



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

**TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
CHIEF COMMUNICATIONS OFFICER
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE**

FROM: COMMISSION SECRETARY *Murphy*

DATE: SEPTEMBER 21, 2007

**SUBJECT: COMMENT ON DRAFT AO 2007-15
GMAC LLC**

Transmitted herewith is a timely submitted comment from Jan Witold Baran regarding the above-captioned matter.

Proposed Advisory Opinion 2007-15 is on the agenda for Monday, September 24, 2007.

Attachment



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September 21, 2007

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VIA FACSIMILE 202.208.3333

Ms. Mary Dove
Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Comments to Drafts of Advisory Opinion 2007-15

Dear Ms. Dove:

On behalf of GMAC LLC, we respectfully submit these comments to the two alternative drafts of Advisory Opinion 2007-15 that the Commission will be considering at its September 24th meeting. In sum, both drafts rely on an analysis of whether GMAC LLC is owned by corporations. This "analysis" is not reconciled with the Commission's affiliation regulations and advisory opinions. Those regulations and advisory opinions are correctly understood as simply requiring that GMAC LLC be affiliated with *any* corporation regardless of the corporation's position in the organizational hierarchy. Accordingly, we recommend that the Commission reject "Draft A." Though it contains some of the same tensions that appear in "Draft A," "Draft B" is clearly preferable. To eliminate those tensions, the Commission need only delete the paragraph on page 4 (beginning on line 6 and ending on line 17) that conditions the Commission's conclusion on GMAC LLC's corporate ownership.

The cited advisory opinions in both "Draft A" and "Draft B" all seemingly grew out of Advisory Opinion 1987-34 (Telenet) which concluded that "the affiliate status of [a non-corporate entity] in relation to [a corporate subsidiary], also means that either [entity] may establish a payroll deduction plan." A footnote mentioned the additional fact that the non-corporate entity was also owned by other corporate entities and that this was yet another reason why the non-corporate entity could pay the administrative expenses of its corporate subsidiary's separate segregated fund ("SSF"). The primary reason, however, was that the non-corporate entity and its corporate subsidiary were affiliated.

The advisory opinions that followed 1987-34 all presented factual predicates in which the non-corporate entity was owned or controlled by one or more corporations. As a result of facts presented by requestors, the rationale of the footnote developed a primacy in the subsequent advisory opinions that cannot be



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justified by Advisory Opinion 1987-34's text. Had the subsequent advisory opinions addressed facts like those presented in the instant advisory opinion request, we suspect that the principal rationale of Advisory Opinion 1987-34 – that affiliation with any corporate entity is itself sufficient for purposes of permitting a non-incorporated entity to pay the administrative expenses of a corporate SSF – would rightly have been emphasized.

The primacy of "affiliation" is reflected elsewhere in Commission rulings. The Commission has permitted participation by affiliated entities in other corporate SSF activities, not just the payment of the payroll deduction plan permitted in Advisory Opinion 1987-34. In all of these instances, the analysis turns solely on whether the entities are affiliated. For example, in Advisory Opinion 2004-32 (Spirit Airlines) the Commission determined that the executive and administrative personnel of non-corporate affiliates could be solicited to contribute to an affiliated corporation's SSF. In Advisory Opinion 1982-32 (Sonat) the Commission even permitted a *foreign* corporation – which may not legally establish its own SSF – to pay the administrative expenses associated with collecting contributions to the SSF of an affiliated U.S. corporation.

The conclusion from all of these advisory opinions is that affiliation has the effect of treating all affiliated entities as one entity regardless of how they are affiliated with each other or their legal form. "Draft A" is incompatible with the rulings and should be rejected. "Draft B" includes a paragraph that requires an affiliation relationship in which one or more corporations own the affiliated non-corporate entity that would incur the SSF administrative costs. This too is incompatible with Commission precedent but could be rectified by deleting the paragraph.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Witold Baran".

Jan Witold Baran
Caleb P. Burns

cc: Office of General Counsel (Via Facsimile: 202.219.3923)