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July 30, 2007

BY HAND DELIVERY

Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

AOR 2007-15

Re: Request for Advisory Opinion

Dear Commissioners:

On behalf of GMAC LLC, we respectfully request an advisory opinion from the Federal Election Commission ("FEC" or "Commission") pursuant to 2 U.S.C. § 437f of the Federal Election Campaign Act of 1971 ("FECA" or "Act"), as amended. Our client seeks the Commission's guidance regarding the extent to which a separate segregated fund ("SSF") may be administered by GMAC LLC on behalf of a subsidiary corporation that is wholly owned and controlled by GMAC LLC.

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FACTUAL BACKGROUND

GMAC LLC is a financial services company that primarily operates in the automotive finance, mortgage, and insurance lines of business. Its subsidiary companies in these lines of business are wholly owned and controlled by GMAC LLC. Almost all of its U.S. subsidiary companies are organized as limited liability companies ("LLCs") with the exception of the insurance companies which are incorporated. A list of GMAC LLC's significant subsidiaries from Exhibit 21 of its December 31, 2006, Securities and Exchange Commission 10-K filing is enclosed for your reference. In addition, GMAC LLC is majority owned and controlled by FIM Holdings LLC, which is an investment consortium led by Cerberus FIM Investors, LLC (its sole managing member), an affiliate of Cerberus Capital Management, L.P.

GMAC LLC has filed an election with the Internal Revenue Service to be treated as a partnership.¹ One of the incorporated insurance companies owned by GMAC LLC, GMAC Insurance Holdings, Inc., intends to establish an SSF. GMAC LLC would like to use its own personnel and resources to administer the SSF.

¹ FIM Holdings LLC has also filed an election with the IRS to be treated as a partnership. Information about Cerberus FIM Investors, LLC's IRS election is not available.

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QUESTIONS PRESENTED

1. May GMAC LLC use its own resources to pay for the expenses associated with administering the SSF of a wholly owned and controlled subsidiary corporation?
2. May the SSF be named "GMAC LLC PAC" and use "GMAC PAC" as an abbreviation?

LEGAL ANALYSIS

1. The Commission's affiliation doctrine permits the use of GMAC LLC resources to administer the SSF of a wholly owned and controlled corporate subsidiary.

In general, the FECA prohibits the use of corporate resources in connection with federal elections. 2 U.S.C. § 441b(a). However, the FECA permits "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation." 2 U.S.C. § 441b(b)(2)(C).²

SSFs and connected corporations are "affiliated" with other entities that are "established, financed, maintained or controlled" by the same persons. 11 C.F.R. §§ 100.5(g)(2); 110.3(a)(1)(ii). The regulatory and practical effect of affiliation is to treat all affiliated entities as one. *See, e.g.*, 11 C.F.R. § 110.3(a)(1) (affiliated committees share a single contribution limit). As a result, the Commission has permitted not only the corporation that establishes the SSF to administer the SSF, but has permitted its non-corporate affiliates to do so as well.

FEC regulations specifically contemplate the use of an affiliated entity's resources to administer a corporation's SSF:

Any corporation, including its subsidiaries, branches, divisions, and *affiliates*, that uses a method of soliciting voluntary contributions or facilitating the

² An LLC that elects to be treated as a corporation by the IRS may also establish and administer an SSF pursuant to this statutory provision. 11 C.F.R. § 110.1(g)(3).

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making of voluntary contributions from its stockholders or executive or administrative personnel and their families, shall make that method available to a labor organization representing any members working for the corporation, its subsidiaries, branches, divisions, and *affiliates* for soliciting voluntary contributions or facilitating the making of voluntary contributions from its members and their families.

11 C.F.R. § 114.5(k) (emphasis added). As explained in the preceding paragraph, FEC regulations explain that affiliation can apply not just to corporations, but to any person or organization. *Id.* § 100.5(g); 110.3(a). Accordingly, the FEC's regulations appear to permit the payment of SSF administrative expenses by any affiliate, regardless of whether it is incorporated.

In the Commission's most recent pronouncement in this area, Advisory Opinion 2004-42 ("Pharmavite"), the Commission permitted an LLC that was wholly owned by a corporation to pay the administrative costs associated with the corporation's SSF. The Advisory Opinion began with the proposition that business organizations are deemed *per se* affiliated when one owns a majority interest in another. The Commission noted that it "generally permits a corporation's affiliates to pay the administrative and solicitation costs of the corporation's SSF," and concluded that the LLC "may perform the functions of a connected organization for the PAC, including paying administrative and solicitation costs." The Commission's analysis and ultimate conclusion can be traced back through a series of advisory opinions to Advisory Opinion 1987-34 (Telenet).

