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Federal Election Commission
Washington, DC 20463

SENSITIVE

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman
Director, ADR Office

BY: Lynn M. Fraser
Assistant Director, ADR Office

SUBJECT: Case for ADR Activation

DATE: July 14, 2004

On June 28, 2004, the ADR Office received from Audit the following case to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, ADR 179/Audit 03-16, is appropriate for ADR and recommend that it be assigned to the ADR Office.

ADR 179/Audit 03-16: An audit of the 2002 election cycle reports of Schneider for Congress filed by Harold Schneider, Treasurer ("Respondents") identified contributions received through a conduit that lacked, or inadequately disclosed, information required by the FECA. In addition, the audit of expenditures, candidate loans, and debts and obligations from the same period, identified a significant number of transactions that lacked, or inadequately disclosed, information required by the Act. Respondents complied with the recommendations of the Audit Department and filed amended reports with the requisite information on receipts and expenditures, loans, and debts and obligations.

Attached for the Commission's review is the *ADR Case Analysis Report* on ADR 179, The *ADR Case Analysis Report* includes an analysis of the case and a description of the issues that the ADR Office anticipates addressing if the case is assigned to ADR. In addition, the *ADR Case Analysis Report* has been reviewed by OGC, which concurs in the description of the case.

24-19-025-4221

If the Commission concurs in the recommendation to assign the matter to ADRO, the above case description will be provided to Respondents as part of ADRO's notification package sent to Respondents.

Recommendation: We recommend that **ADR 179/Audit 03-16** be assigned to the ADR Office for processing.

24.19.025.4222

ADR CASE ANALYSIS REPORT

ADR Case: 179

Respondents:

Schneider for Congress
Harold Schneider, Treasurer

Audit Referral: A 03-16

Date Audit Approved: 06/18/04

Respondent's Rep.: Harold Schneider

Date Forwarded to ADRO: 06/28/04

Committee Type: Authorized

Date Reviewed by ADRO: 07/08/04

Committee Name: Schneider for Congress

District & State: FL 13th C.D.

Election Cycle: 2002

Summary of Referral: The Commission conducted an audit of Respondents' Schneider for Congress and Harold Schneider, Treasurer ("Respondents") financial records for the 2002 election cycle. The review showed that Respondents reported earmarked contributions received through a conduit that lacked or inadequately disclosed information required by the FECA. In addition, an audit of Respondents' reported expenditures, candidate loans, and debts and obligations identified a significant number of transactions that lacked or inadequately disclosed information required, such as the name and address of the payee, and the purpose of the disbursement.

Alleged Violations: 2 U.S.C. §§ 434(b)(3)(A), 434(b)(8), 11 C.F.R. §§ 104.3(a)(4), 104.3(b)(4)(i)(A), 104.3(d), 104.11(b), 110.6(c).

Respondents' Reply to Audit: Respondents complied with the auditors' recommendations by filing amended reports correctly disclosing the earmarked contributions received through a conduit, and correctly disclosing the expenditures, candidate loans and debts and obligations at issue.

Issues:

- Reporting earmarked contributions, 2 U.S.C. § 434(b)(3)(A), 11 C.F.R. §§ 104.3(a)(4), 110.6(c).
- Reporting expenditures, candidate loans and other debt, 2 U.S.C. § 434(b)(8), 11 C.F.R. §§ 104.3(b)(4)(i)(A), 104.3(d), 104.11(b).

24.19.025.4223

Analysis: The implementing regulations clearly define both earmarked contributions and conduits who forward those contributions to the designated committee at 11 C.F.R. §§ 110.6(b)(1)-(2). The statute and regulation require a committee to disclose specific information for each contribution from an individual forwarded by a conduit. Specifically, the reporting committee must disclose the contributor's full name, address, occupation and the name of the employer, the amount of the contribution, the election cycle-to-date total of all contributions from the same individual, the full name and address of the conduit, and the date and total amount of earmarked contributions received from the conduit. Respondents reported \$87,888 in contributions received through *MoveOn.org* PAC, a conduit organization on Schedule A, but did not disclose the required information relative to the conduit. The requirements for contributions received through conduits are flexible as to the manner in which the information is reported, but all of the information must be disclosed.

The statute and the regulations require a committee to report expenditures, candidate loans, as well as debts and obligations. The regulations give examples of the types of descriptions or statements that meet this requirement at 11 C.F.R. § 104.3(b)(4)(i)(A). A reporting committee must disclose outstanding loans in detail, including the date incurred, the original source and amount of the loan, the due date, the interest rate, the cumulative payment, the outstanding balance, and the name and address of any guarantor or endorser, if any. The regulations also specify how debts and obligations, including outstanding debt and/or disputed debt, must be reported, and the level of detail required. 11 C.F.R. § 104.3(d).

