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FEDERAL ELECTION COMMISSION

Washington, DC 20463

AGENDA ITEM
For Meeting of: 3-18-99

March 11, 1999

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Acting Staff Director 

FROM: Lawrence M. Noble
General Counsel 

N. Bradley Litchfield
Associate General Counsel 

Jonathan M. Levin
Senior Attorney 

Subject: Draft AO 1999-03

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for March 18, 1999.

Attachment

1 **ADVISORY OPINION 1999-3**

2
3 **G.T. Franklin Walker, Jr.**
4 **Preston Gates Ellis & Rouvelas Meeds, L.L.P.**
5 **1735 New York Avenue, N.W.**
6 **Suite 500**
7 **Washington, D.C. 20006-5209**

8
9 **Dear Mr. Walker:**

10
11 **This responds to your letter dated February 9, 1999, on behalf of The Microsoft**
12 **Corporate Political Action Committee ("Microsoft PAC"), requesting an advisory**
13 **opinion concerning the application of the Federal Election Campaign Act of 1971, as**
14 **amended ("the Act"), and Commission regulations to the use of digital electronic**
15 **signatures by restricted class employees to authorize payroll deductions of contributions.**

16 **Microsoft PAC is the separate segregated fund of Microsoft Corporation**
17 **("Microsoft" or "the company") and filed its statement of organization with the**
18 **Commission on May 16, 1988. Microsoft currently solicits contributions to Microsoft**
19 **PAC from its employees within the restricted class, as defined by 11 CFR 114.1(j). The**
20 **company wishes to develop a payroll deduction system to facilitate contributions from**
21 **those employees to the PAC. As part of this system, the employees would authorize**
22 **payroll deductions by either digital electronic signature or traditional written signature,**
23 **before the deductions are made. You ask whether the use of an electronic signature by a**
24 **restricted class employee would constitute a valid written authorization for the deductions**
25 **to be made.**

26 **You state that Microsoft's current use of electronic signatures for other company-**
27 **wide purposes demonstrates that the use of this form of electronic signature is very secure**
28 **and protects employee privacy. Microsoft employees currently use electronic signatures**
29 **to access their own employee stock options, to access and complete on-line benefit**
30 **enrollment, and to authorize payroll deductions for charitable activity. Microsoft**
31 **guarantees the security of such signatures by requiring employees to change their**
32 **passwords every two months, by not allowing the use of old passwords, by requiring**
33 **employees to protect their passwords from disclosure, and by securing access to their**

1 computer workstations when they are away from their desks. In addition to these normal
2 company precautions, the PAC will institute a confirmatory process. When the PAC
3 receives an electronically signed payroll deduction form by e-mail, it will send an e-mail
4 reply to notify the employee of its receipt of the form and to request final confirmation of
5 the employee's intention to participate in the payroll deduction program.

6 An exception to the Act's general prohibition on corporate contributions provides
7 that a corporation may solicit contributions to its separate segregated fund ("SSF") from
8 its "restricted class," which includes the corporation's executive and administrative
9 employees. 2 U.S.C. §441b(b)(4)(A)(i); 11 CFR 114.5(g)(1), 114.1(c)(1) and (j).
10 Commission regulations permit the use of a payroll deduction plan for soliciting and
11 collecting contributions from such employees to a corporation's SSF. 11 CFR 114.1(f)
12 and 114.5(k)(1). The permissibility of such a plan is dependent upon compliance by the
13 corporation and the SSF with the requirements of voluntariness set out in 2 U.S.C.
14 §441b(b)(3) and 11 CFR 114.5(a)(1)-(5). These include, but are not limited to, requiring
15 that a corporate solicitation inform the employee of the political purposes of the SSF, and
16 of his or her right to refuse to contribute without any reprisal. Moreover, when the
17 solicitation suggests a guideline for contributions, it must make clear that the guidelines
18 are merely suggestions, that the individual may contribute more or less than the
19 guidelines suggest, and that the corporation will not favor or disfavor anyone for the
20 amount of their contribution or the decision not to contribute. 11 CFR 114.5(a)(2)-(5).

