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VIA EMAIL and OVERNIGHT DELIVERY

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Dear Sir or Madam:

This firm represents Yamaha Motor Corporation, U.S.A. in its efforts to establish a separate segregated fund. Its parent company, Yamaha Motor Co., Ltd. ("YMC"), was started in 1955. Yamaha Motor Corporation, U.S.A. ("YMUS" or "Yamaha") is the wholly owned subsidiary of YMC. YMUS is the distributor of various motorized products manufactured by YMC, as well as Yamaha Motor Manufacturing Corporation of America ("YMMC") and Tennessee Watercraft, Inc. (TWI) in the United States. Such products include motorcycles, all terrain vehicles, scooters, snowmobiles, golf carts, outboard engines, personal watercraft and jet boats. YMUS' Marine Division is responsible for the sale and distribution of outboard engines under the Yamaha brand name.

Yamaha wishes to create a separate segregated fund ("SSF") to contribute to federal candidates and raise funds from its dealers and service centers. There are two types of businesses from which Yamaha wishes to raise funds related to its Marine Division: (1) Dealers, which provide retail sales and service of Yamaha products; and (2) Service Centers, which service Yamaha products and sell Yamaha outboard motors packaged with a boat, but do not sell loose Yamaha outboard motors, and mainly provide servicing functions.

Pursuant to 11 C.F.R. § 112.1(b), Yamaha seeks an Advisory Opinion regarding the following items: (1) whether Yamaha may establish an SSF to make contributions to federal candidates as the domestic subsidiary of a foreign corporation; (2) whether Yamaha, as an organization that operates primarily through dealers and service centers, may solicit PAC contributions from the executive and administrative personnel of its Dealers; and (3) whether Yamaha, as an organization that operates primarily through dealers and service centers, may solicit PAC contributions from executive and administrative personnel of its Service Centers.

Yamaha distributes its marine products through a network of Dealers and Service Centers that are separate corporate entities from Yamaha. Due to the level of control Yamaha exercises over its Dealers and Service Centers, we believe that under the Federal Election Campaign Act ("FECA"), FEC regulations, and advisory opinions, the executive and administrative personnel, stockholders, and families of Yamaha's Dealers and Service Centers can be solicited as licensees pursuant to 11 C.F.R. §§ 114.5(g)(1) and Advisory Opinions 1992-7, 1988-46 and 1985-31. However, recognizing the very fact-

specific nature of these questions, Yamaha seeks an Advisory Opinion confirming that the proposed solicitations comply with the FECA and its attendant regulations.

FACTUAL BACKGROUND

YMUS is a California corporation which is the wholly owned subsidiary of YMC. YMUS is the distributor of various motorized products manufactured by YMC, YMMC and TWI. Such products include motorcycles, all terrain vehicles, scooters, snowmobiles, golf carts, outboard engines, personal watercraft and jet boats. Yamaha's Marine Division is responsible for the sale and distribution of outboard engines under the Yamaha brand name. The President of the Marine Division is empowered by the Board of YMUS to manage and oversee the operations of the Marine Division, and would be empowered to solely manage and oversee the operation of its SSF. The President of the Marine Division is a U.S. citizen and would be solely responsible for the management of the SSF.

The foreign parent of Yamaha Motor Corporation, USA would not provide any financing for the activities of the proposed SSF and the bylaws of the SSF will require that no foreign nationals participate in the operation of the SSF or in any decisions regarding distribution of funds. No contributions from any foreign nationals will be accepted by the SSF, and any foreign nationals in the leadership structure of YMUS will delegate authority over the operation of the SSF to U.S. citizens.

Yamaha sells its products through an extensive network of Dealers and Service Centers. All of the Dealers and Service Centers have the right to use Yamaha's trademarks as part of their advertising, and would be considered by the public to be affiliated with Yamaha, even though none of the Dealers and Service Centers are owned by Yamaha.

The Dealers and Service Centers are closely affiliated with Yamaha. Dealer and other agreements, discussed below, demonstrate that Yamaha exercises control over the hours of business, display and inventory, and facilities. Yamaha evaluates the performance of its Dealers and Service Centers based on factors beyond the volume of sales, also reviewing the manner of advertising, treatment of customers, and sales promotions. Yamaha's agreements with its Dealers and Service Centers can be terminated if they do not meet the standards outlined by Yamaha and limit transferability to different owners.

There are two standard agreements used by Yamaha: (1) the Dealer Agreement (attached as Ex. A); and (2) the Outboard Motors Service Center Agreement (attached as Ex. B). Each one is explained below.

1. The Dealer Agreement

Yamaha's Dealers provide retail sales and service of Yamaha products throughout the country. After completing an application process, Dealers are selected by Yamaha to sell its products to retail customers and are the exclusive method by which retail customers are able to purchase new Yamaha products. Most Dealers are small- to mid-sized corporations and while some dealers sell other marine products, most exclusively deal in Yamaha products.