ADR Recommendation: Assign to ADRO



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

June 28, 2004

MEMORANDUM

TO: Allan Silberman
Director of Alternative Dispute Resolution

THROUGH: James A. Pehrkon *JAP*
Staff Director
Robert J. Costa *RC*
Deputy Staff Director

FROM: Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division
Wanda J. Thomas *WJT*
Audit Manager
Jeff Spilizewski *JUS*
Lead Auditor

SUBJECT: Schneider for. Congress (A03-16) – Referral Matter

On June 18, 2004, the Commission approved the final audit report on Schneider for Congress (SFC). The report was released to the public on June 28, 2004. In accordance with the Commission approved materiality thresholds, the final audit report includes matters that meet the criteria for referral to Alternative Dispute Resolution (ADR):

Finding 1. Disclosure of Earmarked Contributions; and
Finding 2. Disclosure of Expenditures, Candidate Loans, and Other Debts.

Specifically, the conduit transfers not reported as memo entries on line 11(c) (Contributions from other political committees) in Finding 1. and the disclosure of expenditures and candidate loans in Finding 2. are being referred to your office (relevant parts in bold).

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Jeff Spilizewski or Wanda Thomas at 694-1200.

Attachments: Finding 1. Disclosure of Earmarked Contributions
Finding 2. Disclosure of Expenditures, Candidate Loans, and Other Debts

cc: Reports Analysis Division

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Part IV

Findings and Recommendations

Finding 1. Disclosure of Earmarked Contributions

Summary

A review of SFC's reported receipts identified contributions received through a conduit that lacked or inadequately disclosed information required by the Act. SFC complied with the Audit staff's recommendation by filing amended reports correctly disclosing these receipts.

Legal Standard

- A. **Definition of a Conduit.** Anyone who receives and forwards an earmarked contribution to a candidate committee is considered a conduit. 11 CFR §110.6(b)(2)
- B. **Definition of an earmarked contribution.** An earmarked contribution is one which the contributor directs (either orally or in writing) to a clearly identified candidate or his or her authorized committee through an intermediary or conduit. 11 CFR §110.6(b)(1)
- C. **Required Information for Contributions from Individuals Received From a Conduit.** For each itemized contribution from an individual forwarded by a conduit, the recipient committee must report the following information:
- The contributor's full name and address (including zip code);
 - The contributor's occupation and the name of his or her employer;
 - The date of receipt (the date the conduit received the contribution);
 - The amount of the contribution;
 - The election cycle-to-date total of all contributions from the same individual;
 - The full name and address of the conduit; and
 - The date and total amount of earmarked contributions received from the conduit. 11 CFR §§100.12, 104.3(a)(4), 110.6(c) and 2 U.S.C. §434(b)(3)(A).

Facts and Analysis

A review of SFC's reported receipts identified earmarked contributions received through a conduit, **MoveOn.org PAC, totaling \$87,888**. SFC reported these contributions on Schedule A, line 11(a) (Contributions from individuals/persons other than political committees), but did not disclose information relative to the conduit. **Additionally, SFC did not report the conduit transfers as memo entries on line 11(c)(Contributions from other political committees).**

The disclosure requirements for contributions received through conduits are flexible. The recipient committee may either:

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1. Itemize all transfers received from the conduit on Schedule A, line 11(c) (Other Political Committees) and include memo entries on Schedule A, line 11(a) (Individuals/Persons Other Than Political Committees) for only those individual contributions that aggregate greater than \$200; or,
- * 2. **Report all contributions received through the conduit on Schedule A, line 11(a) as contributions from individuals and provide memo entries on Schedule A, line 11(c) for the amount of the conduit transfers.**

In either case, the disclosure of the itemizable individual contributions on Schedule A, line 11(a) must include the contributor's name, full identification, date the contribution was received by the conduit and the amount. Further, all contributions received from a conduit and itemized on line 11(a) must also include the identification of the conduit, and the date and amount of the conduit's transfer.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that SFC:

- Disclose "Earmarked Contribution" in the description field on Schedule A, line 11(a) for all contributions received through the conduit that required itemization. Additionally, include a memo text entry for each of these contributions containing the contributor's last and first name, the conduit's full identification, and the date and amount of the transfer in which the contribution was received; and,
- * • **Disclose as memo entries on Schedule A, line 11(c) the name of the conduit, along with the date, amount of each transfer, and "Earmarked Contribution" in the description field.**

* In response, SFC filed amended reports correctly disclosing the receipts discussed above.

