



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2000-22

Scott A. Sinder  
Stephen Gold  
Collier Shannon Scott  
3050 K Street, N.W.  
Suite 400  
Washington, D.C. 20007-5108

Dear Mr. Sinder:

This responds to your letters dated July 31 and August 30, 2000, on behalf of various trade associations requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations to the use of an electronic signature by a corporate representative to authorize solicitations by a trade association for contributions to its separate segregated fund.

***Background***

You represent the Air Transportation Association of America, the American Land Title Association, the Council of Insurance Agents and Brokers, the Independent Insurance Agents of America, and the Society of Independent Gasoline Marketers of America (“the Associations”). These entities are incorporated trade associations with separate segregated funds (“SSFs”) that are registered with the Commission, and they each have corporate members. The Associations have solicited contributions to their respective SSFs from the executive or administrative personnel of their respective member corporations, as well as the families of such individuals. As required by 2 U.S.C. §441b(b)(4)(D) and 11 CFR 114.8, the Associations have received separate and specific approval from corporate representatives to conduct the solicitations. They have accomplished this by sending an SSF solicitation form (usually by mail) to the

representative, which the representative typically signs and mails back to the Association. The Associations propose the additional option of receiving an executed approval from a corporate representative via the use of an electronic signature. You ask whether that would constitute a valid written authorization for a trade association to solicit contributions to its SSF from the restricted class employees of the member corporation.

You state that the Associations can and will maintain the necessary security measures to safeguard any electronic signature processes that they institute. There are two separate electronic mechanisms that the Associations would like to use to obtain the requisite approvals.

Using the first method, the Association would send an electronic mail message to the corporate representative requesting the corporation's approval with an attached SSF solicitation approval form. Each Association maintains a list of the authorized corporate representatives to whom it can directly send electronic mail. You state that the Association can ensure that the electronic mail to which the executed form is attached was sent from that representative's e-mail address. To so ensure, the e-mail distribution by the Association would be limited to the list of corporate representatives, and the Association would send a confirmation e-mail to each corporate representative upon receipt of a form executed with the electronic signature.

Using the second method, each Association would make the corporate approval forms available to the corporate representatives on the secured "members-only" portions of its Internet website. You state that the Association would ensure that only the corporate representatives have access to the forms through the use of coded private passwords that would restrict access to just the corporate representatives. The corporate representative would then be permitted to provide written approval via an electronic signature, and, upon receipt of the executed form, the Association would send a notification to the representative confirming that receipt. You also state that the Associations will maintain a record of the approvals and comply with all other Commission regulatory requirements.<sup>1</sup>

### ***Applicable Law***

In an exception to the general prohibition on corporate contributions, the Act and Commission regulations provide that a corporation, including an incorporated trade association, may use general treasury funds for the establishment, administration, and solicitation of contributions to its separate segregated fund. 2 U.S.C. §441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii) and 114.5(b). An organization such as an incorporated trade association, which is not itself a political committee, but which directly or indirectly establishes, administers, or financially supports a political committee, is a "connected organization" of that committee. 2 U.S.C. §431(7); 11 CFR 100.6(a).

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<sup>1</sup> The representative would still have the option of mailing a copy of the form with a traditional handwritten signature.

The connected organization and its SSF are subject to restrictions as to the personnel who may be solicited for contributions to the SSF. 2 U.S.C. §441b(b)(4)(A), (C), and (D); 11 CFR 114.5(g)(1), 114.7(a), and 114.8(c). Specifically, an incorporated trade association and its SSF may solicit the association's executive or administrative personnel, and the families of such personnel. They may also solicit the stockholders and executive and administrative personnel, and the families of such stockholders and personnel, of the member corporations that separately and specifically approve the solicitations and that have not approved a solicitation by any other trade association for the same calendar year. Moreover, they may solicit members of the association that are not incorporated, without any need to seek prior approval. 11 CFR 114.7(a), 114.7(c), and 114.8(c).

The requirements for separate and specific approval are described in 11 CFR 114.8(d) and (e). A trade association must make a written request to the member corporation for permission to solicit the member's restricted class. The request may be sent to the corporate representative with whom the association normally conducts its activities. This request for approval must inform the member corporation that: (1) a separate and specific corporate approval is necessary before the trade association or its SSF may conduct a solicitation; and (2) the corporation may not approve solicitations by another trade association for the same calendar year. 11 CFR 114.8(c) and (d).<sup>2</sup>

Before a trade association may solicit the restricted class of any corporate member, the association must obtain written authorization from the member corporation. The member must designate the calendar year for which the solicitations are authorized, and the authorization applies through that calendar year. There is no limit on the number of member corporations from which a trade association can obtain solicitation approvals. In a particular calendar year, however, a corporation is permitted to authorize only one trade association to solicit its restricted class. 11 CFR 114.8(d); Advisory Opinion 2000-10. A copy of each approved request received by a trade association must be retained by the trade association or its SSF for three years from the year for which the approval is given. 11 CFR 114.8(d)(2).

