

Research Firms and Their Consultants Can Pose Disclosure Risk

BY DAVID K. ERICKSON

Your neighbor, Mark Thomas, is a mid-level manager with more than 20 years of industry experience at publicly traded Acme Specialties. Recently, Mark was telling you about how he has been making extra money on the side as a consultant. Upon further discussion, you learn that he's being paid \$200 an hour to answer questions about his industry, the technologies his company is developing and his opinions on competitors' products.

"The opportunity just fell into my lap," said Mark. At a trade show last year, he was approached by the representative of a research firm that specializes in building networks of experts in various industries. The firm sells access to its pool of experts mostly to investors, through either direct phone calls or web-based surveys. "It's a great set-up," Mark declared. "I can do it

whenever it's convenient, and lately I've been making a couple of thousand dollars a month."

"Do Acme's business policies allow you to do this?" you ask.

"I don't know for sure, but I don't think they really care," replies Mark. "And besides, it's not like I'm leaking top secret information. I'm just giving them my perspectives based on all my years of experience."

"And, you're not worried about inadvertently saying something you shouldn't or divulging proprietary information?" you press.

"Nah," says Mark. "I'm not in the loop. I'm just a worker bee. Besides, wouldn't the company always caution me before it shared sensitive information?"



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This situation is fraught with potential problems for both Mark and his company. First of all, Mark is likely to be in direct violation of his company's conflict of interest policy that limits the type of outside employment he can engage in. Even if his second job is conducted during non-working hours, many companies require that outside activities be totally separate from company work.

In addition, information about one's industry or competitors is frequently governed by company policy, typically under a broader ethics clause that covers how that information should be acquired and how it can be used once it is known. Oftentimes, it is a direct violation of company policy to use information obtained in the performance of one's job for personal gain.

The more significant issue for Acme (and by default its IRO) is the possible leaking of sensitive or proprietary information, or worse, material nonpublic information. The average employee may not know which information is sensitive and which is common knowledge to the outsider. And, a seemingly random piece of information may be the key to completing an investor's picture and prompt her or him to take action on the stock. Additionally, an employee who is not a designated company spokesperson may inadvertently divulge things that are inconsistent with the company's official disclosure record, which can also have repercussive effects.

For their part, research firms purport to instruct their consultants to never disclose material nonpublic information or discuss their own companies. However, you have to wonder if these

consultants, who are often lower-level employees, even have a very clear understanding of what information qualifies as non-public, much less material. Further, it seems difficult to imagine that a consultant wouldn't be pressured to dish a little dirt to an especially persistent investor client. Keep in mind that it's very likely the pool of research firm consultants also includes vendors, suppliers, customers and other persons outside your company that you have much less control over. These persons perhaps pose the greatest risk of inadvertent disclosure, especially if they have been retained by the company to assist in the development and testing of new products (e.g., doctors involved in the clinical trial of a yet-to-be-approved product). They almost certainly will have less understanding of the importance of material information.

Bottom line: it is imperative that every IRO work with his or her Human Resources and Legal departments to regularly remind employees of their responsibilities when it comes to handling confidential information. You might also want to review your company's business practice guidelines to see how they address the subject of participation in outside activities including research firms. Finally, it's probably a good idea to check with the person(s) in your company responsible for managing relationships with outside experts to ensure that their contracts expressly discuss the appropriate handling of proprietary information. IRU

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