21 When a payroll deduction or other check-off process is used for an SSF, there
22 must be an affirmative authorization by the contributor in order to permit the deduction.
23 *Federal Election Commission v. National Education Association ("NEA")*, 457 F.Supp.
24 1102 (D.D.C. 1978).¹ The specific and voluntary donative intent of the solicited
25 employee needs to be manifested in a written authorization by him prior to the actual
26 deduction of any contributions. See Advisory Opinion 1997-25. This is often
27 accomplished through the sending of a solicitation and payroll deduction form to the

¹ In *NEA*, the court determined that a union's use of a reverse check-off procedure to collect contributions to its SSF results in involuntary contributions. The court concluded that the reverse check-off violated the Act because it "require[d] the dissenter to act to prevent a contribution rather than requiring his affirmative assent to make one." *NEA*, at 1106.

1 employee who, if she desires to contribute in this way, designates the amount to be
2 deducted during the pay period and then indicates her assent via a signature. This
3 signature is necessary as a unique identifier of the employee.

4 In addition to denoting to the corporation and the SSF that a particular employee
5 has authorized the deduction from his salary, the signature also indicates that fact to the
6 Commission. Commission regulations provide that each political committee required to
7 file or any report or statement with the Commission shall:

8 [m]aintain records, including bank records, with respect to the matters
9 required to be reported, including vouchers, worksheets, receipts, bills and
10 accounts, which shall provide in sufficient detail the necessary information
11 and data from which the filed reports and statements may be verified,
12 explained, clarified, and checked for accuracy and completeness.

13
14 11 CFR 104.14(b)(1). The committee must preserve such records for audit or inspection
15 by the Commission for a period of at least three years after the related report or statement
16 is filed. See 11 CFR 104.14(b)(3) and 102.9(c). A payroll deduction authorization form
17 signed by the contributor is a record supporting each report disclosing a contribution
18 made pursuant to that authorization. The contributor's signature indicates to the
19 Commission that the particular employee authorized his contribution.

20 Your proposal entails the acceptance of an authorization from an employee in a
21 form other than the traditional written signature. The Commission has previously
22 interpreted its regulations to be consistent with contemporary technological innovations,
23 including the maintenance of records in non-paper form and the performance of
24 committee transactions, where the use of the technology would not compromise the intent
25 of the Act or regulations. For example, in Advisory Opinion 1995-9, the Commission
26 permitted a committee that used its web site to solicit contributions to accept these
27 contributions using electronic means. This arrangement was permissible so long as
28 complete and reliable records for recordkeeping, disclosure, and audit purposes were
29 maintained and contributor data in a computer file were backed up in a way that
30 permitted the committee to maintain either machine readable or paper copies for three
31 years after the date on which it reported the contributions. In Advisory Opinion 1994-40,
32 the Commission permitted a political committee to maintain its records on microfilm,

1 rather than paper, so long as the necessary documentation of committee transactions was
2 preserved and the microfilm records were legible and retrievable. In Advisory Opinion
3 1993-4, the Commission permitted a committee to pay its bills electronically through a
4 computer driven billpayer service so long as adequate documentation, including receipts
5 and invoices, were preserved.

6 The electronic signature, like a written signature, is designed and functions as a
7 unique identifier of the authorizing employee. You note that Microsoft uses electronic
8 signatures as personal signatures of employees for several other purposes, and you also
9 describe various safeguards that are expected to preserve the security and integrity of the
10 electronic signature when used for SSF contribution authorizations. In view of these
11 procedures and safeguards, the Commission concludes that an eligible Microsoft
12 employee may use her electronic signature to authorize payroll deduction for her
13 contributions to Microsoft PAC, so long as certain conditions are met. First, the
14 employee must be able to use her electronic signature or a written signature to revoke or
15 modify the amount of her authorization at any time. See Advisory Opinions 1997-9,
16 1991-19, and 1991-1. Second, a record of the submission of the authorizing signature,
17 including verification that the signature came from the particular employee, must be
18 maintained in a retrievable manner so as to be available for review by the Commission in
19 the event of an audit or investigation. See 11 CFR 104.14(b).

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

23 Sincerely,

24
25 Scott E. Thomas
26 Chairman

27
28 Enclosures (AOs 1997-25, 1997-9, 1995-9, 1994-40, 1993-4, 1991-19, and 1991-1)
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