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PRE-MUR # 492

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
Attention: Office of General Counsel- Complaints Examination and Legal Administration

**RE: *SUA SPONTE* COMPLAINT: SEFCU AND SAMS**

Dear Sir/ Madam:

Pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4, we respectfully present this *sua sponte* submission on behalf of our clients, SEFCU and SEFCU Asset Management Services, LLC d/b/a/ SEFCU Insurance Agency ("SAMS"). This letter serves to notify the Federal Election Commission (the "Commission") of inadvertent potential violations of the Federal Election Campaign Act of 1971, as amended ("FECA"), by SEFCU and SAMS. SEFCU and SAMS are committed to conducting the business of SEFCU and SAMS in a lawful manner. As such, SEFCU and SAMS wish to cooperate fully with the Commission and its staff in resolution of this matter. For the reasons set forth below, SEFCU and SAMS seek to resolve this matter through pre-probable cause conciliation pursuant to 11 C.F.R § 111.18(d).

## I. Background

SEFCU is a federally-chartered credit union headquartered in Albany, New York. SAMS, its wholly-owned subsidiary, is a for-profit New York limited liability company referred to in federal credit union law as a credit union service organization or "CUSO." CUSOs may lawfully engage in certain activities that federally-chartered credit unions such as SEFCU may not.

SEFCU management is aware that pursuant to the rules and regulations of the Commission, credit unions are prohibited from making any contribution or expenditure in connection with any election, primary, convention or caucus held to select candidates for local, state or federal offices.[1] *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(a). Until recently, however,

[1] Federal credit unions are also prohibited from making direct donations to or endorsements for political candidates pursuant to National Credit Union Association regulations. *See* § 12 C.F.R. 25; *see also* Op. Nat'l Credit Union Ass'n Gen. Counsel 06-0928 (Nov. 28, 2006).

SEFCU management believed that it was permissible to make political contributions through its CUSO. This belief was based on information delivered to SEFCU by the Credit Union Association of New York ("CUANY") (a credit union trade association of which SEFCU is a member). This trade association routinely provides advice to its members concerning regulatory matters. On this occasion, the trade association had indicated to its members that political contributions could be made through a CUSO (Copies of relevant communications are attached hereto as Exhibit "A"). As a result of a misinterpretation of this information, SEFCU's management authorized SAMS to make two political contributions, one on June 4, 2009, in the amount of $2,500.00 to a political committee organized to re-elect Albany's mayor, and one on July 25, 2008, in the amount of $1,750.00, to the New York Republican State Committee (collectively, the "Contributions").[2]

SEFCU is currently in negotiations for the proposed purchase of a business which must be operated through a CUSO. In the course of the performance of the due diligence review of the target business, Michael Castellana, SEFCU's and SAMS' chief executive officer, requested a re-examination of the permissible activities of CUSOs, including updated information with respect to the ability of CUSOs to make political contributions. In response to this request, SEFCU's compliance officer provided Mr. Castellana with new information from the Credit Union National Association (another credit union trade association) and CUANY that cast doubt on the previously held conclusions regarding the permissibility of CUSOs to make political contributions.[3] Upon review of this information, Mr. Castellana promptly sought advice from this firm. We advised SEFCU and SAMS that it was our opinion that the making of the Contributions had been unlawful.

## II. Analysis

FECA prohibits federal credit unions from making contributions to candidates for federal, state and local office and prohibits the credit union's officers and directors from consenting to any such contribution. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(a).

We believe that a limited liability company CUSO with a federal credit union as its sole member would be subject to the same political contribution prohibition as the parent itself. *See* Op. Fed. Elec. Comm'n 2009-02 (Apr. 17, 2009), 11 C.F.R. 110.1. Thus, any political contributions by SAMS would be attributable to SEFCU since SEFCU is SAMS' sole member.

## III. Corrective Action

In response to our advice, Mr. Castellana directed us to submit this *sua sponte* complaint. Mr. Castellana also directed us to notify the two recipients of the Contributions as to the possible violations of FECA and New York State election law and to request the return of the

[2] We also wish to bring to the Commission's attention that in late June 2009, Mr. Castellana made a $2,500.00 personal contribution to the political committee organized to re-elect Albany's mayor. We do not believe that any federal and/or state law was violated by such contribution.

[3] It should be noted that the advice provided by the CUANY at this time was in direct opposition to the advice it previously provided SEFCU's compliance officer.

Contributions. Both recipients have been notified by telephone and in writing (Copies of these letters are attached hereto as Exhibit "B").

Mr. Castellana has also sought our advice in connection with implementing a policy to reduce the risk of future unintended violations and to clarify the obligations of management in this regard.

## IV. Conclusions

On the advice of this firm, SEFCU and SAMS management now understand that their respective company's actions may have violated 2 U.S.C. § 441b(a). At the same time, the management of each company was unaware at the time of their making that the Contributions would potentially violate the provisions of FECA. Neither management team was consciously and deliberately refusing to comply with FECA. Consequently, we believe the Commission should find that these violations were not knowing and willful in the event they find that they do indeed constitute violations of 2 U.S.C. § 441b(a). Management for SEFCU and SAMS have acted firmly and decisively to institute appropriate remedial action, begin to develop enhancements to existing policies and procedures, and report the activity to the Commission, all of which indicate that these violations of FECA were not intentional.

On behalf of SEFCU and SAMS we request that the Commission's Office of General Counsel initiate an enforcement proceeding and engage in pre-probable cause conciliation with respect to the potential violations described above to the extent they are required. In determining any applicable civil penalty related to these unintentional violations, we further request that the Commission take into account the *sua sponte* nature of this complaint and the remedial steps taken to date by the parties as well as their pledge of cooperation in this matter and the isolated nature of these two potential violations totaling only $4,250.00 in the aggregate.

Finally, please be advised that we are simultaneously notifying the National Credit Union Association of this matter by copy of this letter (A copy of this letter is attached hereto as Exhibit "C").

Thank you in advance for your assistance in this matter. Please feel free to contact me at (518) 449-3125 if you should you have any questions or require any additional information.

Very truly yours,

STOCKLI GREENE SLEVIN & PETERS, LLP

Patrick K. Greene, Esq.

Enclosures

cc: National Credit Union Association

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