Finding 2. Disclosure of Expenditures, Candidate Loans, and Other Debts

Summary

A review of SFC's reported expenditures, candidate loans, and debts and obligations identified a significant number of transactions that lacked or inadequately disclosed information required by the Act. SFC complied with the Audit staff's recommendation by filing amended reports correctly disclosing these expenditures, candidate loans, and debts and obligations.

Legal Standard

A. Reporting Operating Expenditures. When operating expenditures (including certain debts and obligations) to the same person exceed \$200 in an election cycle, the committee must report the:

- Amount;
- Date when the expenditure was made;

- Name and address of the payee; and
- Purpose (a brief description of why the disbursement was made—see below). 11 CFR §104.3(b)(4)(i).

B. Examples of Purpose.

- Adequate Descriptions. Examples of adequate descriptions of “purpose” include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, catering costs, loan repayment, or contribution refund. 11 CFR §104.3 (b)(4)(i)(A).
- Inadequate Descriptions. The following descriptions do not meet the requirement for reporting “purpose”: advance, election day expenses, other expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration. 11 CFR §104.3 (b)(4)(i)(A).

C. Reporting Outstanding Loans. A political committee must disclose the date incurred, the original source and amount of the loan, the due date, the interest rate, the cumulative payment, and the outstanding balance. In addition, if there are any endorsers or guarantors, their mailing address along with the name of their employer and occupation must be disclosed. 11 CFR §§100.7(a)(1) and 104.3(d).

D. Itemizing Debts and Obligations. A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report. A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

E. Reporting Outstanding Debts. A political committee must disclose the full name and address of each creditor, the outstanding beginning and ending balances, any amount incurred during the reporting period, any payment made during the reporting period and the nature or purpose of each debt until those debts are extinguished. When any debt is settled for less than the reported amount or value, each report shall contain a statement as to the circumstances and conditions under which the debt was extinguished and the amount paid. 2 U.S.C §434(b)(8) and 11 CFR §§104.3(d), 104.11(a) and 116.7.

F. Reporting Disputed Debts. A political committee shall report a disputed debt if the creditor has provided something of value to the political committee. Until the dispute is resolved, the political committee shall disclose on the appropriate reports any amounts paid to the creditor, any amount the political committee admits it owes and the amount the creditor claims is owed. 11 CFR §116.10(a).

Facts and Analysis

A review of SFC's reported expenditures, candidate loans, and debts and obligations identified a significant number of transactions that lacked or inadequately disclosed information required by the Act.

A. Disclosure of Operating Expenditures

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* The Audit staff identified expenditures totaling \$120,627 reported on Schedules B (Itemized Disbursements) that lacked or inadequately disclosed the required information. The majority of these expenditures did not have or inadequately disclosed the required memo entries to original vendors for reimbursements to individuals. The remaining expenditures lacked adequate disclosure of the address, purpose, amount, or election designation.

B. Disclosure of Candidate Loans

* Candidate loans totaling \$85,500 reported on Schedules C (Loans) lacked the required disclosure information. For all reporting periods except the July Quarterly 2002 report, the date incurred, due date, and/or interest rate was not disclosed.

C. Disclosure of Debts and Obligations

The Audit staff identified debts and obligations totaling \$27,811 reported on Schedules D (Debts and Obligations) that lacked or inadequately disclosed the required information. SFC reported "Miscellaneous Debts – estimate (not yet billed)", but did not disclose the full name and address of each creditor, the outstanding beginning and ending balances, any amount incurred during the reporting period, any payment made during the reporting period and the nature or purpose of each debt. In addition, SFC inadequately disclosed a debt to Xpedite Systems, Inc. by not including the amount of debt in dispute. Finally, SFC did not disclose a disputed debt totaling \$8,032 to its former Finance Chair.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that SFC:

- * • **Disclose on Schedules B the correct address, purpose, amount, or election designation of expenditures;**
- * • **Disclose on Schedules B, for reimbursements to individuals (excluding personal travel and subsistence), a memo entry including the name and address of the original vendor, as well as the date, amount and purpose of the original purchase;**
- * • **Disclose on Schedules C the date incurred, the original source and amount of the loan, the due date, the interest rate, the cumulative payment, and the outstanding balance of candidate loans;**
- Delete the Schedule D entries for the "Miscellaneous Debts – estimate (not yet billed)", and disclose the full name and address of *each* creditor, the outstanding beginning and ending balances, any amount incurred during the reporting period, any payment made during the reporting period and the nature or purpose of each debt; and
- Disclose on Schedules D, with respect to disputed debts, any amounts paid to the creditor, any amount SFC admits it owes and the amount the creditor claims is owed.

* In response, SFC filed amended reports correctly disclosing the expenditures, candidate loans, and debts and obligations discussed above.