



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 6, 1985

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-23

Judah C. Sommer
Vice President and Associate General Counsel
Goldman, Sachs & Co.
Suite 450
1825 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Sommer:

This responds to your letter of July 10, 1985, which requests an advisory opinion on behalf of Goldman, Sachs & Co. and GSMMI Holdings Inc., concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the establishment of a separate segregated fund by a corporation whose stock is solely owned by a limited partnership which is a Federal contractor.

GSMMI Holdings Inc. ("Holdings") is a Delaware corporation whose stock is solely owned by Goldman, Sachs and Co. ("GSC"), a New York limited partnership engaged in investment banking.¹ Holdings is considering the establishment of a separate segregated fund pursuant to 2 U.S.C. 441b. GSC currently has a contact with the U.S. Department of Transportation. For purposes of this opinion, you state that GSC is a Federal government contractor, and you ask the Commission to assume that it will remain one in the future. You state that all costs relating to the establishment, administration, and solicitation of funds to the Holdings' separate segregated fund will be paid by Holdings; no GSC partnership assets will be used to support the fund.

You request an advisory opinion responding to three questions concerning Holdings' proposed separate segregated fund which arise due to GSC's status as a Federal contractor:

1. Does GSC's status as a Federal contractor bar Holdings from establishing a separate segregated fund?

2. May a separate segregated fund established and maintained by Holdings, solicit the individual partners of GSC?

3. May individuals who are both employees of Holdings and partners or employees of GSC participate in the establishment, administration, and solicitation activities of a separate segregated fund set up by Holdings as long as all costs are borne by Holdings?

The Act and regulations prohibit a corporation from making a contribution or expenditure in connection with any Federal election. 2 U.S.C. 441b(a) and 11 CFR 114.2. However, 441b(b)(2)(C) allows a corporation to establish, administer, and solicit contributions to a separate segregated fund to be used for political purposes by the corporation. In view of its corporate status Holdings may establish a separate segregated fund. The fact that it is totally owned by GSC, a limited partnership and a Federal contractor, does not prohibit it from establishing a separate segregated fund. The Commission concluded in Advisory Opinion 1975-31 that the stockholders of a corporation and the corporation itself are two distinct entities for purposes of 2 U.S.C. 441c. Additionally, the regulations at 11 CFR 115.3(a) permit a corporation, which is a Federal government contractor, to establish a separate segregated fund. Therefore, it is permissible for a corporation whose stock is owned by a Federal contractor to establish a separate segregated fund.

With regard to your second question, you state that Holdings intends to solicit individual GSC partners to contribute to its separate segregated fund. The fund will not accept contributions from the GSC partnership assets and will only accept funds from an individual partner in his or her own name and only in the form of a check drawn on a personal account.

The Act allows a corporation (or its separate segregated fund) to solicit contributions from its stockholders and their families and its executive or administrative personnel and their families. 2 U.S.C. 441b(b)(4)(A)(i). The Act and regulations prohibit any person, including any partnership, that is a Federal contractor from making contributions or expenditures to influence Federal elections. 2 U.S.C. 441c, 11 CFR 115.2. However, individual partners may make contributions from personal assets. 11 CFR 115.4(a) and (b). In Advisory Opinion 1979-77, the Commission concluded that individual partners of a partnership that owned all of the stock of a corporation would be viewed as stockholders of the corporation and could be solicited by the corporation's separate segregated fund. Therefore, the Commission concludes that Holdings' separate segregated fund may solicit the individual partners of GSC as long as only individual partners (i.e. natural persons and not corporate partners) are solicited, the contributions are in the individual partner's name, and are made from personal funds drawn from a personal account. All solicitations of such personnel, as well as their contributions, must otherwise comply with Commission regulations. See, in particular, 11 CFR 102.5(a) and 114.5, also see 11 CFR Part 110.

Lastly, you state that some individuals are employed by both Holdings and GSC. You propose to allow these dual employees to devote working time to the activity of the separate segregated fund in proportion to the ratio of salary received from the two entities. For example, you note that if a clerk receives 10% of his salary from Holdings and 90% from GSC he would devote no more than 10% of his working time to activities related to the separate segregated fund.² In the

event it becomes necessary for an individual to devote more time to the separate segregated fund than the ratio would allow, you intend to arrange a purchase in advance of such services from GSC. Holdings would, therefore, be the sole source of payment for all costs associated with the fund. In your request you cite Advisory Opinion 1984-37 as the basis for this procedure. The Commission concluded in the situation there presented that a separate segregated fund could purchase, in advance, certain employee services from its connected organization.

The Act specifically excludes from the definition of contribution or expenditure the costs incurred by a corporation for the establishment, administration, and solicitation of contributions to the corporation's separate segregated fund. 2 U.S.C. 441b(b)(2)(C); see also 2 U.S.C. 431(8)(B)(vi), 431(9)(B)(v) and 11 CFR 114.1(b), 114.5(b). Accordingly, since all administration costs relating to the separate segregated fund will be borne by Holdings, the dual employees of both Holdings and GSC (including also any Holdings employee who is also a GSC partner) may participate in the otherwise exempt activities of Holdings' separate segregated fund assuming the described salary ratio is followed, or provided that an advance payment for such employee services is made by Holdings to GSC.³

This response constitutes an advisory opinion concerning application of the Act or Commission regulations to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosures (AOs 1975-31, 1979-77, 1984-37)

1. Holdings is not an operating company but owns the stock of Goldman, Sachs Money Market Inc., a dealer of commercial paper and other money market instruments, and is a member of the New York Stock Exchange.
2. The Commission assumes that the employee would devote to GSC whatever portion of his working time is paid for by that organization. For instance, in the example given above, if a clerk receives 10% of his salary from Holdings and 90% from GSC, he must devote 90% of his working time to GSC, with the consequence that if he devotes 10% of his working time to the Holdings separate segregated fund, he will have no working time available for Holdings itself. Any other conclusion would permit GSC to participate in financing the fund, which would not be permissible.
3. The Commission notes that multiple and personal contribution solicitations for the separate segregated fund may be directed only to the executive and administrative personnel of Holdings

(including its subsidiaries and affiliates) and to the individual partners of GSC. See 2 U.S.C. 441b(b)(4)(A), 441b(b)(7), and 11 CFR 114.1(c), 114.5(g).