



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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2007 APR 11 P 4: 09

April 11, 2007

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *TPD*  
Acting General Counsel

Rosemary C. Smith *ACS*  
Associate General Counsel

Ron B. Katwan *RBK*  
Assistant General Counsel

Anthony T. Buckley *ATB*  
Attorney

Subject: Draft AO 2007-04

**AGENDA ITEM**  
For Meeting of: 04-19-07

Attached are two proposed drafts of Advisory Opinion 2007-04, which responds to the request from Atlatl, Inc. ("Atlatl"). The requestor seeks the Commission's determination as to whether it may offer online credit card processing services to political committees. The requestor further asks whether payment of Atlatl's processing fees by the contributors would be contributions to the recipient political committees.

With respect to the first question, both drafts conclude that Atlatl may offer online credit card processing services to political committees. With respect to the second question, Draft A concludes that payment of Atlatl's processing fees by the contributors would be contributions to the recipient political committees; Draft B concludes that payment of Atlatl's processing fees by the contributors would not be contributions to the recipient political committees.

We request that these drafts be placed on the agenda for April 19, 2007.

Attachments  
Drafts A and B

1 ADVISORY OPINION 2007-4

2

3 Duke Williams

4 Chief Executive Officer

5 Atlatl, Inc.

6 P.O. Box 2936

7 Durham, NC 27715-2936

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9 Dear Mr. Williams:

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**DRAFT A**

We are responding to your inquiry regarding the ability of Atlatl, Inc. and its service, Simply Easier Payments, to offer its credit card processing services to political committees under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations. The Commission concludes that Atlatl, Inc. may offer its credit card processing services to political committees, but that any processing fees paid by contributors would be contributions by the contributors to the respective political committees.

***Background***

The facts presented in this advisory opinion are based on your letter received on February 14, 2007, and your email received on February 26, 2007.

Atlatl, Inc., through its service, Simply Easier Payments (collectively "the Corporation"), is a corporation that sells processing services for online credit card transactions. The Corporation would like to offer its services to political committees to process online credit card contributions.

Under your proposal, an individual wishing to make contributions to a political committee would click on a link on a committee's website. This link would take the individual to the Corporation's website. A page on the website would show the amount of the contribution the individual intended to provide to the political committee, as well

1 as a separate “convenience fee” to be paid by the individual to the Corporation. The  
2 individual would have to agree to pay the “convenience fee” to make the contribution. In  
3 addition to credit card information, the individual would be required to input information  
4 consistent with contributor information required to be reported by political committees.<sup>1</sup>  
5 The individual would also be required to attest to various facts to show compliance with  
6 the Act’s amount limitations and source prohibitions.<sup>2</sup>

7 The “convenience fee” would cover all of the costs of the financial institutions  
8 involved in the credit card transaction (*i.e.*, the bank issuing the credit card, the card  
9 association, the card processor, the card network, and the Corporation) and provide a  
10 profit to the Corporation. The “convenience fee” is composed of two amounts. The first  
11 amount is a “discount fee,” which is paid to the bank issuing the credit card, the card  
12 association, and the card network. This discount fee amount is negotiated among the  
13 parties and can be either a fixed amount per transaction, or a percentage of each  
14 transaction. The second amount is set by the Corporation and is generally an additional

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<sup>1</sup> Such information includes the individual’s name, mailing address, employer and occupation. *See*  
2 U.S.C. 434(b)(3)(A) and 431(13); 11 CFR 104.8(a) and 100.12.

<sup>2</sup> The website will include the following attestation language:

By checking this box, I confirm that the following statements are true and accurate:

1. I acknowledge that this contribution is made from my own funds, and not those of another.
2. I acknowledge that it is not made from the general treasury funds of a corporation, labor organization or national bank.
3. I am not a Federal government contractor.
4. I am not a foreign national who lacks permanent resident status in the United States.
5. I am at least 18 years of age.
6. This contribution is made on a personal credit or debit card for which I have the legal obligation to pay, and is made neither on a corporate or business entity card nor on the card of another.

