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May 23, 2014

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VIA HAND DELIVERY

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

Re: Advisory Opinion Request

Dear Commissioners:

On behalf of REED Marketing Consultants, Inc. ("RMC"), we respectfully request an advisory opinion from the Federal Election Commission ("FEC") pursuant to 2 U.S.C. § 437f of the Federal Election Campaign Act of 1971, as amended (the "Act").

Specifically, we seek confirmation that RMC's proposed affinity credit card product, marketed to a federal political committee such as a national party committee ("Committee"), is permissible under the Act and FEC regulations. It is materially indistinguishable from what the Commission has approved in prior Advisory Opinions.

Background

RMC is a marketing consulting firm that specializes in the financial services and credit card businesses. As part of its business practices, RMC analyzes the financial services marketplace, identifies potential opportunities, and develops innovative financial products that support their findings. RMC seeks partnerships with well-known financial services entities that support RMC's new product development. Serving as a strategic marketing partner, RMC creates comprehensive marketing campaigns that launch the new product into the marketplace.

RMC wants to facilitate the development of an affinity credit card program with an issuing bank(s) and both Democratic and Republican national party committees ("Committees"). RMC is willing to enter into affinity credit card program arrangements with any Committee as long as

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Federal Election Commission

May 23, 2014

Page 2

they provide similarly acceptable commercial benefits to RMC and its financial services partner(s).

In the case of a Committee affinity card, RMC would be involved in multiple aspects of marketing the card to prospective cardholders based on the Committee's supporter list. The affinity card to be offered to Committees is a rebate card, which permits cardholders to earn rebates by charging purchases on their affinity credit card account, which could then be paid out as cash or designated as contributions to the Committee. In other words, the rebates are the funds of the cardholder, who has full discretion and control over them.

1. Marketing / Prospecting

The affinity card program requires the Committee to grant RMC and its partners the use of their supporter contact list and a license to use the Committee's trademark or branding. RMC understands that, while Committees do not develop such lists for commercial purposes, the lists do have significant market value based on their size and scope. RMC and its partners will use the Committee's branding in marketing materials for the affinity card. RMC's issuing bank partner will use the Committee list to screen the individuals contained therein for credit-worthiness and/or likelihood to respond to the affinity card product offering. RMC and its partners will provide the Committee certain data and statistics regarding cardholders and usage. In exchange for its administration of the affinity program, RMC will charge the Committee an acquisition fee for each new cardholder and a monthly administration fee.

2. Affinity Card Specifics

The affinity card program would permit cardholders to accrue rebates based on their usage of the affinity card. These rebates, once earned, become the property of the cardholder. With the affinity card program, cardholders will be offered the option to direct their rebates to the Committee instead of being sent to the cardholder. Cardholders may then choose whether to retain the rebate personally or contribute all or part of the rebate to the Committee. RMC and its partners will provide the cardholder the opportunity to authorize their rebates be contributed to the Committee and ask the cardholder for the information necessary for disclosure under the Act and FEC regulations. Such requests for authorization will include disclaimers and language consistent with the Act and FEC regulations for solicitations.

3. Processing contributions

Once contributors request their rebates be contributed to the Committee, RMC and/or its partners will process the contribution, forwarding contributor information to the Committee with the contribution. Contributions will be transferred to the Committee at the same time as

they otherwise would have been transferred to the cardholder. The transaction costs associated with processing the rebates and transferring contributions to the Committee are covered by the administration fee charged by RMC on all contributions to the Committee from the rebate funds. The Committee would retain responsibility for using best efforts to collect and report any missing contributor information not provided by the cardholder in the authorization and for contribution limits.

RMC wishes to contract with Committees to create affinity card programs for Committee supporters, in line with its usual business practices for other organizations, adapted for compliance with federal election law.

Question Presented

May RMC and its financial services partners enter into agreements with a Committee to create, market, and administer an affinity card program that gives cardholders the option to make political contributions to the Committee out of rebates cardholders earned through the use of their affinity credit cards?

Analysis

The affinity card program proposed is permissible under the Act since it complies with the two conditions outlined in AOs 2008-18 and 2006-34 regarding affinity programs: “(1) the corporation and political committee enter into a commercially reasonable transaction, and (2) the amounts contributed to political committees *via* rebates or rewards are from individual customers’ funds and not from the corporation’s funds, then the arrangements are bona fide commercial transactions.” AO 2008-18; *see also* AOs 2010-21, 2010-06, 2006-34, 2003-16.

- 1. The contributions from earned cardholder rebates are permissible contributions from individual cardholders.**

The contributions resulting from the affinity card program will come only from the individual cardholder’s rebate, after it is vested in that individual. The Commission has previously determined that “[r]ebates that have vested are the property of the cardholder. . . . Consequently, contributions of cardholder’s rebates would be treated as contributions from the cardholders’ personal funds.” AO 2003-16 at 7. Here, cardholders have control over the disposition of the rebates. *See* AO 2006-34 at 7. And, as such, “[i]ndividual cardholders may make these contributions” so long as they do not exceed limits or come from prohibited sources. *See* AO 2003-16 at 7. Further, the affinity card program’s rebates occur during the ordinary course of

Federal Election Commission

May 23, 2014

Page 4

RMC's business; RMC has developed numerous successful credit card acquisition campaigns and programs with non-political organizations. *See* AO 2006-34.