In Advisory Opinion 1987-34, the Commission held that the affiliated relationship of a joint venture partnership and its corporate subsidiary meant that either entity could pay the administrative expenses associated with the corporate subsidiary's SSF: "[T]he affiliate status of [the joint venture partnership] in relation to [the corporate subsidiary], also means that either [the corporate subsidiary] or [the joint venture partnership] may establish and finance a payroll deduction plan" To further reinforce its conclusion, the Commission included a footnote citing the above-quoted regulation at 11 C.F.R. § 114.5(k) that contemplates the payment of administrative expenses by *any* affiliate of a corporation or its SSF. The same footnote explained that the joint venture partnership's affiliation with its controlling corporate partners was yet another reason the partnership could pay the SSF's administrative expenses.



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Since then, the Commission has largely addressed this issue in the context of affiliated relationships like that just described in the footnote of Advisory Opinion 1987-34.³ It does not appear that the Commission has since addressed a situation where, as here, the SSF administrative expenses would be paid by a non-corporate entity that owns – and is therefore affiliated with – a subsidiary corporation that establishes the SSF. Nonetheless, the conclusion of Advisory Opinion 1987-34 would permit such an arrangement.

Three years earlier, however, the Commission reached a seemingly different outcome. Advisory Opinion 1985-23 (Goldman Sachs) addressed whether a wholly owned corporate subsidiary of a partnership that maintained federal government contracts could establish an SSF. The requestor represented that any partnership resources used to administer the corporation's SSF would be paid for in advance by the corporation. The Commission permitted the establishment of the SSF based on this representation and explained in a footnote: "Any other conclusion would permit [the partnership] to participate in financing the fund, which would not be permissible."

It is notable that although Advisory Opinion 1985-23 has been cited in subsequent advisory opinions, it has never been cited for this proposition.⁴ There appear to be three principal reasons. First, and as detailed more thoroughly above, this aspect of the Advisory Opinion was effectively – though not explicitly – superseded by the conclusion of Advisory Opinion 1987-34 that *any* affiliated non-corporate entity may pay the administrative costs of an affiliated corporation's SSF.

Second, the logic of this aspect of Advisory Opinion 1985-23 is inherently flawed. If a partnership wholly owns a corporate subsidiary, the assets of that subsidiary *are*

³ Advisory Opinion 2004-42 confirms as much stating: "[T]he Commission has interpreted the Act and Commission regulations to permit a partnership, or an LLC treated as a partnership under Commission regulations, that is owned entirely by one or more corporations and affiliated with at least one of those corporations, to pay the administrative and solicitation costs for the partnership's political action committee."

⁴ Advisory Opinion 1985-23 was, in fact, cited in Advisory Opinion 1987-34, but for the proposition that "individual partners of a partnership that owned all the stock of a corporation were held to be solicitable by the corporation for contributions to the corporation's political fund" because the partnership and corporation were affiliated. As discussed more fully two paragraphs *infra*, this concept further supports the conclusion that affiliated entities may pay SSF administrative expenses.

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the assets of the partnership. Thus, when the corporate subsidiary administers its SSF with its resources, it is using the resources of the partnership. Presumably, the partnership should be able to use its other resources to administer the SSF.⁵

Lastly, permitting affiliated entities to pay SSF administrative expenses is consistent with other allowances provided by the Commission in the affiliation context. For example, the Commission permits corporate SSF's to solicit contributions from the executive and administrative personnel of non-corporate affiliates, including partnerships and LLCs. See FEC Advisory Opinions 2004-32 (Spirit Airlines) & 1979-77 (Trammell Crow). The Commission has even allowed a foreign subsidiary company to pay the administrative costs associated with collecting contributions to the SSF of its U.S. parent. See FEC Advisory Opinion 1982-34 (Sonat).⁶ The Commission has repeatedly recognized that once entities are deemed affiliates, they may participate in the operations of an affiliate's SSF.

* * *

Notwithstanding Advisory Opinion 1985-23, the Commission's recognition in its regulations and advisory opinions that affiliation permits a non-corporate entity to pay the administrative costs of a corporate SSF should allow GMAC LLC to pay the administrative expenses associated with the SSF of one of its wholly owned corporate subsidiaries.