1 one percent added to the discount fee. This additional amount is set to cover the card  
2 processor's costs, the Corporation's costs, and to provide a profit to the Corporation.<sup>3</sup>

3 ***Questions Presented***

4 1. *Would the Corporation's proposal to process online credit card contributions for*  
5 *political committees result in impermissible corporate contributions by the Corporation*  
6 *to those political committees?*

7 2. *Would the payment of processing fees to the Corporation by contributors result in*  
8 *contributions by the contributors to the political committees?*

9 ***Legal Analysis and Conclusions***

10 1. *Would the Corporation's proposal to process online credit card contributions for*  
11 *political committees result in impermissible corporate contributions by the Corporation*  
12 *to those political committees?*

13 No, the Corporation's proposal to process online credit card contributions for  
14 political committees would not result in impermissible corporate contributions by the  
15 Corporation to those political committees because the Corporation would be acting  
16 permissibly as a commercial vendor in providing these services to the political  
17 committees in the ordinary course of business and at the usual and normal charge.

18 The Act and Commission regulations specifically prohibit corporations from  
19 making a contribution in connection with a Federal election. *See* 2 U.S.C. 441b(a); 11  
20 CFR 114.2(b)(1). A "contribution" includes "any gift, subscription, loan, advance, or  
21 deposit of money or anything of value made by any person for the purpose of influencing

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<sup>3</sup> The Corporation's ability to show profits depends on a significant volume of transactions. You have estimated that there is a large enough volume of transactions to offer the possibility of achieving a level of profit to justify your efforts.

1 any election for Federal office.” 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.52(a); *see also*  
2 2 U.S.C. 441b(b)(2) and 11 CFR 114.2(b)(1). “Anything of value” includes all in-kind  
3 contributions, including the provision of goods or services without charge or at a charge  
4 that is less than the usual and normal charge. *See* 11 CFR 100.52(d)(1). “Usual and  
5 normal charge” is defined as the price of goods in the market from which they ordinarily  
6 would have been purchased at the time of the contribution, or the commercially  
7 reasonable rate prevailing at the time the services were rendered. *See* 11 CFR  
8 100.52(d)(2).

9 In addition to this general prohibition on corporate contributions, corporations are  
10 prohibited from facilitating the making of contributions to candidates or political  
11 committees. *See* 11 CFR 114.2(f)(1). Facilitation means using corporate resources to  
12 engage in fundraising activities in connection with any Federal election. *Id.* Therefore,  
13 the Corporation’s proposal to process credit card contributions for political committees  
14 would be impermissible under the Act and Commission regulations unless it meets this  
15 “commercial vendor” exception.

16 A “commercial vendor” is any person “providing goods or services to a candidate  
17 or political committee whose usual and normal business involves the sale, rental, lease or  
18 provision of those goods or services.” 11 CFR 116.1(c). Commission regulations permit  
19 a commercial vendor to provide goods or services to political committees in the ordinary  
20 course of business and at the usual and normal charge. *See* 11 CFR 114.2(f)(1).

21 In Advisory Opinions 2004-19 (DollarVote) and 2002-7 (Careau), the  
22 Commission determined that corporations could collect and forward online contributions  
23 to candidates as commercial vendors. The Commission determined that these

1 corporations qualified as “commercial vendors” under 11 CFR 114.2(f)(1) because: (1)  
2 their services were rendered in the ordinary course of business for the usual and normal  
3 charge; (2) they forwarded earmarked contributions to candidates through separate  
4 merchant accounts; and (3) their websites incorporated adequate screening procedures to  
5 ensure that they were not forwarding illegal contributions.

6 Your proposal also establishes that the Corporation will be acting permissibly as a  
7 commercial vendor. First, the agreements between the Corporation and the political  
8 committees would be commercially reasonable because the Corporation would be acting  
9 in the ordinary course of its business by providing secure credit card processing services  
10 to political committees. Further, the “convenience fee” would constitute the usual and  
11 normal charge because it would compensate the Corporation for the costs it incurs in  
12 processing and forwarding contributions to the political committees and also would  
13 provide the Corporation with a reasonable profit.

14 Second, the funds intended for the political committees would transfer from the  
15 issuing bank to an account held by the card processor for the sole purpose of holding  
16 funds intended for political contributions. The funds would transfer from the card  
17 processor account to the designated political committees. Thus, the funds transferred to  
18 the political committees would be the funds of the individual contributors and not the  
19 funds of the Corporation.