2. The program is commercially reasonable, conducted as an arms-length transaction, and in line with programs available to non-political organizations.

Additional services provided by RMC in connection with the marketing and administration of the affinity card would not constitute improperly facilitating making contributions to the Committee since these activities are part of RMC's ordinary course of business, and because RMC is charging the usual and customary rate for its services as a commercial vendor. *See* AO 2003-16 at 7; *see also* 11 C.F.R. § 114.2(f).

RMC's purpose in engaging Committees in creating affinity card programs is to increase its business profile and grow its business. RMC's financial services partner's purpose is to increase the number of active credit cardholders and purchase volume within its credit card portfolio, generating revenue for its business. RMC and its financial services partners already successfully offer the products at issue here to many other types of organizations and businesses wholly unrelated to political committees. A large part of RMC's business model is to identify and pursue relationships with affinity organizations subject to the commercial viability of the endeavor rather than party affiliation or ideological orientation. *See* AO 2006-34.

RMC's services are being provided at the "usual and normal charge" since it enters into similar agreements on similar terms with its non-political clients. 11 C.F.R. § 100.53(d)(2). In fact, RMC often takes on more initial risk with its non-political clients than proposed in this AO Request since the services it provides to any one affinity organization are incidental to RMC's normal course of business developing and administering credit card marketing campaigns.

RMC's marketing of the affinity card program is likewise commercially reasonable. The primary purpose of RMC's acquisition solicitations would be to generate new cardholders for its financial services partner while growing the profile and business of RMC through its successful development and execution of the marketing campaign. *See* AO 2006-34 at 7. This model differs significantly from solicitation services provided by commercial vendors to political committees and services which resemble them, which require the committee to pay fair market value for such solicitation services. *See id.* Further, this marketing would contain no references to any current federal candidates or future elections. *See* AO 2003-16.

As such, only a small percentage of the total solicitation costs are of value to the Committee. *See* AO 2006-35 at 7. RMC and its financial services partners gain ascertainable retail value from the use of the Committee's mailing list, which covers these marketing costs and any incidental costs of administering the affinity credit card program. *See* AO 2002-14; 2006-35. RMC and its

PATTON BOGGS

Federal Election Commission

May 23, 2014

Page 5

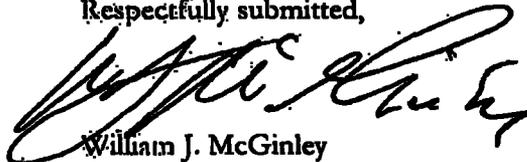
financial services partners also gain a license to use the name and marks of the Committee in marketing its product. Finally, regarding the administration of the rewards program (including any administrative costs in forwarding to the Committee contributions from participating cardholders), RMC and its financial services partners charge a fee for all contributions that accrue to the Committee through the rebate program. Together, the value to RMC of these components more than compensates it for the cost of services provided to the Committee. See AO 2003-16.

Conclusion

For the reasons describe above, we respectfully request that the Commission issue an advisory opinion confirming that RMC's affinity card program is permissible under the Act.

Please do not hesitate to contact us with any questions or for more information.

Respectfully submitted,



William J. McGinley



REED Marketing Consulting, Inc. Advisory Opinion Request
William J McGinley

to:
rknop
07/03/2014 11:33 AM

Cc:

egyory

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From: William J McGinley <wmcginley@jonesday.com>

To: rknop@fec.gov,

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Mr. Knop,

Please find listed below the answers to the questions listed in your June 13, 2014 email to me concerning the Advisory Opinion Request that was submitted on May 23, 2014, on behalf of our client, REED Marketing Consultants, Inc. Please do not hesitate to contact me if you have any additional questions.

Regards,
Bill McGinley

Background

QUESTION: *Please clarify whether the requestor is planning to offer services to any national party committee that meets the requestor's criteria, and not just the Democratic and Republican National Party Committees (see pg 1-2 of request).*

ANSWER: Requestor plans to offer services to any national party committee that meets the requestor's criteria, including the Democratic and Republican National Party Committees as well as the national committees of any minor parties.

QUESTION: *Will the requestor offer services to federal political committees other than national party committees (e.g., authorized committees)? (see second paragraph of request) (see 11 C.F.R. 102.8(a) on forwarding timelines for different types of recipient committees).*

ANSWER: At this time, Requestor plans on offering services to national party committees. To the extent there is a viable market for other political committees, Requestor would like to offer services to such committees in the future, including state party committees.

QUESTION: *On page 2, first full paragraph, last sentence, the request letter states that "the rebates are the funds of the cardholder, who has full discretion and control over them." Did you mean to refer to the legal standard for contributions forwarded by intermediaries and conduits in 11 C.F.R. 110.6(d), e.g., "direction and control"?*

ANSWER: The description was included to accurately state the facts, specifically that Requestor does not exercise any direction or control over the contributor's choice to contribute, or to whom the contributor wishes to contribute.

