have suggested that while the regulators are considering the implications of these practices, no immediate regulatory action appears to be on the horizon. Congress, on the other hand, may be more interested in addressing these practices. Currently, money managers' dealings with lobbyists are largely unregulated, as lobbyists are now not required to disclose the identities of clients for whom they gather information, with no intent to influence legislation or administrative action. We understand that the newly - elected Democratic Congress, however, may be considering legislation requiring lobbyists to disclose their so-called "intelligence clients."

Beyond the issue of disclosure is a question of whether what has traditionally been considered technical detail about the legislative or administrative process, of interest only to those directly involved in an issue, may come within the definition of "insider information" for purposes of the federal securities laws. Importantly, persons receiving that kind of information, technically referred to as "material, non-public information," can be subject to prohibitions on trading in securities on the basis of such information.

At a minimum, the recent articles should serve as a signal to money managers that they need to be aware that information they receive from "political intelligence" arrangements may be considered material, non-public information and, if used for trading, may trigger liability under the federal securities laws. In seeking to avoid issues under these laws, money managers should consider implementing compliance procedures designed to address these types of arrangements, define what is material, non-public information and make clear that consultants are not being asked to obtain insider information. Money managers should also consider regularly reviewing their existing insider trading policies and procedures and should provide ongoing training to employees regarding interactions with lobbyists and other consultants.

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We regularly advise money managers on this issue and have helped them develop procedures and training resources for minimizing the risk of trading on material, non-public information. If you have questions on these issues, please contact Russell L. Smith (202-303-1116, rsmith@willkie.com) of Willkie's government relations group, Michael S. Didiuk (202-303-1280, mdidiuk@willkie.com) of Willkie's asset management group, or the Willkie attorney with whom you regularly work.

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