

PROPOSAL ASKS SEC TO REQUIRE DISCLOSURE OF PLAINTIFFS' LAWYERS' CONTACTS WITH ANALYSTS

by

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Existing securities laws provide virtually no regulation of communications between plaintiffs' lawyers and securities analysts in advance of the filing of class actions. Plaintiffs' lawyers may use secretly coordinated communications with selected securities analysts to drive down company stock as a means of forcing a quick settlement. This practice, while not illegal, can have a drastic effect on the value of the price of a security and can cause serious financial harm to investors. Allowing such covert communications is in sharp contrast to the principles and rules of full and fair disclosure governing corporate communications with securities market professionals.

The current Securities and Exchange Commission (SEC) regulations cover information disclosures by corporate insiders or individuals who are trading in the stocks they are manipulating. Because plaintiffs' lawyers are neither "corporate insiders" nor are they trading in the securities they are manipulating, plaintiffs' lawyers' communications with securities analysts are not necessarily covered by existing securities regulations. Nevertheless, such communications can be detrimental to investors due to the drop in stock prices that can result from communications between plaintiffs' lawyers and analysts. Unless changes are made to existing regulations, there is little the SEC can do to put an end to this practice.

In light of these public policy concerns, the Washington Legal Foundation's ("WLF") has filed a Petition (File # 4-477) requesting that the SEC promulgate a rule which would require pre-notification and disclosure of certain material, non-public communications by trial lawyers with securities professionals. Among other things, the WLF proposal calls for the implementation of rules similar to Regulation FD (Fair Disclosure) with respect to plaintiffs' lawyers' selective private contacts with securities analysts. Plaintiffs' lawyers would be required to notify the SEC at least three days in advance of a proposed communication with an analyst. The SEC would post this notification on the SEC website along with a summary of the proposed communication. Publicly traded companies would then have an opportunity to publicly respond to the plaintiffs' lawyers' general allegations as posted on the SEC website.

WLF is seeking to bring this issue to light as part of its wider Investor Protection Program. WLF's INVESTOR PROTECTION PROGRAM seeks to: protect investors from manipulation; protect employees, consumers, pensioners and investors from stock losses caused by abusive litigation; encourage regulatory oversight of plaintiffs' bar within securities industry; and restore investor confidence through judicial and regulatory reform. Under the auspices of that program, WLF has already filed a complaint with the SEC

regarding communications made shortly before a class action suit had been filed that indicate manipulation involving the short selling of the stock of the parent company of Eckerd Drug Stores, J.C. Penney Co. Given that this practice is ongoing, it is critical that the SEC address this issue as part of its broader review of the securities industry.

Interested parties should urge the SEC to carefully review the petition, specifically the recommendations relating to fair disclosure, as a means of leveling the playing field for trial lawyers and publicly traded companies. SEC action is necessary to protect investors from stock price manipulation by plaintiffs' lawyers.

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About WLF And The COUNSEL'S ADVISORY

The Washington Legal Foundation (WLF) is the nation's largest non-profit, free enterprise public interest law and policy center. WLF litigates *and* publishes in order to advocate legal policies that promote economic growth, job creation, and the civil liberties of business. As a 501(c)(3) tax exempt organization, WLF relies upon the charitable support of individuals, businesses, associations, and foundations to fund its programs.

This COUNSEL'S ADVISORY is one of WLF's six publication formats. Its purpose is to inform the free enterprise community about a development in the legal policy world that can be favorably influenced by the immediate involvement of legal experts and business and community leaders.

For more information on the Washington Legal Foundation, please contact Daniel J. Popeo, Chairman, at (202) 588-0302.

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