⁵ This reasoning is also consistent with that in the series of advisory opinions where the Commission has permitted subsidiary non-corporate entities that are owned by, and are therefore affiliated with, corporations to pay the administrative expenses of an SSF. In those advisory opinions, the Commission further justified its conclusions by analogizing to the FEC's "dual attribution principle" for partnership contributions. The "dual attribution principle" requires that political contributions by a partnership be attributed to both the partnership and the individual partners that own the partnership. Similarly, the advisory opinions reason that the administrative support provided by a non-corporate subsidiary "may be construed as coming from the affiliated corporations" that own or control the subsidiary. Advisory Opinion 1997-13. This concept applies with equal force here where the wholly owned corporation is similarly standing in the shoes of the non-corporate parent entity by virtue of their parent/subsidiary relationship. It is indisputable that the subsidiary corporation may administer an SSF with its own resources. Those resources, however, can also be attributed to the non-corporate parent entity that owns 100% of the corporate subsidiary.

⁶ Of course, GMAC LLC, its affiliates, and the SSF would observe all of the legal requirements related to foreign nationals contained in the Act, regulations, and the Commission's advisory opinions.

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2. "GMAC LLC PAC" should be an appropriate name – and "GMAC PAC" should be an appropriate abbreviation – for the SSF.

Federal law generally requires that the name of the connected corporation be included in the name of an SSF. 2 U.S.C. § 432(e)(5); 11 C.F.R. § 102.14(c). However, Advisory Opinion 2004-42 recently allowed an SSF to replace the reference in its name to "Otsuka America, Inc.," the SSF's connected corporation, with "Pharmavite LLC," the affiliated LLC that was incurring the administrative expenses of the SSF. The Commission explained that it will allow the name of an SSF to reflect the name of an affiliated LLC "where the LLC was performing the functions of the SSF's connected organization." The Commission also explained that because the SSF would be focused on candidates and issues of importance to the LLC, the use of the LLC's name in the name of the SSF "will provide the public with a more accurate understanding of the PAC's funding and purpose."

Assuming the Commission allows GMAC LLC to pay the administrative costs associated with the SSF, and because the SSF will be supporting candidates based on issues of importance to GMAC LLC and all of its U.S. subsidiaries, the public will be better informed of both the SSF's funding and purpose if the name includes GMAC LLC.

Advisory Opinion 2004-42 also held that the SSF could abbreviate its name by omitting "LLC." Assuming "GMAC LLC PAC" is an acceptable name for the SSF, we are also requesting confirmation that "GMAC PAC" would be an acceptable abbreviation to use on checks, letterhead, and for other common uses. As explained in the Advisory Opinion and FEC regulations cited therein, both the full and abbreviated names of the SSF will be used on the SSF's Statement of Organization, on all reports filed with the FEC, and on all disclaimer notices.

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CONCLUSION

Because GMAC LLC is affiliated with GMAC Insurance Holdings, Inc., GMAC LLC should be able to use its resources to administer an SSF established by GMAC Insurance Holdings, Inc. Furthermore, GMAC LLC's administration of the SSF, coupled with the SSF's broad purpose, suggests that "GMAC LLC PAC" is an appropriate name for the SSF and that "GMAC PAC" is an appropriate abbreviation.

Sincerely,



Jan Witold Baran
Caleb P. Burns

Enclosure

Exhibit 21

GMAC LLC

GMAC LLC Subsidiaries as of December 31, 2006

Subsidiary companies of GMAC LLC are listed below.