The process for becoming a Yamaha Dealer involves a minimum of four steps:

1. The initial contact can come from the prospective dealer to Yamaha or by Yamaha to a prospective dealer.
2. Yamaha then conducts an analysis of the market and the District Marketing Manager (DMM) reviews the prospective dealer's capabilities. That review includes the prospective dealer's financials, boat lines sold, shop location, management in place, inspection of the store, and potentially other factors the DMM thinks are relevant.
3. If Yamaha and the prospective dealer agree that it would be beneficial to move forward, the prospective dealer then officially "applies" to become a dealer. This includes the Dealer Agreement attached to this request, but the paperwork makes clear it is only an application until the management of Yamaha's Marine Division accepts the application.
4. Once Yamaha accepts the application, it executes a Dealer Agreement and a dealer number is provided, along with setup for dealer training.

In order to be considered for a dealership, Dealers have to disclose a significant amount of financial and credit information to Yamaha. After being selected, prospective Dealers then must complete a number of training requirements, including operational training and training on servicing Yamaha products. Achieving higher levels of certification from Yamaha (which can be used in advertising) requires additional online training modules. Some training takes place online and other training takes place in one of two physical training locations operated by Yamaha.

Each Dealer is assigned a DMM, who visits each location no less than each quarter (and usually monthly) to evaluate the displays, setup of the store, and the Dealer's operations. Yamaha's control over the Dealer extends to more than just the setup of its own products, because it also includes the overall store and the placement of specific products from Yamaha with prominence.

Yamaha requires that Dealers purchase a sign with the Yamaha logo and does not grant a license to use its mark to its Dealers. Instead, Yamaha retains control over the Yamaha marks through a Yamaha Visual Identity Manual and review of Dealer advertisements. Dealers are not required to obtain pre-approval of advertisements that use Yamaha's marks and follow the Manual. But Dealers must submit all advertisements for approval in order to receive reimbursement. Yamaha does not provide a full reimbursement for the costs of the advertisement, but reimburses a significant portion of the costs.

In addition, Yamaha's control over its Dealers includes continuing evaluations of the financial performance and health of Dealers, the hours of business, and the required purchase of special tools to service Yamaha products. Yamaha also prohibits the assignment of the agreement with the Dealers because of the personal nature of the agreement.

The Dealer Agreement lays out these requirements for Yamaha Dealers and defines the relationship between Yamaha and its Dealers. Sections 2.4 through 2.10 specifically state the variety of criteria that must be followed in order for a Dealer to serve in that capacity for Yamaha:

2.4 Performance Criteria. Dealers level of performance may be evaluated periodically by Yamaha, based on reasonable criteria such as the following:

- (a) The volume of Dealers sales of the Products as compared with the sale of competitive products in the market area served by Dealer's Location.
- (b) The volume of Dealers sales of the Products as compared to other dealers of the Products.
- (c) The actual sales volume of the Products by Dealer as compared to the reasonable annual sales objectives which may be established by Yamaha for Dealer.
- (d) The manner in which Dealer has conducted its sales operations including advertising, sales promotion and treatment of consumers.
- (e) The trend over a reasonable period of time of Dealer's sales performance.
- (f) The availability of Products to Dealer.
- (g) Significant local conditions that may have directly affected Dealers performance.
- (h) The compliance with all of the terms and conditions of this Agreement.

Evaluations prepared pursuant to this Section 2.4 will be discussed with and provided to Dealer, with the expectation that Dealer will take such action as may be required to correct any deficiencies in Dealers performance of its responsibilities.

2.5 Customer Relations. Dealer shall at all times conduct its operations in such a manner so as to develop and maintain good customer relations. Dealer shall provide prompt and courteous service to customer inquiries and complaints relating to the Products. Dealer shall at all times properly represent the Products and shall not make, directly or indirectly, any false, misleading, or disparaging representations to any customer or other person in regards to Yamaha or the Products.

2.6 Hours of Business. Dealer agrees that its operations shall be conducted in the normal course of business during usual business hours and for not less than the usual number of days of the week and hours of the day which are customary for the same type of business in the market area served by Dealer's Location.

2.7 Display and Inventory. Dealer agrees to maintain a prominent display of a reasonable representation of the entire line of the Products at Dealer's Location, which display shall be in accordance with the guidelines established by Yamaha. Dealer also agrees to maintain a reasonable inventory of the Products which is adequate to meet the current and anticipated demand in the market area served by Dealer's Location, subject to availability and to guidelines established by Yamaha.