Marketing/Solicitation

QUESTION: *Is the requestor only marketing to individuals on the committees' lists? Will it only issue cards to individuals on the lists? See, e.g., AO 2012-35 (Global Transaction Services Group) at 5 (addressing availability of contributor information to corporation forwarding contributions).*

ANSWER: Yes, at least initially, Requestor is only marketing to individuals on the committees' lists. Requestor does not issue cards, but instead handles the marketing of cards to be issued by an issuing bank. Regardless, at least initially, Requestor anticipates that since it is only marketing to individuals on the committees' lists, cards will be issued only to individuals on the lists. Eventually, Requestor would like to market to the general public. Regardless, contributor information will be forwarded to the recipient committee in a manner consistent with AO 2012-35.

QUESTION: *How will requestor market the cards? Will the request for authorization be a separate communication from the marketing materials?*

ANSWER: Requestor will market the cards consistent with how it conducts marketing for other, non-political affinity programs. First, the list of potential cardholders (the party committees' lists) are analyzed for creditworthiness. After creditworthiness is determined per the issuer's criteria, an acquisition package is sent to the potential cardholder. This includes a letter and other materials, and states that he or she is prequalified for a credit card, and that he or she has the option of receiving rebates, or giving those rebates to a national party committee. Hopefully, the potential cardholder responds positively, and indicates that he or she would like to be issued a card. The potential cardholder, upon acceptance, has the option to choose to direct any rebates that he or she might earn to be a contribution to the recipient committee. The potential cardholder does have the option to not use rebates to make contributions, and this option has no bearing on the creditworthiness of the potential cardholder or the decision to issue a card. Upon receiving an affirmative response, a backend credit check is conducted, and assuming the requisite creditworthiness, a card will then be issued.

QUESTION: *The request indicates that requests for authorization will include disclaimers and "language consistent with the Act and FEC regulations for solicitations." Will the marketing materials contain disclaimers? See, e.g., AO 2006-34 (Working Assets) at 8-9.*

ANSWER: Yes, the marketing materials will contain disclaimers, consistent with AO 2006-34.

QUESTION: *Do the committees' mailing lists have ascertainable market value and will they be used in a commercially reasonable manner, with a bona fide arm's length transaction? See, e.g., AO 2008-18 (Mid-Atlantic Benefits) at 4; AO 2006-34 (Working Assets) at 6; AO 2003-16 (Providian National Bank) at 6.*

ANSWER: Yes, the committees' mailing lists have ascertainable value, and they will be used in a commercially reasonable manner, with a bona fide arm's length transaction.

Receipt/Forwarding of Contributions

QUESTION: *Will cardholders be asked to authorize and provide contributor information each time they receive a rebate? Can they do it once? At what stage(s) in the process will the cardholder be asked to authorize? See AO 2012-35 (Global Transaction Services Group) at 4-5; AO 2010-21 (ReCellular) at 8 and AO 2010-06 (Famos) at 8; see also AO 2010-12 (Procter and Gamble) at 3 (noting that pre-*

authorized payroll deductions were made at regularly scheduled intervals).

ANSWER: The cardholder can authorize rebates to be used as contributions once, when he or she first requests a card. His or her information will be sought at that time as well. The cardholder can change this at any time, and choose to not have rebates be used for political contributions, by calling customer service, and this will be clearly stated on the application.

QUESTION: *Will the requestor/bank partners ask cardholders to verify that the contribution is not from a prohibited source? If cardholder does not verify/does not provide identification information, will the requestor forward the contributions? See AO 2012-35 (Global Transaction Services Group).*

ANSWER: Although such verification is not required, cardholders will nonetheless be asked to verify that their contributions are not from a prohibited source, and contributions will not be forwarded without such verification.

QUESTION: *On what basis (monthly, rolling, etc.) do the rebates accrue to the cardholder?*

ANSWER: Consistent with normal business practices, the rebates will accrue monthly.

QUESTION: *The request states that contributions are forwarded to the committee at the same time the rebate would have been sent to cardholder (pg. 2-3) – how long after the funds vest with the cardholder are rebates sent to the cardholder?*

ANSWER: Rebates are sent to the cardholder upon request, and in a manner consistent with the cardholder's wishes. Some want rebates dispersed monthly; others ask that they be credited toward their account balance. Or the rebates can remain in the cardholder's account. Ultimately, it depends on the desire of the cardholder.

QUESTION: *Are the rebates an accounting on the requestor's books or is the requestor receiving funds from the bank partners?*

ANSWER: Requestor does not handle the rebates. Instead, they come from the issuing bank, just as was the case in prior favorable AOs.

QUESTION: *If the bank partners are transmitting funds to the requestor, when does the requestor receive the funds, relative to the disbursement to cardholder/committee? See AO 2010-12 (Proctor and Gamble) at 3 and AO 2006-34 (Working Assets) at 7-8 (noting that a corporation cannot process a contribution prior to receiving the funds/authorization to use the funds for a contribution without making a prohibited corporate contribution).*

ANSWER: Requestor does not receive such funds. Requestor markets the card and performs related tasks.

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