### ***Analysis***

The Commission has examined the use of electronic signatures in another context where a written signature has been required to authorize an activity by a connected organization or its SSF. In Advisory Opinion 1999-3, the Commission allowed the use of an electronic signature process, which included safeguards for the security and integrity of the signature, to authorize payroll deductions for voluntary contributions to a corporation's SSF by the corporation's executive or administrative personnel. The

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<sup>2</sup> The trade association may enclose a copy of proposed solicitation materials in its request for approval. In addition, the trade association may note that it intends to limit the range of those to be solicited (e.g., just the executive and administrative personnel, and not the stockholders). Moreover, in its approval, the member corporation may limit the range of solicitees and the number of times solicitations may be made. 11 CFR 114.8(d)(3) and (5), and 114.8(e).

opinion concluded that the electronic signature, like a traditional signature, was designed and functioned as a unique identifier of the authorizing employee. In approving the use of the electronic signature, the Commission noted that its advisory opinions have previously interpreted Commission regulations “to be consistent with contemporary technological innovations, including the maintenance of records in non-paper form and the performance of committee transactions, where the use of the technology would not compromise the intent of the Act or regulations.”

The Commission has also interpreted the Act and regulations to permit retiree members of a labor organization to authorize deductions, by telephone, from their monthly OPM annuities for contributions to the organization’s SSF. That proposal entailed the use of a unique account number accompanied by other safeguards giving the member complete control of the authorization process and exclusive access to his account for that purpose. The Commission concluded that the proposal was materially indistinguishable from that presented in Advisory Opinion 1999-3, stating that the absence of a handwritten authorizing signature on a paper document was not significant under the circumstances. Advisory Opinion 1999-6.

You have represented that there will be adequate security measures limiting the use of the prior approval form to the authorized corporate representative. Such security measures are important to assuring that the ability to sign and return the prior approval will reside only with that representative.<sup>3</sup> The Commission also assumes that the Associations have the ability to verify that the electronically signed authorization came from the particular representative.

In addressing prior approvals provided by member corporations, the Commission has sought to make clear that the member corporation is granting the approval and that the corporate representative is doing so on behalf of the corporation. *See* Advisory Opinions 1984-61 and 1984-33. Thus, the approval form on which the representative enters her electronic signature should also indicate that the signatory is doing so on behalf of the specific named corporation, e.g., “[the signature], for ABC Corp.”

Pursuant to 11 CFR 114.8(d)(2), the Associations must also maintain a copy of the approval from each corporation for a period of three years from the year for which the particular corporation’s approval is given. The record must be retained in a retrievable manner so as to be readily available for review by the Commission in the event of an audit or investigation. This would include a record that verifies that the electronic signature came from the particular corporate representative.

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<sup>3</sup> The Commission assumes that the Association has adequate password protection procedures to assure integrity and uniqueness with respect to the passwords used by the corporate representatives. *See* Advisory Opinion 1999-3.

Based on the foregoing analysis, conditions, and assumptions, the Commission concludes that the use of an electronic signature to grant prior approval for solicitations by the Associations for their respective SSFs is permissible under the Act.<sup>4</sup>

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.

Sincerely,

(signed)

Darryl R. Wold  
Chairman

Enclosures (AOs 2000-10, 1999-6, 1999-3, 1984-61, and 1984-33)

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<sup>4</sup> You assert that the Commission is required to permit the use of electronic signatures to provide SSF solicitation authorizations pursuant to the recently enacted Electronic Signatures in Global and National Commerce Act (“E-Signatures Act”), Pub. L. 106-229 (signed June 30, 2000). This statute provides, in part, that a signature, contract, or other record relating to any transaction in or affecting interstate or foreign commerce may not be denied legal effect, validity, or enforceability solely because it is in electronic form, and that a contract relating to such a transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or record was used in its formation. E-Signatures Act, Section 101(a). The Commission notes, however, that the E-Signatures Act defines “transaction” as follows: an action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including any of the following types of conduct --

- (A) the sale, lease, exchange, licensing, or other disposition of (i) personal property, including goods and intangibles, (ii) services, and (iii) any combination thereof; and
- (B) the sale, lease, exchange, or other disposition of any interest in real property, or any combination thereof. Section 106(13).

It is unclear whether the E-Signatures Act applies to signatures made in the context of non-commercial relationships between a non-profit, tax-exempt trade association and its members with respect to voluntary contribution solicitations by an SSF which is also a non-profit, tax-exempt organization. *See* 26 U.S.C. §§501(c)(6), 527(a). Because the Commission has concluded that the Federal Election Campaign Act permits the use of electronic signatures for the prior approvals, it is unnecessary to determine whether the E-Signatures Act could apply in these circumstances since the approvals are not denied legal effect due to the use of an electronic signature or record.