



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 *MWD*

DATE: OCTOBER 5, 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 Thursday, October 11, 2007.

Attachment



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October 5, 2007

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VIA FACSIMILE 202.208.3333

Ms. Mary Dove
Commission Secretary
Federal Election Commission
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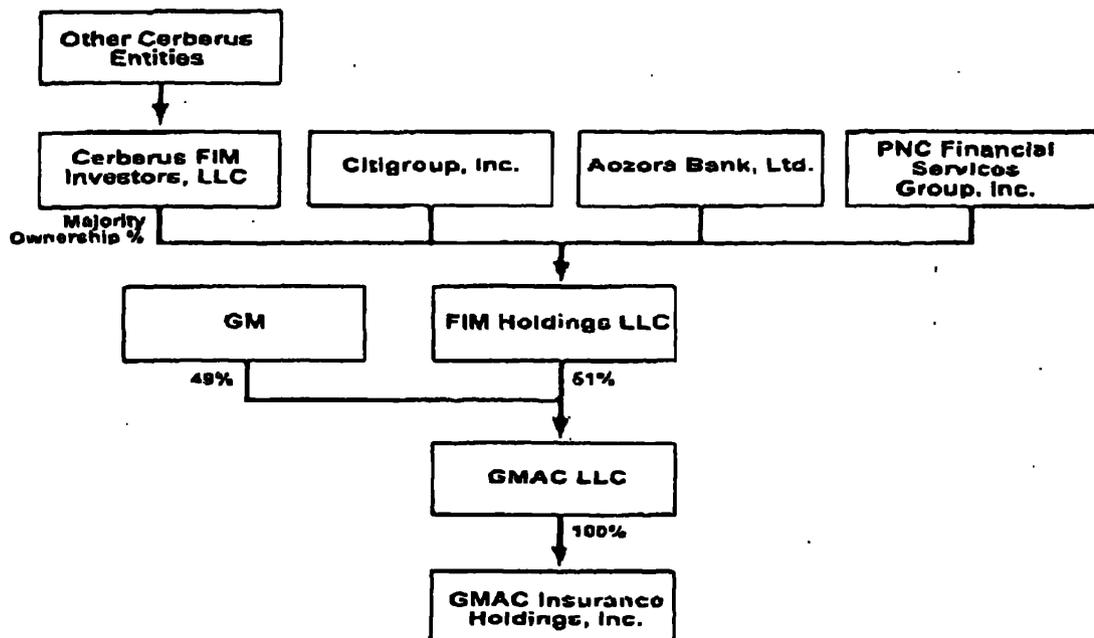
Re: Advisory Opinion 2007-15

Dear Ms. Dove:

On behalf of GMAC LLC, we respectfully submit these comments in response to the discussion that occurred during the Commission's September 24th meeting regarding the above-captioned matter. Commissioners raised a number of questions that we would like to address.

Structure of GMAC LLC

As a starting point, the following is an organizational chart reflecting the general structure and ownership of GMAC LLC:





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As one can see, GMAC LLC is part of an extensive and complicated business structure that includes various corporations, LLCs, and investors. Due to multiple acquisitions by various investors, there are numerous other corporations associated with various "Cerberus" entities. Two of these corporations have registered with the FEC separate segregated funds ("SSFs"). They are IAP Worldwide Services, Inc. and Chrysler International Corporation. Counsel has determined that the SSFs of these two companies are affiliated under FEC regulations and related statutes. Those SSFs have amended their respective Statements of Organization accordingly. When an SSF connected to GMAC Insurance Holdings, Inc. is formed, it too will be affiliated with the SSFs of IAP Worldwide Services, Inc. and Chrysler International Corporation unless the opinion in this matter suggests otherwise.

GMAC Insurance Holdings, Inc.

One question asked at the September 24 meeting was whether GMAC Insurance Holdings, Inc., as an insurance company, is barred by any state or federal law from establishing an SSF. Our client advises us that there is no such bar. Furthermore, the existence of numerous insurance company SSFs – as reflected in the FEC's Campaign Finance and Data online database – corroborates that there is no legal impediment to an insurance company establishing an SSF.

The Significance of Affiliation

The most important questions raised during the September 24 meeting addressed the practical and legal effects of affiliation between SSFs and between various business entities. As discussed above, Cerberus entities have concluded that because IAP Worldwide Services, Inc. and Chrysler International Corporation are controlled by the same person or groups of persons, their SSFs are affiliated. The major effect of affiliation between SSFs is that they must share one contribution limit with respect to contributions made and received.