20 Finally, based on your representations, the Corporation’s screening and  
21 verification procedures for online payments meet the standards approved in previous  
22 advisory opinions. *See* Advisory Opinions 2004-19 (DollarVote) and 2002-7 (Careau).

1           Accordingly, your proposal to process online credit card contributions for  
2 political committees would not result in impermissible corporate contributions by the  
3 Corporation to those political committees.

4       2.       *Would the payment of processing fees to the Corporation by contributors result in*  
5 *contributions by the contributors to the political committees?*

6           Yes, the payment of processing fees to the Corporation by contributors would  
7 result in contributions by the contributors to the political committees that must comply  
8 with the Act's amount limitations and source prohibitions and be reported as operating  
9 expenditures by the recipient political committees.

10           Typically, a financial service provider that processes credit card contributions for  
11 a political committee deducts the processing fees from the amount of the contribution  
12 authorized by the contributor and thus transmits to the political committee an amount  
13 smaller than the one authorized by the contributor. In past advisory opinions, the  
14 Commission has determined that for purposes of the Act's amount limitations and  
15 reporting requirements, the contribution includes the entire amount authorized by the  
16 contributor, including any processing fees deducted by the financial service provider.  
17 *See, e.g., Advisory Opinions 1999-8 (Specter) (noting that where a "contribution by*  
18 *credit card is made and expenses are deducted by the credit card company or other*  
19 *processors[,] . . . the entire amount of the cardholder's transaction is a contribution even*  
20 *though the amount that the committee receives is reduced by the deducted expenses, and*  
21 *those expenses are reportable as operating expenses of the committee"); 1995-34*  
22 *(Politechs) ("While the amount Politechs actually remits to the political committee will*  
23 *be reduced by the clearing, processing, and service charges deducted . . . (which service*

1 charges will be considered expenditures by the political committees), the entire amount  
2 of the caller's credit card transaction will be treated as a contribution to the political  
3 committee"); 1995-9 (NewtWatch) (requiring the requesting political committee to "treat  
4 the full amount of a donor's contribution as the contributed amount for purposes of the  
5 limits and reporting provisions of the Act, even though the [political committee] will  
6 receive a lesser amount because of the [financial service company's] fees"); 1994-33  
7 (VITEL) ("In the case of [credit card] contributions to the authorized committee, the  
8 amount actually remitted to the committee would be reduced by charges deducted by the  
9 card issuer (although this would not reduce the amount of the reportable contribution.);  
10 and 1991-1 (Deloitte & Touche) ("The amount of any contribution by credit card is the  
11 amount authorized by the contributor. Any deductions or discounts taken by . . . the  
12 credit card issuer[] against the proceeds of such contributions should be reported by the  
13 Committee as operating expenditures.").

14 Here, the Corporation proposes to enter into agreements to provide services to  
15 political committees (*i.e.*, processing contributions made to political committees) for a  
16 "convenience fee." The amount of the "convenience fee" will be negotiated between the  
17 Corporation and the political committees. The "convenience fee" will cover the costs  
18 that political committees, like other organizations that accept credit card payments, would  
19 have to pay for the processing services they receive. However, instead of deducting the  
20 processing fees from the amount of the contribution, the Corporation proposes to transmit  
21 to the political committees the entire amount authorized by the contributor and have the  
22 contributor pay the processing fees in a separate transaction directly to the Corporation.



1           The Commission concludes that, for FECA purposes, there is no distinction  
2 between a contributor paying processing fees through a deduction from the amount of the  
3 contribution authorized by that contributor and paying such processing fees in a separate  
4 transaction. Both are contributions because by paying the “convenience fee,”  
5 contributors would relieve recipient political committees of a financial obligation that  
6 political committees would otherwise have to pay for themselves, thereby providing  
7 something of value to these committees.

