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AGENDA ITEM
For Meeting of: 4-25-02

April 18, 2002

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

Subject: Draft AO 2002-04

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for April 25, 2002.

Attachment

1 ADVISORY OPINION 2002-04

2
3 Brett G. Kappel
4 Powell, Goldstein, Frazer & Murphy LLP
5 1001 Pennsylvania Avenue, N.W.
6 Sixth Floor
7 Washington, D.C. 20004-2582

DRAFT

8
9 Dear Mr. Kappel:

10 This responds to your letter dated March 13, 2002, on behalf of Austin, Nichols &
11 Co., Incorporated ("the Company"), requesting an advisory opinion concerning the
12 application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and
13 Commission regulations to the selection and use of a name for the Company's separate
14 segregated fund ("SSF").

15 ***Background***

16 The Company is a U.S. producer and distributor of fine spirits and wine. It is a
17 subsidiary of Pernod Ricard S.A., a Paris-based wine and spirits company.¹ In late 2001,
18 the Company decided to adopt the trade name of Pernod Ricard USA in order to better
19 synchronize brand recognition in the U.S. The Company received authorization to use
20 Pernod Ricard USA as a trade name from the Corporations Division of the New York
21 Department of State on October 9, 2001. Subsequently, it had this trade name reflected
22 on its New York State Liquor Authority license and its permits for operation issued by
23 the Bureau of Alcohol, Tobacco and Firearms of the U.S. Treasury Department ("ATF").
24 On January 23, 2002, the Company sent correspondence to the liquor control authorities
25 in all 50 states and the District of Columbia notifying them that, starting in the first
26 quarter of 2002, the Company would begin using the trade name "Pernod Ricard USA"
27 for "operating purposes, which will include labeling, reporting, price filing, invoicing,
28 and brand registration."

¹ The Company operates from its headquarters in White Plains, New York and has production and distribution facilities in Kentucky and Indiana. You indicate that the Company intends to comply with the provisions in the Act and regulations that prohibit a foreign national from participating in the decision-making process of a political action committee and from making a contribution, directly or through any other person, or an expenditure in connection with an election to any political office, as well as the prohibition against the solicitation, acceptance or receipt of a contribution from a foreign national. See 2 U.S.C. § 441e(a); 11 C.F.R. § 110.4(a)(1)-(4). The Commission also notes that these provisions prohibit the participation of any foreign national in the decision-making process of the Company itself with regard to its Federal or non-Federal election related activities. 11 CFR 110.4(a)(3).

1 On December 21, 2001, the Company issued a press release announcing the new
2 name. This press release noted that previously the Company was known as Austin,
3 Nichols & Company, but would henceforth be known as Pernod Ricard USA. You
4 indicate that it subsequently issued a number of other press releases to that effect, as well
5 as notifications to trade associations. The Company's web site, www.pernod-ricard-
6 usa.com, also makes clear that Pernod Ricard USA is the "new name" by which the
7 Company is known. You state also that the Company now appears as Pernod Ricard
8 USA on Dun & Bradstreet's Company Detail listing.

9 You explain that the use of the Pernod Ricard USA name is widespread in all of
10 the Company's materials. The Company is using the new name on all of its business
11 identification materials, such as letterhead, business cards, and e-mail addresses. In
12 addition, a policy has been issued to all Company employees on the use of the name. For
13 instance, employees have been instructed to use Pernod Ricard USA "in full in
14 conversation and writing, including internal memos and e-mails" and that the full name,
15 Pernod Ricard USA, "will be used on all printed stationery, forms and signage."²

16 The Company intends to organize a separate segregated fund pursuant to 2 U.S.C.
17 §441b(b)(2)(C). In view of the adoption and use of the trade name, the Company
18 proposes that the SSF's official name will be "Austin, Nichols & Co.,
19 Incorporated/Pernod Ricard USA Political Action Committee." It would use that name
20 on the SSF's name in its statement of organization and in all disclosure statements. For
21 common use of the PAC name, such as on checks and letterhead, it intends to use
22 "Pernod Ricard USA PAC." The connected organization of Pernod Ricard USA PAC
23 will be reported as "Austin, Nichols & Co., Incorporated d/b/a Pernod Ricard USA."
24 You ask whether the proposed PAC names would be permissible under the Act and
25 Commission regulations.

