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November 19, 2003

Mr. John C. Vergelli
Acting Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Rulemaking Petition: Payroll Deduction Contributions to a Trade Association's Separate Segregated Fund [Notice 2003-18] 68 FR 60887 (October 24, 2003)

Dear Mr. Vergelli:

America's Community Bankers ("ACB")¹ appreciates the opportunity to offer additional comments in support of our petition to the Federal Election Commission (the "Commission") requesting a rulemaking to allow payroll deduction contributions to a trade association's separate segregated fund ("SSF").² Specifically, ACB is asking the Commission to undertake a rulemaking to amend section 114.8(e)(3) of its regulations to allow trade associations to use a payroll deduction mechanism to facilitate voluntary contributions to a trade association's SSF. As stated in our petition, we believe there is strong legislative, regulatory, factual and policy support for this proposed rulemaking.

Factual Support for the Rulemaking Continues to Grow

In our petition, ACB described how the payments system in the United States has evolved exponentially since 1976, when the current prohibition on the payroll deduction mechanism was finalized. Recently released data confirms that this trend continues to be even stronger. In October 2003, the Federal Reserve Board held its annual payments systems conference entitled, "The Payments System in Transition." In his opening remarks, Chairman Alan Greenspan noted the following aspects of the evolution of the electronic payments:

¹ America's Community Bankers represents the nation's community banks. ACB members, whose aggregate assets total more than \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

² 68 Fed. Reg. 60887 (October 24, 2003).

- The use of paper checks in U.S. society is in decline;
- Overall, the number of electronic payments has increased five-fold during the past two decades and it is predicted that, within the year, electronic payments may well exceed the number of paper checks written;
- Data on credit card, debit card and ACH usage show very strong and sustained growth, such that electronic payments now account for about half of the number of all non-cash payments; and
- Data from the Federal Reserve's consumer finance surveys show that, over time, households across most age and income categories have been adopting basic electronic payments.³

Some other recent statistics also demonstrate that acceptance and usage of electronic payment channels by consumers, businesses and governments will only increase over time.

- One third of respondents to the 2003 *American Banker*/Gallup Consumer Survey said they are writing fewer checks than they did five years ago.
- The same survey found that nearly 24 percent of all respondents are paying their bills online through their primary financial institution.
- According to *Business Week*, the market for recurring, regular payments is expected to grow to \$1.1 trillion by 2005, as consumers continue to abandon paper checks for electronic payment mediums such as payroll deduction, Internet transactions and debit cards.
- In its October 2003 letter, the Federal Reserve Bank of Chicago reports that the proportion of retail, non-cash payments in the U.S. rose from 15 percent in 1979 to 40 percent in 2000.
- The *American Banker* reported on October 27, 2003 that the Federal Reserve System expects to process nine percent fewer paper checks in 2004.
- The Treasury Department reports that nearly three quarters of all payments of the Federal government occur electronically.

The ongoing growth in usage by consumers of electronic payments over paper checks, as well as other developments in electronic payments, all suggest that changes to business practices must occur in order to effectively meet consumers' ever-expanding demands. As Chairman Greenspan noted in his recent remarks, the growth in electronic payments suggests not only a reduction in the scale of overall check writing, but also a shift to new technologies and services to meet increasing demand.

“One of the common misconceptions in the analysis of payments systems is that only production or processing costs – that is, conditions of supply – matter from a market or public-policy standpoint. A problem in early predictions of the growth of electronic payments was the lack of attention to the needs of users, including the fact that electronic payments could be quite inconvenient and costly for many purposes. In retrospect, it has

³ Remarks by Chairman Alan Greenspan, Federal Reserve Payments Systems Committee 2003 Conference, Washington, D.C., October 29, 2003.

taken years of investments in electronic infrastructure at homes and businesses to support the use of electronic payments as a convenient and relatively low-cost alternative to checks.⁴

In short, businesses are responding because they have to in order to meet the reality of what consumers (and businesses) want and need with respect to how to transmit payments and to pay for goods and services.

Recent Legislative Changes

Congress also has responded. Last month, President Bush signed into the law The Check Clearing for the 21st Century Act of 2003 (“Check 21”)⁵, which allows depository institutions to take digital images of checks and truncate the original check. Check 21 does not mandate that checks be truncated and turned into electronic payments. Rather, the intent of this legislation was to provide legislative support for ongoing evolution in electronic payments by removing unnecessary barriers to important and necessary innovations.

ACB’s Petition Summary

ACB believes the proposed rulemaking is authorized under the Federal Election Campaign Act (“FECA”) because:

- The petition represents a clearly permissible interpretation; nothing in the language of the FECA or its legislative history requires exclusion of payroll deduction as a permissible method of obtaining contributions. In addition, the current prohibition is inconsistent with the FECA and other Commission regulations governing the facilitation of voluntary contributions.
- The changes in the workplace and in electronic payments further underscore the factual support for the proposed rulemaking.
- Payroll deduction is a common method employed by millions of Americans for a variety of regular payments, and is virtually identical to other forms of “facilitation” that the FECA and Commission regulations allow.
- Recent revisions to the nation’s campaign finance laws have made it harder for individuals to participate in the electoral process.
- Payroll deduction allows more individuals to make voluntary contributions and to be able to do so more easily.

Conclusion

The factual data and analyses all point to the fact that transmitting payments through a variety of electronic payment channels is what more and more Americans demand, and that business will continue to innovate in response.

⁴ *Id.*

⁵ Pub. L. No. 108-100, 117 Stat. 1177 (Oct. 28, 2003).

For all of these reasons, ACB believes the factual and policy support for the rulemaking is even more compelling. Accordingly, we reiterate our request that the Commission proceed to undertake a rulemaking to amend 11 C.F.R. § 114.8(e)(3) to allow trade associations to use payroll deductions to obtain voluntary contributions to their SSFs.

We look forward to working with the Commission to finalize this important rulemaking. If you have any questions, please contact the undersigned at (202) 857-3122 or via email at mbriggs@acbankers.org; or Charlotte M. Bahin at (202) 857-3121 or via email at cbahin@acbankers.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Briggs". The signature is written in a cursive, flowing style.

Michael W. Briggs
Chief Legal Officer