8           The situation presented here differs materially from that in Advisory Opinion  
9 2006-8 (Brooks), on which you rely in your request. Unlike the current situation, in  
10 Advisory Opinion 2006-8 (Brooks), the corporation did not anticipate entering into any  
11 contractual relationship with any political committee. Instead, the corporation intended  
12 to sell a variety of services to its subscribers. Specifically, the corporation proposed to  
13 accept funds from subscribers, which would be deposited into a merchant account. These  
14 funds would be disbursed to candidates and political committees at a later date, at the  
15 direction of the subscribers. The subscribers would compensate the corporation for the  
16 incidental cost in making contributions. The Commission likened this service to  
17 corporations that provide delivery services, bill-paying services, or check writing  
18 services, and determined that it was permissible under the Act and Commission  
19 regulations. For additional fees, the corporation also offered other services to its  
20 subscribers, such as monitoring their contribution limits, forwarding commentary and  
21 analysis of political candidates including their voting records, and forwarding  
22 contribution solicitations from candidates meeting certain criteria chosen by the  
23 subscribers.



1   ADVISORY OPINION 2007-4

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Duke Williams  
Chief Executive Officer  
Atlatl, Inc.  
P.O. Box 2936  
Durham, NC 27715-2936

**DRAFT B**

9   Dear Mr. Williams:

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11           We are responding to your inquiry regarding the ability of Atlatl, Inc. and its  
12 service, Simply Easier Payments, to offer its credit card processing services to political  
13 committees under the Federal Election Campaign Act of 1971, as amended (the “Act”),  
14 and Commission regulations. The Commission concludes that Atlatl, Inc. may offer its  
15 credit card processing services to political committees, and that any processing fees paid  
16 by contributors would not be contributions by the contributors to the respective political  
17 committees.

18   ***Background***

19           The facts presented in this advisory opinion are based on your letter received on  
20 February 14, 2007, and your email received on February 26, 2007.

21           Atlatl, Inc., through its service, Simply Easier Payments (collectively “the  
22 Corporation”), is a corporation that sells processing services for online credit card  
23 transactions. The Corporation would like to offer its services to political committees to  
24 process online credit card contributions.

25           Under your proposal, an individual wishing to make contributions to a political  
26 committee would click on a link on a committee’s website. This link would take the  
27 individual to the Corporation’s website. A page on the website would show the amount  
28 of the contribution the individual intended to provide to the political committee, as well

1 as a separate “convenience fee” to be paid by the individual to the Corporation. The  
2 individual would have to agree to pay the “convenience fee” to make the contribution. In  
3 addition to credit card information, the individual would be required to input information  
4 consistent with contributor information required to be reported by political committees.<sup>1</sup>  
5 The individual would also be required to attest to various facts to show compliance with  
6 the Act’s amount limitations and source prohibitions.<sup>2</sup>

7 The “convenience fee” would cover all of the costs of the financial institutions  
8 involved in the credit card transaction (*i.e.*, the bank issuing the credit card, the card  
9 association, the card processor, the card network, and the Corporation) and provide a  
10 profit to the Corporation. The “convenience fee” is composed of two amounts. The first  
11 amount is a “discount fee,” which is paid to the bank issuing the credit card, the card  
12 association, and the card network. This discount fee amount is negotiated among the  
13 parties and can be either a fixed amount per transaction, or a percentage of each  
14 transaction. The second amount is set by the Corporation and is generally an additional

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<sup>1</sup> Such information includes the individual’s name, mailing address, employer and occupation. *See*  
2 U.S.C. 434(b)(3)(A) and 431(13); 11 CFR 104.8(a) and 100.12.

<sup>2</sup> The website will include the following attestation language:

By checking this box, I confirm that the following statements are true and accurate:

1. I acknowledge that this contribution is made from my own funds, and not those of another.
2. I acknowledge that it is not made from the general treasury funds of a corporation, labor organization or national bank.
3. I am not a Federal government contractor.
4. I am not a foreign national who lacks permanent resident status in the United States.
5. I am at least 18 years of age.
6. This contribution is made on a personal credit or debit card for which I have the legal obligation to pay, and is made neither on a corporate or business entity card nor on the card of another.