Name of subsidiary	State or sovereign power of Incorporation
GMAC LLC	Delaware
Autofinanciamiento GMAC, S.A. de C.V.	Mexico
Banco GMAC S.A.	Brazil
Basic Credit Holding Company, L.L.C.	Delaware
American Suzuki Financial Services Company LLC	Delaware
Nuvell Credit Company LLC	Delaware
Nuvell Financial Services LLC	Delaware
Nuvell National Auto Finance LLC	Delaware
Saab Financial Services LLC	Delaware
Capital Auto Receivables LLC	Delaware
Central Originating Lease, LLC	Delaware
G.M.A.C. — Comercio e Aluguer de Veiculos, Lda.	Portugal
G.M.A.C. Financiera de Colombia S.A. Compania de Financiamiento Comercial	Colombia
Gamma Auto Receivables LLC	Delaware
General Motors Acceptance Corporation (N.Z.) Limited	New Zealand
General Motors Acceptance Corporation de Portugal, Instituicao Financiera de Credito, SA	Portugal
General Motors Acceptance Corporation del Peru S.A.	Peru
General Motors Acceptance Corporation Hungary Commercial Limited Liability Company	Hungary
General Motors Acceptance Corporation Italia S.p.A.	Italy
General Motors Acceptance Corporation Nederland N.V.	Netherlands
General Motors Acceptance Corporation of Canada, Limited	Canada
General Motors Acceptance Corporation Suisse S.A.	Switzerland
General Motors Acceptance Corporation, S.A. de C.V.	Mexico
GM Credit AB	Sweden
GMAC (Thailand) Ltd.	Thailand
GMAC — Prestadora de Serviços de Mão-de-Obra Ltda.	Brazil
GMAC Arrendamiento S.A. de C.V.	Mexico
GMAC Australia LLC	Delaware
GMAC Automotriz Limitado	Chile
GMAC Bank	Utah
GMAC Bank Polska Spolka Akcyjna	Poland
GMAC Banque	France
GMAC Colombia S.A. LLC	Delaware
GMAC Comercial Automotriz Chile S.A.	Chile
GMAC Comercial Finance (Holdings) Limited	England
GMAC Commercial Finance LLC	Delaware
GMAC Commercial LLC	Delaware
GMAC Compania Financiera S.A.	Argentina
GMAC Continental LLC	Delaware
Masterlease Limited	England
GMAC d.o.o. (domiciled in Croatia)	Croatia
GMAC del Ecuador S.A.	Ecuador
GMAC Financial Services India Limited	India

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Exhibit 21**GMAC LLC**

Name of subsidiary	State or sovereign power of incorporation
GMAC Holdings (U.K.) Limited	England
General Motors Acceptance Corporation (U.K.) plc	England
GMAC Hungary Financial Services Private Limited Company	Hungary
GMAC Insurance Holdings, Inc.	Delaware
GMAC RE Corp.	Delaware
GMAC Securities Corporation	Delaware
MEEMIC Insurance Services Corporation	Delaware
Motors Insurance Corporation	Delaware
MEEMIC Insurance Company	Michigan
MIC General Insurance Corporation	Michigan
MIC Property and Casualty Insurance Corporation	Michigan
Universal Warranty Corporation	Michigan
GMAC International Finance B.V.	Netherlands
GMAC International Holdings Coöperatief U.A.	Netherlands
GMAC International LLC	Delaware
General Motors Acceptance Corporation Italia S.p.A.	Italy
GMAC MEXICANA, S.A. de C.V. Sociedad Financiera de Objeto Limitado Filial	Mexico
GMAC Latin America Holdings LLC	Delaware
GMAC Lease B.V. (aka Masterlease Europe)	Netherlands
GMAC Leasing GmbH (Austrian entity)	Austria
GMAC Leasing of DE LLC	Delaware
GMAC MEXICANA, S.A. de C.V. Sociedad Financiera de Objeto Limitado Filial	Mexico
GMAC Mortgage Group LLC	Delaware
GMAC Mortgage Holdings LLC	Delaware
Residential Capital, LLC	Delaware
GMAC Residential Holding Company, LLC	Delaware
GHS Global Relocation U.K. Limited	United Kingdom
GMAC Home Services, LLC	Delaware
GMAC Mortgage, LLC	Delaware
GMACB Service Company, LLC	Delaware
GMACRH Settlement Services, LLC	Delaware
GMAC-RFC Holding Company, LLC	Delaware
Residential Funding Company, LLC	Delaware
GMAC Residential Funding of Canada Limited	Canada
GMAC-RFC Auritec, S.A.	Mexico
GMAC-RFC Australia Pty Limited	Australia
GMAC-RFC Europe Limited	England
GMAC-RFC Holdings Limited	England
Homecomings Financial, LLC	Delaware
Residential Funding Securities, LLC	Delaware
GMAC North America LLC	Delaware
GMAC South America LLC	Delaware
GMAC Sverige AB	Sweden
GMAC Taiwan LLC	Delaware
GMAC, a.s.	Czech Republic

Exhibit 21
GMAC LLC

Name of subsidiary	State or sovereign power of incorporation
GMAC, Australia (Finance) Limited	Australia
GMACI Holdings LLC	Delaware
Master Lease Austria GmbH	Austria
Masterlease Limited	England
Pardo Rabello Inversiones S.A.	Argentina
SA Holding One LLC	Delaware
SA Holding Two LLC	Delaware
Semperian LLC	Delaware
Servicios GMAC S.A. de C.V.	Mexico
Servicios, Representación y Asesoramiento de Personal Persoserv S.A.	Ecuador
Wholesale Auto Receivables LLC	Delaware