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PRE-MUR # 602

February 9, 2017

VIA HAND DELIVERY

Lisa J. Stevenson
Acting General Counsel
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: CVS Health PAC

Dear Ms. Stevenson:

On behalf of our client, the CVS Health PAC ("CVS PAC" or the "PAC"), we are writing to bring a matter to the attention of the Federal Election Commission (the "Commission" or "FEC") pursuant to its *Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions)*, 72 Fed. Reg. 16,695 (Apr. 5, 2007). If the Commission determines that formal proceedings are necessary to resolve this matter, we request that this matter be referred for alternative dispute resolution ("ADR") or fast-track resolution. Otherwise, we respectfully request that the Commission take no action against CVS PAC and dismiss this matter.

I. Factual Background

A. Background on CVS and CVS PAC

CVS Health ("CVS") is a pharmacy company whose purpose is to help people on their path to better health. To that end, CVS operates more than 9,600 pharmacy stores around the world, has more than 1,100 MinuteClinic locations around the country with over 31 million patient visits to date, and employs over 243,000 people, including 30,000 pharmacists. CVS PAC is the separate segregated fund of CVS. CVS PAC solicits contributions from its restricted class employees nationwide and contributes these funds to federal candidates who have a history of supporting the healthcare industry generally, as well as other issues that may be related to the activities, operations and/or well-being of CVS.

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B. Identification and Investigation of Reporting Discrepancy

CVS underwent a partial turnover of its government relations staff during the course of the 2016 election cycle. When the new staff members began their tenures, one of their first objectives was to undertake a full review of CVS PAC's federal campaign finance compliance operations and processes. This review unearthed a modest discrepancy between CVS PAC's bank balance and its reported cash on hand. At the time CVS discovered the discrepancy, CVS PAC's reported cash on hand was \$5,244.61 less than its bank account balance.

As soon as CVS discovered this error, the company took swift action to identify the cause and correct it. Through staff hiring, engagement of outside counsel, reporting assistance from outside compliance consultants, and staff training, CVS took immediate steps to ensure that the PAC reported receipts and disbursements accurately each month.

In addition, CVS and its outside compliance consultants undertook an extensive investigation to determine when the reporting errors might have begun and what might have caused them. First, they compared the PAC's FEC reports with internal banking records for three selected years, 2013-2015. Second, certain bank records were reviewed for prior years (2011 and 2012) in hopes that they might uncover the source of the discrepancy. None of these reviews revealed the source of the error.¹

Third, CVS staff conducted a thorough review of its corporate governance documents, bank records, and other internal records to try to determine whether there may have been any reporting irregularities. Staff members reviewed numerous electronic records and boxes of paper records and found nothing that could explain the discrepancy.

Fourth, CVS subsequently sought to conduct detailed reconciliations for years prior to 2013. However, after a comprehensive review, CVS has not been able to locate some of the specific documents that would be necessary to conduct a full, detailed reconciliation. Conducting such a reconciliation would require, among other things, the PAC's bank statements, copies of checks, and detailed general ledgers, many of which CVS discarded in the ordinary course of its business over the years.

¹ When reviewing its records to try to uncover the source of the cash-on-hand discrepancy, CVS discovered three additional reporting errors that it has subsequently corrected. First, it appears that certain contribution refunds meant for employee-donors were netted from the payroll transfers to the PAC's bank account rather than separately issued. The refunds were not reported on CVS PAC's FEC reports. Second, CVS discovered six disbursements from the PAC totaling \$3,250.00 that the PAC inadvertently failed to disclose. Third, CVS discovered that the PAC had inadvertently failed to report the voiding of thirteen stale-dated checks originally issued in 2012 and 2013. These omissions were correct in recent filings with the Commission.

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Despite its exhaustive efforts to date to identify the origin of the initially discovered misstatement in the PAC's cash on hand, CVS has been unable to do so. As of January 31, 2017, CVS PAC's reported cash on hand is \$9,510.39 less than its bank account balance.

