

## **Transparency Sought on 'Political Intel'; Regulators investigate key leak to Wall Street**

By Jeffrey Young and Jim Snyder

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It was a great get. Citigroup analyst Paul Heldman had obtained a leaked document offering a detailed preview of a hotly anticipated regulation that meant big money to Wall Street investors.

On April 2, a Sunday, Heldman fired off an otherwise run-of-the-mill report explaining how the upcoming regulation would affect what Medicare pays hospitals and medical-device makers. What made this report unusual, though, is that Heldman quoted directly from the document crafted by the Centers for Medicare and Medicaid Services (CMS).

That's also what attracted the attention of the Securities and Exchange Commission (SEC), sources say, and possibly the scrutiny of other government agencies.

Sources say the SEC is reviewing the matter. A spokesperson for the agency said it does not confirm or deny its investigations.

Heldman, who works out of Citigroup's Washington office, has a lot of contacts in the healthcare industry. He parlayed years of experience as a healthcare reporter for Bloomberg into the more lucrative world of investment analysis, with a list of clients who look to him to explain how Washington works.

But the Heldman case touches on sensitive issues related to government leaks, insider trading and free speech. It's also making some in Washington and on Wall Street nervous.

CMS would not discuss this specific case, except to confirm that the agency was aware of the Citigroup report and its use of an internal CMS document.

"We take leaking of information very seriously. Very seriously," said Leslie Norwalk, CMS's deputy administrator. Leaks that can affect Wall Street are "of particular concern to us," she emphasized.

"We, in all instances of improper disclosure, do have some kind of investigation," Norwalk said.

The SEC, the Office of the Inspector General for the Department of Health and Human Services and other government authorities may be asked to join an internal CMS inquiry, she said. The Office of the Inspector General would not say whether there was an agency investigation.

Federal-agency employees — as well as congressional aides — routinely leak information to reporters and lobbyists. Wall Street analysts also often are the beneficiaries of the same kinds of leaks, a fact that has recently drawn the attention of lawmakers who fear that inside political intelligence may be giving

some investors an unfair edge. Such information can have a significant impact on the financial markets.

The hospital-payment regulation, which was made public April 12 (after the markets closed), was anxiously anticipated by hospital and device-company investors. Medicare had proposed substantial changes to the formula used to pay hospitals, and healthcare insiders wanted to know who the winners and losers would be.

Heldman's report, complete with quotations from Medicare, carried bad news for specialty hospitals and the device makers and good news for hospitals in rural areas. Sources stressed that Medicare had already hinted it would move in that direction.

Nevertheless, the case highlights what securities attorneys say is a gray area in insider-trading laws: the practice of Washington insiders' — lobbyists or analysts — funneling political intelligence to Wall Street clients.

Reps. Brian Baird (D-Wash.) and Louise Slaughter (D-N.Y.) have introduced a bill that would make it illegal for members of Congress or their staffs to release nonpublic information if they knew the information was going to be used to trade stocks. Last month, the lawmakers asked the SEC, the Department of Justice and the Commodities Futures Trading Commission to investigate.

"The buying and selling of stock based on this type of nonpublic information has the potential to profit some individuals at the expense of those who do not have access to this same information," they wrote the agency chiefs last month.

In a preliminary response, Cox wrote that the SEC's legal staff was analyzing the issues raised in the letter.

More broadly, leaks themselves have come to be regarded more suspiciously by the Bush administration and others.

Vice President Cheney's former chief of staff, Lewis "Scooter" Libby, has been indicted with making false statements in the investigation of who leaked the identity of Valerie Plame, who was a covert Central Intelligence Agency (CIA) operative. Last week, the CIA itself fired a longtime employee, apparently for supplying information to The Washington Post about secret U.S. prisons in Eastern Europe. Two former lobbyists for the American Israel Public Affairs Committee face criminal charges for handling classified information.

Even the press, which traditionally has been allowed to use leaked information with near impunity, has felt the pinch. Famously, then-New York Times reporter Judith Miller did jail time in the Plame case.

The stakes in the isolated case of the Medicare regulations are not as dramatic. Shares in four firms named in the report moved only slightly in the days surrounding the release of Heldman's report.

Nevertheless, Medicare's former top official stressed that the regulations can seriously affect the market.

“When they put out a regulation, they change stock prices and they move things,” said Tom Scully. “I think most civil servants are oblivious to this.” Scully is a lobbyist at Alston & Bird and an adviser at Welsh Carson Anderson & Stowe, a New York-based investment firm.

The legal jeopardy for Heldman and Citigroup is likely minimal, legal experts said.

Heldman’s right to disseminate the information is guaranteed by the Constitution, said Jamin Raskin, a professor at American University’s Washington College of Law. “The First Amendment protects the circulation of information, regardless of your motivations,” he said.

Simply possessing a document others might not have does not qualify as insider trading, securities attorneys explained.

Heldman forwarded a message for comment to Citigroup’s media-relations offices.

“We do have a policy that precludes the use of confidential, nonpublic, material information,” a Citigroup spokeswoman said. The company does not confirm whether it is the subject of government investigations.

Insider-trading cases are “very fact-intensive,” said Jerry Isenberg, a former SEC enforcement officer who is now a securities attorney at LeClair Ryan. The SEC conducted 42 insider-trading investigations in 2005, according to the commission.

“They turn on whether or not the information was non-public, whether it was material and whether it was obtained or leaked in violation of a duty of trust or confidence,” Isenberg said. He declined to comment on the Citigroup case.

The SEC might be less likely to find the information Heldman passed was private if other analysts also had access to it — which some apparently did — but either lacked the actual document or chose not to quote directly from it. Four days before Heldman’s report came out, for example, the Stanford Washington Research Group offered a prediction about the upcoming Medicare rule that closely resembles Citigroup’s conclusions.

Importantly, the lack of a clear link between the report and the share prices of the companies it identifies make insider-trading charges unlikely. For insider trading to occur, the principal parties would have to gain a financial advantage.

One thing that seems certain is that political-intelligence work is growing. As the number of hedge funds has grown, so too has the number of political intelligence practices. Hedge funds trade more frequently than mutual funds or other stock portfolios do.

Some lobbying firms have political-intelligence practices. Others provide only general advice on how Washington works or on bills or regulations that could affect a company or industry.

One analyst said his firm was “cognizant” of recent news reports on political intelligence in The Hill and The Wall Street Journal.

“We’re not ignorant of it,” said the source, who asked not to be identified. “It’s sort of a gray area out there.”

*Bob Cusack contributed to this report.*