1 one percent added to the discount fee. This additional amount is set to cover the card  
2 processor's costs, the Corporation's costs, and to provide a profit to the Corporation.<sup>3</sup>

3 ***Questions Presented***

4 1. *Would the Corporation's proposal to process online credit card contributions for*  
5 *political committees result in impermissible corporate contributions by the Corporation*  
6 *to those political committees?*

7 2. *Would the payment of processing fees to the Corporation by contributors result in*  
8 *contributions by the contributors to the political committees?*

9 ***Legal Analysis and Conclusions***

10 1. *Would the Corporation's proposal to process online credit card contributions for*  
11 *political committees result in impermissible corporate contributions by the Corporation*  
12 *to those political committees?*

13 No, the Corporation's proposal to process online credit card contributions for  
14 political committees would not result in impermissible corporate contributions by the  
15 Corporation to those political committees because the Corporation would be acting  
16 permissibly as a commercial vendor in providing these services to the political  
17 committees in the ordinary course of business and at the usual and normal charge.

18 The Act and Commission regulations specifically prohibit corporations from  
19 making a contribution in connection with a Federal election. *See* 2 U.S.C. 441b(a); 11  
20 CFR 114.2(b)(1). A "contribution" includes "any gift, subscription, loan, advance, or  
21 deposit of money or anything of value made by any person for the purpose of influencing

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<sup>3</sup> The Corporation's ability to show profits depends on a significant volume of transactions. You have estimated that there is a large enough volume of transactions to offer the possibility of achieving a level of profit to justify your efforts.

1 any election for Federal office.” 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.52(a); *see also*  
2 2 U.S.C. 441b(b)(2) and 11 CFR 114.2(b)(1). “Anything of value” includes all in-kind  
3 contributions, including the provision of goods or services without charge or at a charge  
4 that is less than the usual and normal charge. *See* 11 CFR 100.52(d)(1). “Usual and  
5 normal charge” is defined as the price of goods in the market from which they ordinarily  
6 would have been purchased at the time of the contribution, or the commercially  
7 reasonable rate prevailing at the time the services were rendered. *See* 11 CFR  
8 100.52(d)(2).

9 In addition to this general prohibition on corporate contributions, corporations are  
10 prohibited from facilitating the making of contributions to candidates or political  
11 committees. *See* 11 CFR 114.2(f)(1). Facilitation means using corporate resources to  
12 engage in fundraising activities in connection with any Federal election. *Id.* Therefore,  
13 the Corporation’s proposal to process credit card contributions for political committees  
14 would be impermissible under the Act and Commission regulations unless it meets this  
15 “commercial vendor” exception.

16 A “commercial vendor” is any person “providing goods or services to a candidate  
17 or political committee whose usual and normal business involves the sale, rental, lease or  
18 provision of those goods or services.” 11 CFR 116.1(c). Commission regulations permit  
19 a commercial vendor to provide goods or services to political committees in the ordinary  
20 course of business and at the usual and normal charge. *See* 11 CFR 114.2(f)(1).

21 In Advisory Opinions 2004-19 (DollarVote) and 2002-7 (Careau), the  
22 Commission determined that corporations could collect and forward online contributions  
23 to candidates as commercial vendors. The Commission determined that these

1 corporations qualified as “commercial vendors” under 11 CFR 114.2(f)(1) because: (1)  
2 their services were rendered in the ordinary course of business for the usual and normal  
3 charge paid by authorized committees; (2) they forwarded earmarked contributions to  
4 candidates through separate merchant accounts; and (3) their websites incorporated  
5 adequate screening procedures to ensure that they were not forwarding illegal  
6 contributions.

7       Your proposal also establishes that the Corporation will be acting permissibly as a  
8 commercial vendor. First, the agreements between the Corporation and the political  
9 committees would be commercially reasonable because the Corporation would be acting  
10 in the ordinary course of its business by providing secure credit card processing services  
11 to political committees. Further, the “convenience fee” would constitute the usual and  
12 normal charge because it would compensate the Corporation for the costs it incurs in  
13 processing and forwarding contributions to the political committees and also would  
14 provide the Corporation with a reasonable profit.

15       Second, the funds intended for the political committees would transfer from the  
16 issuing bank to an account held by the card processor for the sole purpose of holding  
17 funds intended for political contributions. The funds would transfer from the card  
18 processor account to the designated political committees. Thus, the funds transferred to  
19 the political committees would be the funds of the individual contributors and not the  
20 funds of the Corporation.

