FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 13, 2010

CERTIFIED MAIL
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ADVISORY OPINION 2010-12

Robert K. Kelner, Esq.
Zachary G. Parks, Esq.
Covington & Burling, LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

Dear Messrs. Kelner and Parks:

We are responding to your advisory opinion request on behalf of the Procter & Gamble Company ("P&G") and its separate segregated fund ("SSF"), the Procter & Gamble Company Good Government Committee ("P&G PAC"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the deduction by P&G of contributions to P&G PAC from P&G's quarterly cash retainer payments to members of its board of directors.

The Commission concludes that P&G directors, who receive retainer payments on a salary rather than hourly basis, are members of P&G's restricted class and, thus, are eligible for solicitation by P&G PAC. The Commission also concludes that contributions made by directors through pre-authorized deductions from their quarterly retainer payments are, as proposed, permissible under the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letter received on May 18, 2010, on your email of June 29, 2010, and on telephone conversations with Commission staff.

P&G PAC is an SSF of P&G and is registered with the Commission as a political committee. P&G currently operates a corporate payroll deduction system whereby employees in P&G's restricted class may elect to contribute to P&G PAC by pre-authorizing periodic deductions from their salary payments. P&G proposes to extend this program to certain members of its ten-member board of directors.

The board's chair, who is also P&G's President and Chief Executive Officer, is a full-time employee of P&G. The nine other directors are not full-time P&G employees, but do receive quarterly retainer payments from P&G as compensation for their board service. These retainer payments are issued on a salary rather than hourly basis, meaning that the retainer amount is not determined by the amount of time a director spends on board responsibilities. Directors may elect to receive their quarterly retainer payments in cash (through physical checks or direct deposit), unrestricted stock, retirement restricted stock, or a combination of the above options.

Under P&G's proposal, P&G PAC would follow the same procedures for directors that it currently follows for non-directors participating in the payroll deduction plan. P&G PAC would send a written solicitation to the director, informing him or her of the choice to have P&G automatically deduct a specified amount from the cash portion of each quarterly retainer payment as a contribution from the director to P&G PAC. Directors wishing to participate would return a signed authorization form to P&G PAC. P&G PAC intends to solicit only those directors (1) who are United States citizens or lawful permanent residents; and (2) who elect to receive at least 25 percent of their retainer payments in cash. P&G indicates that the solicitations would comply with the provisions of 11 CFR 114.5(a) and that the contributions received would not exceed the limitations in the Act and Commission regulations.

Question Presented

May P&G PAC, with prior written authorization from a P&G board member, deduct a contribution to P&G PAC from the board member's quarterly retainer payment?

Legal Analysis and Conclusions

Yes, P&G may, with prior written authorization from a P&G board member, deduct a contribution to P&G PAC from a board member's quarterly retainer payment.

The Act and Commission regulations prohibit corporations from making any contributions in connection with a Federal election. 2 U.S.C. 441b(a); 11 CFR 114.2(b)(1). Corporations are also generally prohibited from facilitating the making of contributions to candidates or political committees. 11 CFR 114.2(f)(1). Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with any Federal election. *Id.*

A corporation's use of general treasury funds to establish, administer, and solicit contributions from its restricted class to its SSF is not a contribution to a candidate or political committee, and does not facilitate the making of a contribution to a candidate or political committee. 2 U.S.C. 441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii) and 114.5(b). A corporation's restricted class includes stockholders and their families, and executive or administrative personnel and their families. 2 U.S.C. 441b(b)(4)(A)(i);

11 CFR 114.5(g)(1). The term "executive or administrative personnel" means "individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities." 2 U.S.C. 441b(b)(7); *see also* 11 CFR 114.1(c).

Members of a corporation's board of directors are not automatically considered to be members of a corporation's executive and administrative class. *See* 11 CFR 114.5(g)(1) and 114.1(c)(1)-(3); Advisory Opinion 2000-10 (America's Community Bankers). To be a member of the restricted class, "a director must be paid a salary or stipend in order to be solicited (assuming the director is not otherwise solicitable as a stockholder or as an executive employee of the corporation)." Advisory Opinion 2000-10 (America's Community Bankers); *see also* Advisory Opinions 1992-09 (KAMO Power), 1985-35 (Weirton), and 1977-18 (Proprietary Industry PAC). Because P&G pays its directors' retainers on a salary rather than hourly basis, the directors are members of P&G's restricted class and may be solicited by P&G PAC.

Commission regulations provide that facilitating the making of contributions does not include "[e]nrolling members of a corporation's . . . restricted class in a payroll deduction plan or check-off system which deducts contributions from dividend or payroll checks to make contributions to the corporation's . . . separate segregated fund." 11 CFR 114.2(f)(4)(i). In prior advisory opinions, the Commission has approved arrangements in which a corporation administers contributions to its SSF via payroll deduction or check-off. *See, e.g.*, Advisory Opinions 2001-04 (MSDW PAC) and 1999-03 (Microsoft PAC). P&G's proposal is analogous to arrangements the Commission has approved in the past. For example, in Advisory Opinion 2009-31 (MAXIMUS, Inc.), the Commission approved a proposal to allow employees to contribute the value of earned "credits," which were part of the corporation's employee compensation plans, to the corporation's SSF. In Advisory Opinion 1999-06 (Rural Letter Carriers), the Commission approved a proposal to allow members to contribute to a labor organization's SSF through deductions from their annuity payments.

P&G's proposal would provide for pre-authorized deductions of a fixed amount from regularly scheduled periodic payments by the corporation to members of its restricted class. Thus, like these prior proposals, P&G's proposal is permissible under the Act and Commission regulations.

The permissibility of P&G's proposal is conditioned upon compliance with the voluntariness requirements of 2 U.S.C. 441b(b)(3) and 11 CFR 114.5(a), including the continuing right of contributors to revoke their authorizations or modify their contribution amounts at any time. *See* Advisory Opinions 2000-04 n.8 (NAFCU), 1999-03 (Microsoft PAC), and 1991-19 (GTE). Additionally, in order to avoid making contributions from its general treasury funds, P&G must ensure that it does not forward any contributions to P&G PAC until the time the quarterly retainers are paid to the director making the contribution. Otherwise, the contributions would constitute an advance of corporate funds, prohibited by 2 U.S.C. 441b(a). *See* 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1); Advisory Opinion 2006-34 (Working Assets, Inc.).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law, including, but not limited to, statutes, regulations, advisory opinions, and case law. The cited advisory opinions are available on the Commission's website at http://saos.nictusa.com/saos/searchao.

On behalf of the Commission,

(signed)
Matthew S. Petersen
Chairman