Separately, FEC regulations, advisory opinions and related statutes state that when affiliation exists, eligible employees and stockholders at the connected organization and "its subsidiaries, branches, divisions, and affiliates," 11 C.F.R. § 114.5(g)(1), may be solicited. *See also* Advisory Opinion 2004-32 (The SSF of Spirit Airlines could solicit the executive and administrative personnel of all affiliated entities, including limited liability companies.) Whether an entity is an "affiliate" is determined by the factors provided at 11 C.F.R. § 100.5(g)(4) which include an analysis of ownership, control, governance, and more. Thus, GMAC Insurance



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Holdings, Inc., which is wholly owned by GMAC LLC, is an affiliate of GMAC LLC. Accordingly, an SSF established by GMAC Insurance Holdings, Inc. may solicit the executive and administrative personnel of GMAC LLC. Because FIM Holdings LLC owns 51% of GMAC LLC it too would be an affiliate and its restricted class may be solicited. This conclusion applies up and down the ownership chain with respect to entities that own or control the entities beneath them. Accordingly, the SSF of GMAC Insurance Holdings, Inc. could solicit the executive and administrative personnel of GMAC LLC and any of its affiliates throughout the organizational hierarchy.

The Advisory Opinion Request

The pending request seeks clarification that affiliated entities, in addition to making executive and administrative personnel eligible for SSF solicitations, may also pay the costs associated with those solicitations as well as other administrative expenses.¹ As explained in our original request and subsequent comments, the seminal advisory opinion on this point, 1987-34, allows the payment of SSF administrative expenses by affiliated entities. Subsequent advisory opinions seemingly conditioned such payments on unnecessary additional factors. Permitting GMAC LLC to pay the administrative expenses of the SSF of GMAC Insurance Holdings, Inc. would not be a departure from this Commission precedent, but would merely clarify it.

The effect of affiliation demonstrates how permitting such payments by GMAC LLC is entirely consistent with federal law. For example, there is no question that GMAC Insurance Holdings, Inc. may use its own resources to pay the administrative expenses of its SSF. Because GMAC Insurance Holdings, Inc. is wholly owned by GMAC LLC, GMAC Insurance Holdings, Inc. resources are, in fact, GMAC LLC resources. As a result, GMAC LLC resources would be used to administer the SSF. It should not, as a matter of law, make a difference which particular asset GMAC LLC uses to administer the SSF.

The affiliated relationship between GMAC LLC and GMAC Insurance Holdings, Inc. also informs another issue raised by Commissioners during the September 24th meeting. It was suggested that organizations must neatly fit into the regulatory regime as either corporations or partnerships. Two Commissioners appeared to express a concern that because the former permits the administration of an SSF, and

¹ Separately, the request raises a question as to what name the SSF may use.



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the latter permits direct contributions that are attributed to individual partners, entities should not be permitted to do both. That may be true for standalone corporations and partnerships. On the other hand, affiliated entities such as corporations, partnerships, and LLCs are subject to the rules and consequences of affiliation.

As explained above, GMAC Insurance Holdings, Inc. can administer an SSF and solicit contributions to the SSF from the executive and administrative personnel of GMAC LLC and other affiliates. Given GMAC LLC's ownership and control over GMAC Insurance Holdings, Inc., the SSF administered by GMAC Insurance Holdings, Inc. can effectively operate as GMAC LLC's SSF. If one assumes for the sake of argument that GMAC LLC's ownership can be traced back to individual partners, then GMAC LLC may also make direct candidate contributions in addition to the SSF contributions made by its wholly owned and controlled subsidiary.²

This was recognized as far back as 1980 when the Commission issued Advisory Opinion 1979-77 (Trammell Crow). The FEC concluded that the SSF of a corporation that was wholly owned by a partnership could solicit the individual partners of the partnership because of the affiliated relationship between the partnership and the corporation it owned. In addition, the opinion noted that the non-connected political committee operated by the partnership was also affiliated with the corporation's SSF. Nothing in the opinion limited the ability of the individual partners or the partnership to make political contributions or to refrain from administering the SSF of the partnership's wholly owned subsidiary.

In reaching its conclusion, the Commission addressed the effect of affiliation between a corporation and a partnership by analogizing to a conclusion it reached in a previous advisory opinion where "stockholders of the parent corporation of a wholly owned subsidiary may be solicited by the political fund of the subsidiary since stockholders of the parent are also, in effect, stockholders of the wholly owned subsidiary." As discussed previously, this logic also applies with equal force here. GMAC Insurance Holdings, Inc. is "in effect" GMAC LLC given the fact that the former is wholly owned by the latter. The affiliated relationship permits the SSF to solicit the executives of any affiliated partnership or LLC. Because of affiliation, it should make no difference who among the affiliated entities pays those solicitation costs.

² Of course, any such hypothetical contributions by GMAC LLC would have to be attributable to a partner, reported as such and counted toward the partner's limit.



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CONCLUSION

This advisory opinion request seeks confirmation that GMAC LLC can use its resources to directly administer an SSF that it is otherwise permitted to *indirectly* administer through its affiliated wholly owned subsidiary GMAC Insurance Holdings, Inc. The affiliated relationship between the two entities under FEC regulations provides the legal basis for permitting such an arrangement. Any requirement that GMAC Insurance Holdings, Inc. use its own resources – i.e., somehow calculate and reimburse to GMAC LLC the value of the latter's resources used to administer the SSF – would be a regrettable example of allowing form to trump substance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Caleb P. Burns".

Jan Witold Baran
Caleb P. Burns

cc: Ms. Amy L. Rothstein, Office of General Counsel (Via Facsimile:
202.219.3923)