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## AGENDA ITEM

For Meeting of: 11-21-02

CONTINUED ON 11-25-02

### SUBMITTED LATE

### MEMORANDUM

TO: The Commission

FROM: Scott E. Thomas  
Commissioner *[Signature]*

SUBJECT: Possible amendment re disclaimers for unsolicited e-mail and committee websites AND solicitations for contributions

1. On p. 52, lines 15-17, substitute:

This section applies only to: public communications, defined for this section to include the communications at 11 CFR 100.26 plus unsolicited electronic mail of more than 500 substantially similar communications, Internet websites of political committees available to the general public, and solicitations for contributions via electronic mail or websites; and electioneering communications as defined in 11 CFR 100.29.

2. On p. 6, delete from "As" in line 2 through "below." in line 7.
3. On p. 8, line 2, change "an identical" to "a virtually identical".
4. On p. 8, line 9, add ", when appropriate," after "Commission".
5. On p. 8, delete from "Accordingly" in line 11 through "accordingly" in line 18.
6. On p. 10, after line 7, add the following:

While the term "public communication" serves generally to describe the proper reach of the disclaimer rules, the Commission has decided that certain Internet-based communications also should be covered. The Commission has for years interpreted the statute to require disclaimers on electronic mail and Internet website communications. *See, e.g.,* Advisory Opinions 1995-9 and 1999-37. In view of the widespread use of this technology in modern campaigning, and the

relatively non-intrusive nature of disclaimer requirements, the Commission has concluded that the interests served by prompt public disclosure warrant application of the disclaimer provisions.

Nonetheless, to avoid overreaching in this area, and to maintain some symmetry with the definition of "public communication," the Commission is limiting the coverage, first, to electronic mail involving more than 500 substantially similar unsolicited communications. This approach would not require a disclaimer on electronic mail (that does not solicit contributions) where the recipients have taken some affirmative step to be on a list used by the sender, such as responding positively to a request to be on such list. Moreover, regarding websites, the Commission is extending the disclaimer requirements to political committee websites. This will assure, for example, that a website created and paid for by an individual to undertake express advocacy will not have to include a disclaimer. At the same time, arguably, the most significant use of electronic mail and websites to conduct campaign activity will have to provide the public notice of who is responsible. Finally, the Commission is extending the disclaimer requirements to any use of electronic mail or website technology to solicit contributions as defined under the federal law. This will serve the important anti-fraud elements of the statute.

In order to incorporate the foregoing Internet-based applications in the final disclaimer rules, 11 CFR 110.11(a) provides that for purposes of the section, the term "public communication" also covers more than 500 unsolicited electronic mail communications, websites of political committees, and usages of electronic mail or websites to solicit political contributions as defined under the statute and regulations. This is the Commission's only divergence from the 11 CFR 100.29 definition of "public communication."

The Commission notes that it has initiated a separate rulemaking regarding several Internet-related issues. The disclaimer provisions may be revisited in that rulemaking.

7. On p. 10, delete lines 16 and 17.