

Political Intelligence: Transparency or Insider Trading?

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(AP Photo/Pablo)

The Washington Post writes that staffers for Sen. Orrin Hatch gave information to investors in Humana that appeared to prompt speculative trading.

There are many ways corporations and financial interests can exercise influence in Washington. Some donate money to political campaigns while others hire lobbyists to be their megaphones to legislator ears. But information flows the other way, too. And since the financial crisis, details about the laws and regulations being hashed out behind closed doors is more valuable than ever.

A story from the Washington Post this week looks at the growing popularity of “political intelligence” firms that sell analysis of federal actions, and the likely policy ramifications of those actions, to interested parties. Oftentimes, the clients are investors in a company that will be affected by a policy decision or a proposed regulation. Some firms even coordinate meetings and conference calls with congressional staff members in which they share what they know about relevant legislation.

The Post illustrates this with an example: Capitol Street, a political intelligence firm specializing in health policy, recently set up a private conference call between a member of Sen. Orrin Hatch’s staff (R-Utah) and investors in Humana, a major healthcare company. The staffer told the investors that the odds were improving that Congress would make a decision related to Medicare that would help insurance companies. That same morning, the level of speculative trading on Humana’s stock was nearly 10 times more than it had been on any day in the previous two weeks. Lawmakers and federal regulators have noted that this sort of politically informed investing can look suspicious, and investigators recently issued subpoenas in connection with a different spike in trading after a D.C.-based investment-research firm correctly predicted a change in policy.

In a Washington Post video, reporter Jia Lynn Yang says many on the Hill don't see what they're doing as illegal or problematic. "In their minds, they talk to constituents all day, they talk to lobbyists, they talk to reporters — they're just saying what they would say to these same people. And so in their mind, this information is actually public because it's available and they're just trying to be transparent about it. And for the investors, it's potentially very valuable. Our story found that if people [investors in Humana] had actually traded on these options that morning, they could have made millions of dollars right off the bat from that."

The power that political intelligence has to move markets has made it a \$400 million a year industry and a hot topic in both political and financial circles. Wayne State University law professor Peter Henning wrote last month in the NYT Dealbook blog about the fine line between political intelligence and insider trading. "Trying to regulate firms that seek government information is difficult because of the lack of a definition of what constitutes "political intelligence" that would distinguish it from the ordinary analysis of governmental operations. A report issued by the Government Accountability Office points out just how hard it would be to try to adopt workable rules for the industry whose sole purpose is to gather such information."

Sen. Chuck Grassley (R-IA) has announced plans to reintroduce legislation that would require political intelligence firms to register like lobbyists and to disclose their contacts with government officials. “After digging up information in the halls of Congress and nosing around the federal bureaucracy, the political intelligence industry is profiting from non-public government information that Main Street does not have and that Wall Street is secretly buying. These nuggets can turn into a potential gold mine for those who pay for it,” Grassley wrote , referring to political intelligence as “Washington ’s secret merry-go-round ” of information.

Grassley had previously pushed for a registration requirement as part of the 2012 Stop Trading On Congressional Knowledge (STOCK) Act that was dropped from the watered-down version that was passed last April.

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