21       Finally, based on your representations, the Corporation’s screening and  
22 verification procedures for online payments meet the standards approved in previous  
23 advisory opinions. *See* Advisory Opinions 2004-19 (DollarVote) and 2002-7 (Careau).

1           Accordingly, your proposal to process online credit card contributions for  
2 political committees would not result in impermissible corporate contributions by the  
3 Corporation to those political committees.

4       2.       *Would the payment of processing fees to the Corporation by contributors result in*  
5 *contributions by the contributors to the political committees?*

6           No, the payment of processing fees to the Corporation by contributors would not  
7 result in contributions by the contributors to the political committees.

8           The arrangement proposed in this request would consist of two separate sets of  
9 agreements: first, the agreements between the Corporation and the respective political  
10 committees under which the Corporation would process online credit card contributions  
11 for the political committees; second, the agreements between the Corporation and the  
12 individual contributors, under which contributors would independently agree to pay the  
13 costs of processing their contributions. The second set of agreements between the  
14 Corporation and individual contributors is similar to the agreements between a financial  
15 service provider and individual contributors that the Commission approved in Advisory  
16 Opinion 2006-8 (Brooks).

17           In Advisory Opinion 2006-8, a corporation proposed to sell a variety of services  
18 to subscribers. Specifically, the corporation would accept funds from subscribers, which  
19 would be deposited into a merchant account. These funds would be disbursed to  
20 candidates and political committees at a later date, at the direction of the subscribers.  
21 The Commission likened this service to corporations that provide delivery services,  
22 bill-paying services, or check writing services, and determined that it was permissible  
23 under the Act and Commission regulations. The Commission did not treat the



1 contributors' payments for these services as contributions to the recipient political  
2 committees.

3           Here, like in Advisory Opinion 2006-8, the Corporation would enter into  
4 agreements with contributors to provide certain services to aid contributors in making  
5 their contributions (*e.g.*, the convenience of an online credit card payment and a secure  
6 server to protect the contributors' privacy).

7           By contrast, the proposed arrangement is materially different from the  
8 arrangements involving credit card contributions that the Commission has considered in  
9 previous advisory opinions. In all these past advisory opinions, the financial service  
10 providers would deduct the processing fees from the amount of the contributions  
11 authorized by the contributors and thus transmit to the political committees amounts  
12 smaller than the ones authorized by the contributors. The Commission determined that,  
13 under these circumstances, the contribution included the entire amount authorized by the  
14 contributor, including any processing fees deducted by the financial service provider.  
15 *See, e.g.*, Advisory Opinions 1999-8 (Specter); 1995-34 (Politechs); 1995-9  
16 (NewtWatch); 1994-33 (VITEL); and 1991-1 (Deloitte & Touche). However, in all of  
17 the arrangements presented in these previous advisory opinions, the processing fees were  
18 paid by the political committees solely pursuant to agreements between the financial  
19 service providers and the political committees. Contributors did not participate in  
20 deciding how or whether such fees would be paid.

21           The Commission concludes that contributors' payments of the "convenience fees"  
22 would not be contributions to the recipient political committees because these fees would

1 be paid for not by the political committees but by contributors pursuant to independent  
2 agreements with the Corporation.

3 This conclusion is consistent with the Commission's treatment of payments for  
4 similar types of costs incurred in processing contributions. For example, when  
5 contributors make contributions by check, checking account fees are not considered part  
6 of the contribution amount. Similarly, when contributors send contributions by U.S.  
7 mail, payment for the cost of postage is not considered part of the contribution amount  
8 even though when paid for by political committees it is an operating expenditure.

9 This response constitutes an advisory opinion concerning the application of the  
10 Act and Commission regulations to the specific transaction or activity set forth in your  
11 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
12 of the facts or assumptions presented and such facts or assumptions are material to a  
13 conclusion presented in this advisory opinion, then the requester may not rely on that  
14 conclusion as support for its proposed activity. All cited advisory opinions are available  
15 on the Commission's website at [www.fec.gov](http://www.fec.gov).

16 Sincerely,

17

18 Robert D. Lenhard  
19 Chairman