26 ***Analysis***

27 Under the Act and Commission regulations, the name of any separate segregated
28 fund must include the full name of its connected organization. 2 U.S.C. §432(e)(5);

² Included in the request are copies of the New York State authorization, the operation permits from ATF, a notification to a State liquor authority of the use of the trade name, a sample letterhead, and the Company policy on the use of the trade name.

1 11 CFR 102.14(c); *see also* Advisory Opinions 1993-7, 1989-8, and 1988-42.³ The
2 regulations also permit the use of “a clearly recognized abbreviation or acronym by
3 which the connected organization is commonly known” provided that the SSF uses both
4 the abbreviation (or acronym) and the full name on the SSF’s Statement of Organization,
5 on all reports filed with the Commission, and on all disclaimer notices required by 11
6 CFR 109.3 and 110.11. The SSF may make contributions using the abbreviation or
7 acronym. 11 CFR 102.14(c); *Explanation and Justification* at 45 Fed. Reg. 15080,
8 15085; *see also* Advisory Opinions 2000-34, 1999-20, and 1987-26.

9 The proposed name of the SSF includes the full official corporate name of the
10 Company, “Austin, Nichols & Co., Incorporated,” and, in that respect, is in compliance
11 with the requirement for official SSF names set out in the Act and regulations. The
12 proposed name, “Austin, Nichols & Co., Incorporated/Pernod Ricard USA Political
13 Action Committee” is permissible.

14 The Company proposes to use the name “Pernod Ricard USA PAC” for common
15 uses such as checks and letterhead. As indicated above, use of “Pernod Ricard USA” is
16 permissible if it is a clearly recognized abbreviation or acronym by which the Company
17 is commonly known. In determining whether specific terms or names meet this
18 requirement, the Commission has examined whether they gave adequate notice to the
19 public of the identity and sponsorship of SSFs. *See* Advisory Opinions 2000-34, n.4,
20 1987-26, 1980-86, and 1980-23. The Commission has looked at a number of indicators
21 such as use of the term or name in the company trademark or service mark, in a stock
22 exchange identification, in financial reference sources or directories, on the corporate
23 web site, and in the corporate annual report. *See* Advisory Opinions 2000-34, 1999-20,
24 and 1987-26.

25 Although “Pernod Ricard USA” is not literally an acronym or abbreviation, it is
26 materially indistinguishable from an acronym or abbreviation qualifying for PAC use
27 under 11 CFR 102.14(c). There is ample information indicating that it is a clearly
28 recognized name that gives adequate notice to the public as to the identity and
29 sponsorship of the SSF. The adoption of the trade name by the Company, as the name by

³ A fund established by a corporation that has a number of subsidiaries need not include the name of each subsidiary in its name. Similarly, a separate segregated fund established by a subsidiary need not include in its name the name of its parent or another subsidiary of its parent. 11 CFR 102.14(c).

1 which the Company is to be known, is disclosed on documents available to the public
2 such as web site documents, press releases, and the Dun & Bradstreet listing. The trade
3 name is used extensively on company materials, including materials given or sent to
4 those outside the Company, and the Company has provided specific instructions to its
5 personnel mandating use of the full trade name. Moreover, the name is being used for
6 governmental licensing and authorizations, and the Company has notified all the States of
7 the use of the name for operating purposes.

8 Based on the foregoing, the Company's SSF may be identified as Pernod Ricard
9 USA PAC, without the inclusion of the official corporate name of the Company (Austin,
10 Nichols & Co., Incorporated), on documents such as checks and letterhead. As indicated
11 above, the Company must use the full name of the PAC, "Austin, Nichols & Co.,
12 Incorporated/Pernod Ricard USA Political Action Committee" on the SSF's Statement of
13 Organization, on all of the SSF's reports filed with the Commission, and on all disclaimer
14 notices required by 11 CFR 109.3 and 110.11.⁴

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

18 Sincerely,

19
20 David M. Mason
21 Chairman

22
23 Enclosures (AOs 2000-34, 1999-20, 1993-7, 1989-8, 1988-42, 1987-26, 1980-86, and
24 1980-23)
25

⁴ The focus of this requirement is on the use of the corporate names. The Commission notes that the term "PAC" is "sufficiently well known enough through public media usage" that it may be used instead of "Political Action Committee" in the official name of the separate segregated fund. Advisory Opinion 1988-42, n.1.