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Federal Election Commission
999 E Street, NW
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COMMISSION
OFFICE OF GENERAL
COUNSEL
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Re: MUR 5671

Dear Mr. Jordan:

As designated counsel for the Bacardi U.S.A., Inc. Political Action Committee (“BAC PAC”) and its treasurer, Robert M. Higdon (the “Treasurer”), and pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6, I write to you regarding MUR 5671. We respectfully ask that the Federal Election Commission (the “Commission”) dismiss the complaint filed by the Citizens for Responsibility and Ethics in Washington (“CREW”) for the reasons stated, below.

The Complaint

BAC PAC is a separate segregated fund (“SSF”) of Bacardi U.S.A., Inc. (“Bacardi”), a producer of wine and spirits. In its 2005 Mid-Year Report filed on July 5, 2005, BAC PAC reported having made a contribution to Pete’s PAC on January 25, 2005, in the amount of \$1,000.00, and to Democracy Believer’s PAC on April 13, 2005, also in the amount of \$1,000.00. The treasurer¹ of the recipient committees reported having received those contributions on April 19, 2005, and May 31, 2005, respectively. Complainant, CREW, filed an amended complaint with the Commission on July 19, 2005, alleging that for each of these contributions, either BAC PAC violated 11 C.F.R. § 102.9(b)(1)(ii) and 11 C.F.R. § 104.9(a), or the treasurer of each recipient committee violated 11 C.F.R. § 103.3(a). That is, either BAC PAC’s Treasurer violated the requirement to accurately report the date, amount and purpose of each of the disbursements, or the treasurer of the recipient committees failed to deposit the contributions within 10 days of receipt. For the reasons stated, below, we believe the Commission should dismiss the CREW complaint.

¹ The treasurer of Pete’s PAC and the Democracy Believers PAC is the same person.

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Factual Background

Contribution to the Democracy Believers PAC

BAC PAC's records indicate that, after receiving an invitation to attend an event in honor of the Democracy Believers PAC, a BAC PAC official requested a check in the amount of \$1,000.00 made payable to the Democracy Believers PAC. BAC PAC's Treasurer, who is located in Miami, Florida, executed a check from the committee depository on April 13, 2005, and entered that date as the date of disbursement for the contribution. The check was delivered to the BAC PAC official who transmitted the check to the Democracy Believers PAC's representative on or about May 13, 2005.

Contribution to Pete's PAC

Similarly, a BAC PAC official requested that the Treasurer execute a check in the amount of \$1,000.00 made payable to Pete's PAC. The Treasurer did so on January 25, 2005, recorded this date as the date of disbursement, and transmitted it to Bacardi's Washington, DC, office. After being received, it was sent to Pete's PAC's post office box address in New Mexico.

The CREW Complaint Should Be Dismissed

It is acknowledged that the date of disbursement in the 2005 Mid-Year Report is different from the date the two contribution checks were presented to the committees. In both instances, however, BAC PAC's Treasurer recorded all relevant information relating to the two contributions, including the date on which the checks were executed. In both instances, there was no intent to violate the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.* ("FECA"), and no intent to conceal the contribution. The contributions were recorded at the earlier date immediately upon their execution. In these instances, by recording the date that the checks were written as the date on which the contributions were made, the Treasurer was following proper accounting principles.

Moreover, as a practical matter, for larger corporations that maintain SSFs, treasurers often are separated physically from other PAC officials who most frequently request and distribute the SSF's contributions. This is especially true for SSFs of corporations that have Washington, DC, offices but where the treasurer is located in a corporate office in another state. In an attempt to keep accurate records and to leave no void in their recordkeeping, treasurers commonly will list the date a check was written as the date of the disbursement in their records. Treasurers then forward the SSF's contribution check to the requesting PAC official, who may be located in another office and/or state. Days can often pass between the time that a check is received from a treasurer and transmitted to a recipient committee. In these instances, and in the two instances at issue, there is no attempt to conceal or otherwise inaccurately report the date on which a contribution was made; rather, it is out of an excess of caution that treasurers will often use the date on which the check is written in their records as the date of disbursement to ensure that the contribution is reported in the proper reporting period.

The common nature of this practice is evidenced by a review of the 2005 Mid-Year Reports filed with the Commission by the most active SSFs in this reporting period. For these SSFs, we have compared the reported dates of disbursement for contributions against the dates of receipt reported by recipient committees to the Commission for each of those contributions. Our research indicates that in a significantly high number of instances the date of a disbursement reported by an SSF to a committee and the date on which the recipient committee reported the receipt to be outside of 10 days. In one case, the number of such occurrences exceeded 60 percent, and in another, 50 percent.

We know of no instances in which the Commission has taken action against any SSF for differences between the date of disbursement as detailed in a report and the date on which such a contribution was presented. If the Commission were to find this to require enforcement action, we respectfully submit that it should only be after the Commission has notified the SSF community that such activities will be of greater concern in the future. Nevertheless, BAC PAC will endeavor to more closely adhere to the requirements of 11 C.F.R. § 102.9(b)(1)(ii) and 11 C.F.R. § 104.9(a) in the future.

Conclusion

CREW has raised hyper-technical concerns that should not be the subject of an enforcement action by the Commission. The purposes of FECA to promote disclosure are served through the reporting of the contributions which were available in a timely manner enabling them to be examined readily by any interested party, as was done by CREW. We respectfully request that the Commission exercise its prosecutorial discretion and dismiss the complaint against BAC PAC and its Treasurer. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

Sincerely,


Thomas J. Spulak

cc: Mr. Robert M. Higdon, Treasurer
Frederick J. Wilson, III, Esq.

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