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SKADDEN, ARPS, SLATE, MEAGHER & ASSOCIATES LLP

1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000

FAX: (202) 393-5760

http://www.skadden.com

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2003 JUN 27 P 3:13

June 27, 2003

Supplement to
AOR 2003-16

Via Hand Delivery

Rosemary C. Smith, Esq.
Acting Associate General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RE: Response to Second Round of Questions Regarding Advisory
Opinion Request on Affinity Credit Card Program

Dear Ms. Smith:

This responds to your letter of June 12, 2003, in which you asked a second set of follow-up questions regarding the advisory opinion request ("AOR") we submitted on May 6, 2003. Once again, please note that Providian has not agreed with a National Party as to the specific terms of the business practices and procedures described below. The following information describes possible actions Providian may take depending on its business objectives and needs, and not steps it definitely will take with a National Party. Unless otherwise indicated in this letter, the capitalized terms used in this letter have the same meaning as defined in our AOR.

Question 1

Please clarify who will be paying the transaction costs associated with the transfers of funds involved in the processing of the rebates and bonuses to the national party under the Affinity Program when the cardholder has selected the national party to be the recipient.

Rosemary C. Smith, Esq.

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Answer

Providian may transfer the funds (e.g., Rebates or Bonuses) by check, through the Automated Clearing House (ACH), or other commercially available means. Providian will charge or obtain payment from the National Party for any expenses related to sending the check, making the ACH transaction, or using other commercially reasonable means.

Question 2

Please indicate whether there is a cap or maximum rebate or bonus amount that can be earned by a cardholder participating in the Affinity Program. Also, please describe in detail how and when the rebate and bonus is contributed to the national party, and what actions, if any, the cardholder must take to approve the transfer to the national party. Furthermore, if the cardholder is unable or unwilling to make a contribution to the national party through the rebate or bonus program, what options relative to the rebate or bonus are available to the cardholder (e.g., cash rebate sent to cardholder, frequent flyer mileage credited to cardholder's account, etc.)?

Answer

Cap. Providian does not plan to cap Rebate earnings. A Rebate cardholder will earn a percentage of net new purchases made in a calendar year. Providian will determine the amount of the Bonus through the method we stated in our June 4 correspondence. The amount of the Bonus will be based on two factors: (1) whether the amount is sizable enough to stimulate initial and/or ongoing card usage; and (2) whether the Bonus is financially justifiable. We expect the Bonus sizes to range between \$5 and \$50.

Bonus and Rebate Tracking. The National Party will track donations on an individual basis to ensure it does not receive excessive contributions from any individual as proscribed under FEC rules. Once the National Party receives a cardholder's account information and donated Bonus or Rebate funds, the National Party is responsible for complying with all FEC regulations to process those funds for deposit, including determining within 10 days whether a cardholder's donations exceed the \$25,000 individual annual maximum. In the case of Rebate donations, given the credit lines that Providian will assign to Affinity Cards, Providian believes that it will be virtually impossible for individual cardholders to charge enough on an Affinity Card in one year to exceed the \$25,000 aggregate maximum unless a cardholder makes large contributions to the National Party on his/her own in addition to the Rebate donations. In any event, a National Party will be responsible for monitoring all Rebate and Bonus donations from each Affinity Card account to

ensure that the \$25,000 maximum is not exceeded. In addition, based on the Bonus range described above, obviously the Bonus alone will never exceed \$25,000.

Cardholder Option. A consumer receiving an Affinity Bonus Card or Affinity Rebate Card offer will have the option to check a box on the reply card accompanying the offer in order to direct Providian to send his/her Bonus or Rebate earnings as his/her donation to the National Party.

Bonuses. When a cardholder who responds to a Bonus offer checks the box to direct that the Bonus be forwarded to the National Party, Providian will forward that cardholder's FEC-required information (*e.g.*, name, address, employer name, occupation) along with the Bonus amount to the National Party after the cardholder earns the Bonus.

Rebates. A cardholder who responds to a Rebate offer and checks the box to direct that the Rebate be forwarded to the National Party will accrue Rebate dollars based on net new purchases charged to the card. The accrued portion of the Rebate will vest in regular intervals. For example, if we establish the vesting period as six months, then at each six-month interval, Providian will forward that cardholder's FEC-required information (described above) along with the accrued Rebate earnings to the National Party.

If prospective cardholders do not check the box to make a contribution to the National Party through Rebates or Bonuses, they will keep those amounts. Providian will credit the Bonus or Rebate earnings to the individual cardholder's Affinity Card account instead of transferring the proceeds to the National Party in the cardholder's name. In the case of the Bonus, Providian will credit the Bonus amount to the cardholder's account instead of transferring the Bonus amount to the National Party in the cardholder's name. With respect to Rebates, a cardholder may notify Providian and choose to change his or her election (to send or not to send Rebate donations to the National Party) at any time in the course of the Affinity Card account relationship, and any new option will apply prospectively.

Question 3

Please indicate the proposed language that the national party intends to use in its solicitations to cardholders for contributions.

Answer

We understand that you would like to see the language that a National Party would use in the ad space it purchases from Providian for soliciting prospects for the Value

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Added Affinity Card. As Providian has mentioned, Providian does not yet have an Affinity Program with a National Party, and therefore at this stage, Providian has not received from a National Party any creative text for such a solicitation. However, as described in our previous response, such solicitation will not contain the names of federal candidates or refer to elections.

Please call if you need any further information.

Sincerely,



Kenneth A. Gross

Skadden, Arps, Slate, Meagher & Flom LLP



Ki P. Hong

Skadden, Arps, Slate, Meagher & Flom LLP

Attorneys for Providian National Bank