C. Corrective Action Taken by CVS PAC

CVS has instituted a number of changes to enhance its compliance processes to avoid repeating these past errors and to ensure the accuracy of its reports going forward. Among other things:

- In Spring 2016, CVS hired a new Director of Political Advocacy and Engagement with years of federal PAC experience to manage the PAC.
- CVS retained additional outside counsel to help with the PAC's compliance with the Federal Election Campaign Act and FEC regulations.
- CVS and/or its outside compliance consultants now reconcile the PAC's monthly reports to its bank statements and general ledgers each month. CVS also takes the extra step of reconciling its payroll receipts before even entering them into the database. Under the new procedures, PAC and finance staff members reconcile the receipts and disbursements on the PAC's general ledgers and bank statements against the information on the FEC report before each report is filed.
- The PAC has enacted a new process for better tracking stale-dated checks. The PAC creates a list of outstanding checks, reviews this list monthly, and uses the list when conducting the monthly reconciliation. Checks that are outstanding for more than six months will be voided and reported as such on the PAC's next regularly filed FEC report.
- The employees responsible for obtaining, maintaining, and submitting campaign finance information for the PAC will receive regular training in the relevant legal requirements and PAC procedures.
- New procedures have been put in place to better ensure CVS's payroll department notifies the PAC's management about each refund it processes to ensure each one is properly reported.

Finally, CVS has ensured that the PAC's management structure and procedures are consistent with the requirements contained in the Commission's Safe Harbor for Misreporting Due to Embezzlement.²

² Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions), 72 Fed. Reg. at 16,695-16,698 (Apr. 5, 2007).

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Following the adoption of these improved controls, the PAC's monthly activity as reported to the FEC has reconciled to the PAC's bank statements each month, with only minor, explained variances.

II. Conclusion

As this submission demonstrates, CVS took immediate and sweeping action once it learned that the balance reported on the FEC reports deviated from that balance in its bank account. Upon discovery, it immediately investigated, took corrective measures, and implemented new internal controls to prevent future violations.

CVS has devoted substantial time and resources trying to identify the source of the cash on hand discrepancy so that it might correct the public record. All told, CVS staff and its consultants have reviewed hundreds of pages of paper and electronic documents, and have conducted numerous accountings and analyses. CVS's outside compliance consultants have spent over 150 hours reviewing records and accountings. However, due to the departure of staff members and difficulty accessing contemporaneous records before 2013, CVS has not been able to determine the sources of the error.

Given its efforts to date, and the futility of further review, the PAC respectfully asks the Commission for permission to correct the record. It would like to bring the account into balance by reporting a one-time adjustment to its cash balance as an "Other Receipt" in order to bring its FEC cash on hand in line with its bank balance. Though the amount of the discrepancy may seem notable as a raw number, it is not unreasonable for a committee whose level of activity (disbursements plus receipts) has, in recent years, exceeded \$1 million per election cycle. Furthermore, since the PAC has implemented corrective measures, its activity has reconciled monthly, demonstrating that the sources of error that may have been a problem in the past are no longer present.

CVS PAC is committed to cooperating with the Commission to resolve this matter expeditiously. Based on the Commission's disposition of similar matters involving misstated balances, CVS PAC respectfully requests that the Commission dismiss this matter and take no further action.³ However, if the Commission determines that formal proceedings are necessary to resolve this matter fully, CVS PAC requests that the Commission submit this matter for the Commission's ADR program or, absent that, for fast-track resolution.⁴ As noted above, the PAC is willing to make documents available to the Commission for its review, should the Commission so request.

³ See Notification to Brinker International, Inc. Political Action Committee and Charles M. Sonsteb, Treasurer, ADR Case 442 (Nov. 24, 2008); Notification to Verizon Communication Inc. Good Government Club and Taylor Craig, Treasurer, ADR 509 (Oct. 20, 2009).

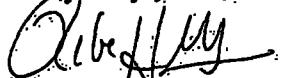
⁴ See Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions), 72 Fed. Reg. at 16,698.

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We would appreciate the opportunity to meet with you in person about this matter at your earliest convenience. Please feel free to contact Rebecca Gordon at (202) 434-1676 should you have any questions.

Very truly yours,



Rebecca H. Gordon

Rachel L. Jacobs

Counsel to CVS Health PAC