2.8 Report and Records. In order that Yamaha may comply with applicable regulations and achieve its marketing objective, Dealer shall report to Yamaha, all retail sales of the Products within ten (10) days of completion of such sale. Dealer shall periodically provide to Yamaha complete and accurate data regarding Dealer's inventories of the Products and such other reasonable information as and when requested by Yamaha. Dealer shall keep complete and accurate records regarding sales and service activities for the Products, applications for discounts, allowances, warranty claims, refunds and credits and shall retain for at least three (3) years all such records and documents. Dealer shall permit any designated representative of Yamaha, at reasonable times, to examine and audit such records and documents.

2.9 Cooperation with Yamaha. Dealer shall at all times cooperate and work closely with Yamaha's representatives and shall maintain close communications with such representatives in regards to Dealers operations hereunder.

2.10 Facilities. Dealer shall establish and maintain the appearance and condition of the facilities at Dealer's Location so as to favorably reflect on the Products and the quality image of Yamaha. As part of the facilities at Dealer's Location, Dealer shall install and maintain prominent and suitable signs as recommended by Yamaha, which identify Dealer as a dealer of the Products. Dealer agrees to maintain the facilities in a neat and orderly fashion and in accordance with the standards established by Yamaha which may be changed from time to time. The facilities must at all times comply with such standards with respect to appearance, location, size, layout of building, showroom, office, parts department and service operation. Yamaha may periodically evaluate Dealer's facilities. Dealer shall permit any designated representative of Yamaha, at reasonable times, to inspect the facilities and Dealer agrees to make such alterations or improvements to the facilities as Yamaha may reasonably specify.

Other provisions of the Agreement are also relevant: Yamaha undertakes efforts within its sole discretion to provide sales assistance to Dealers (Section 5.2) and to allow Dealers to use Yamaha's trademarks (Section 5.4). The Dealers' use of Yamaha's trademarks is not a license, but Yamaha retains control of the use of its marks. Assignment is prohibited because of the personal nature of the agreement (Section 7.1).

Yamaha also requires Dealers to submit financial reports and financial information to Yamaha on a regular basis:

5.6 Financial Responsibility. Dealer shall maintain for its operations hereunder adequate working capital and lines of wholesale credit to enable Dealer to fulfill its responsibilities under this Agreement. Dealer further agrees to comply with financial responsibility guidelines issued by Yamaha from time to time. Dealer agrees to furnish Yamaha, at reasonable times, financial reports and other financial data in a format acceptable to Yamaha to enable Yamaha to determine Dealer's financial responsibility. At least within ninety (90) days following the close of Dealer's fiscal year, Dealer agrees to submit to Yamaha Dealer's audited financial statement for the previous year.

2. The Outboard Motors Service Center Agreement

In addition to its Dealers, Yamaha also selects entities to serve as Service Centers that do not sell loose Yamaha outboard motors to retail customers but instead provide warranty and other service on Yamaha products and sell boats powered by Yamaha outboard motors provided to them by boat builders ("Packaged Products"). Service Centers may provide some sales of parts as part of the service process, but otherwise only sell Packaged Products and do not sell loose Yamaha outboard motors. Service Centers are chosen through the same process described above for Dealers.

Through the standard Service Center agreement, Yamaha exercises control over the hours of operation of the Service Centers, makes monthly to quarterly visits to check the cleanliness and operations of the locations, and requires the purchase of special tools for warranty work. Like the Dealer agreement, owners of Service Centers must undergo training from Yamaha and the agreement cannot be assigned. Yamaha also requires that Service Centers purchase a sign with the Yamaha logo and retains control over the Yamaha marks through the same Yamaha Visual Identity Manual required of Dealers.

The Service Center Agreement provides less control over the operations of the service center than the Dealer agreement, but still controls a number of points indicating control over policies and practices. Specifically, the Service Center Agreement provides for hours of operation and the authority of Yamaha to inspect the records of the Service Center at any time it so chooses. The Service Agreement specifically provides:

4.3 Customer Relations. Service Center shall at all times conduct its operations in such a manner so as to develop and maintain good customer relations. Service Center shall provide prompt and courteous service to customer inquiries and complaints relating to the Products. Service Center shall at all times properly represent the Products, parts and accessories and shall not make, directly or indirectly, any false, misleading, or disparaging representations to any customer or other person in regards to Yamaha or the Products, parts and accessories.

4.4 Hours of Business. Service Center agrees that its operations shall be conducted in the normal course of business during usual business hours and for not less than the usual number of days of the week and hours of the day which are customary for the same type of business in the market area served by Service Center location.

4.5 Report and Records. Service Center shall periodically provide to Yamaha complete and accurate data regarding Service Center service activities and such other reasonable information as and when requested by Yamaha. Service Center shall keep complete and accurate records regarding service activities for the Products. Service Center shall permit any designated representative of Yamaha, at reasonable times, to examine and audit such records and documents.

4.6 Facilities. Service Center shall establish and maintain the appearances and condition of the facilities at Service Center location so as to favorably reflect on the Products and the quality image of Yamaha. As part of the facilities at Service Center location, Service Center shall install and maintain prominent and suitable signs as recommended by Yamaha, which identify Service Center as a service center of the Products. Service Center agrees to maintain the facilities in a neat and orderly fashion and in accordance with the standards established by Yamaha which may be changed from time to time.

In addition, similar provisions to the Dealer Agreement exist regarding the use of Yamaha's trademarks (Section 4.2), and limitations on assignment due to the personal nature of the agreement (Section 6.i).

ANALYSIS

1. Domestic Subsidiary of Foreign Corporation

As explained above, the foreign parent of YMUS will not exercise any control or financing authority over the SSF and only U.S. citizens will direct the operations of the SSF. Pursuant to AO 2006-15, the lack of control of the foreign parent should lead to a conclusion that Yamaha is able to establish a SSF to make contributions to federal candidates.

2. Solicitation of Dealers

Yamaha exercises a substantial amount of control over the business policies, practices, and procedures of its Dealers. Those Dealers are also subject to a large amount of contractual obligations to Yamaha.

This is similar to the control maintained by H&R Block over its franchisees, found to be appropriate under AO 1992-7, including extensive training and oversight, regular supervisory visits, control over appearance of the facilities, requirements regarding the hours of operation, and restrictions on transferability. *Sue also* AO 1988-46 and 1979-38. The Commission reviews the factors set forth at 11 C.F.R. § 100.5(g)(4) to determine whether an organization is an affiliate of a corporation. Those factors include control over the governance of the other organization and the ability to control the decision making employees at the organization. 11 C.F.R. § 100.5(g)(4)(ii)(B) and (C).

Although Yamaha's dealers are not franchisees, they are licensees and Yamaha maintains a sufficient level of control over its Dealers for them to be considered affiliates. The amount of control over the governance extends to the hours of operation, the financial health of the dealers, and extensive reporting of sales to Yamaha. The Dealers are only granted limited use of Yamaha's trademarks, must purchase specialized equipment from Yamaha, and are overseen on a regular basis. Yamaha controls who operates the dealerships through its limitations on control of the Dealers and limits on assignment. These facts demonstrate affiliation between Yamaha and its Dealers. Unlike the relationship with the wholesalers in AO 1985-07, the control exercised by Yamaha extends to more than just a business contract between two entities. The regular supervisory visits and control over the daily operations and business policies of the Dealers show that there is a close relationship beyond that of a typical business agreement. Yamaha's relationship with its dealers meets the factors set forth at 11 C.F.R. § 100.5(g)(4) to demonstrate that it is affiliated with its Dealers.

This is the type of control required by this Commission and should authorize a finding that Yamaha may solicit the executive and administrative personnel, and the families thereof, of its Dealers. 11 C.F.R. § 114.1(c). In addition, Yamaha should be able to solicit from contributions from the Dealers themselves if they are individuals or partnerships, pursuant to AO 1988-46 and 1983-48.

3. Solicitation of Service Centers

While the level of control exercised by Yamaha over its Service Centers is less than the control over its Dealers, it is still substantial under 11 C.F.R. § 100.5(g)(4) and AO 1992-7. *See also* AO 1988-46 and 1979-38. Yamaha regulates the governance of the Service Centers in their hours of operation, customer relations, and facilities utilized, and it also requires reports that can be audited by Yamaha at its option. Service Centers receive the same supervisory visits, training, and tool purchase requirements as Dealers. The Service Centers cannot change ownership without Yamaha's express approval because of the personal nature of the agreement. The Service Center must use Yamaha's trademarks in accordance with Yamaha's guidance and does not receive a general license for the use of those marks.

As with the Dealers, this is the type of control required by the Commission and should authorize a finding that Yamaha may solicit the executive and administrative personnel, and the families thereof, of its Service Centers. 11 C.F.R. § 114.1(c). In addition, Yamaha should be able to solicit from contributions from the Service Centers themselves if they are individuals or partnerships, pursuant to AO 1988-46 and 1983-48.

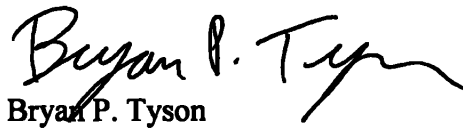
CONCLUSION

Thus, under the Federal Election Campaign Act, its attendant regulations, and this Commission's Advisory Opinions, we believe that Yamaha's SSF may be formed, even though it is owned by a foreign subsidiary, and that the SSF may solicit for voluntary contributions from the executive and administrative personnel, and their families, of its Dealers and Service Centers. But because of the fact-specific nature of these issues, we seek this Commission's guidance through an Advisory Opinion.

If the Commission requires any additional facts or information, we will be happy to supplement this request.

Sincerely,

STRICKLAND BROCKINGTON LEWIS LLP


Bryan P. Tyson

Enclosures