



FEDERAL ELECTION COMMISSION
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ADVISORY OPINION 2014-18

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1900 K Street, NW
Washington, D.C. 20006

Dear Messrs. Passantino and Keane:

We are responding to your advisory opinion request on behalf of Rayonier Inc. (“Rayonier”) and Rayonier Advanced Materials Inc. (“RYAM”). The requestors ask the Commission to find that RYAM’s separate segregated fund (“SSF”), Rayonier Advanced Materials Inc. Good Government Committee, is not affiliated with Rayonier’s SSF, the Rayonier Inc. Good Government Committee.

The Commission concludes that RYAM’s SSF is not affiliated with Rayonier’s SSF under the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (formerly 2 U.S.C. §§ 431-457) (the “Act”), and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letters received on August 20 and October 22, 2014, your email received on December 8, 2014, and public disclosure reports filed with the Commission.

RYAM is a corporation whose stock has been publicly traded since June 30, 2014. It specializes in the manufacturing and sale of “performance fibers.” RYAM was formed via a spin-off from Rayonier in June 2014. Prior to that spin-off, the performance fibers business had been a wholly owned business unit of Rayonier, which also operated (and continues to operate) other, distinct business units.

On May 27, 2014, Rayonier's board of directors approved the spin-off of the performance fibers business unit into a new publicly traded corporation, RYAM. The spin-off was accomplished by distributing to each Rayonier shareholder one share of RYAM common stock for every three shares of Rayonier common stock held on June 18, 2014. This distribution was completed on June 27, 2014, and RYAM stock commenced trading on the New York Stock Exchange shortly thereafter.

Public shareholders now own 100% of RYAM's outstanding stock. Although some Rayonier shareholders might hold RYAM stock, Rayonier itself does not own any of RYAM's stock, and RYAM does not own any of Rayonier's stock.

RYAM is governed by its nine-member board of directors. RYAM Bylaws, § 3.1, Advisory Opinion Request ("AOR") (Aug. 19, 2014). Rayonier named the initial members of RYAM's board prior to the spin-off. Six of these initial members, when named, were members of Rayonier's board of directors.¹ Immediately prior to their selection for RYAM's board, all six resigned from Rayonier's board and thereby "divested themselves of all responsibility for the management and governance of Rayonier" and since have worked only on behalf of RYAM. AOR at 3. Thus, no person concurrently serves as a board member for both companies.

Beginning at RYAM's 2014 annual stockholders meeting, its directors will be divided into three classes, with the term of office for the first class to expire at the 2015 annual meeting, the second class to expire at the 2016 meeting, and the third class to expire at the 2017 meeting. Beginning at the 2015 annual meeting, directors will be elected to three-year terms to fill the expiring seats as each class's term ends. RYAM Bylaws, § 3.2.

RYAM's directors may be removed only for cause, by an affirmative vote of at least 80% of the voting power of the voting stock. *See id.*, § 3.12. Vacancies on the board of directors are filled by a majority vote of the remaining directors. *Id.*, § 3.10.

RYAM estimates that more than 90% of its current employees served in some employment capacity for Rayonier prior to the separation. Moreover, six of the eight members of RYAM's "senior leadership team" (the chief executive officer and seven direct reports) were senior management employees of Rayonier prior to the spin-off.² The two other members of RYAM's senior leadership team were hired by Rayonier shortly before the separation for the "express purpose of serving in leadership positions for RYAM after the spin-off." AOR at 3 (Oct. 17, 2014).

¹ There is no indication that the other three initial RYAM directors chosen by Rayonier had any connection with Rayonier before or after their selection.

² One of these employees has announced that he plans to retire at the end of 2014, and his replacement has no ties to Rayonier. AOR at 3 & n.1 (Oct. 17, 2014).

The request states that despite Rayonier's role in selecting RYAM's initial directors and its first president/chief executive officer, all of RYAM's managerial decisions now "reside solely" with RYAM's directors, officers, and management. Since the spin-off was completed, Rayonier has had no ability to exercise control over RYAM's day-to-day operations and no influence over RYAM's personnel or managerial decisions.

RYAM has also been financially and administratively independent of Rayonier since the spin-off. As part of the separation process, RYAM and Rayonier entered into a number of agreements, including a Separation and Distribution Agreement,³ a Transition Services Agreement,⁴ a Tax Matters Agreement,⁵ an Employee Matters Agreement⁶, and an Intellectual Property Agreement.⁷ These agreements allocate certain assets and obligations between RYAM and Rayonier, as summarized below.

The Separation and Distribution Agreement primarily describes the legal steps necessary to complete the spin-off and identifies the assets and liabilities to be allocated as a result of the separation. The agreement requires that each entity pay any costs and expenses it incurred in connection with the separation, or that such costs and expenses be appropriately allocated. Finally, the Separation and Distribution Agreement provides for a \$950 million payment from RYAM to Rayonier to facilitate the separation transactions. *See* Separation and Distribution Agreement, § 2.12.

The Transition Services Agreement establishes a framework for the entities to provide one another with limited, short-duration administrative services during the separation and on a transitional basis following its completion. For example, Rayonier has agreed to assist and train RYAM on operational processes and equipment and to assist in preparing Rayonier's July 2014 earnings release, and each entity will assist the other on completing open internal audits. *See* Transition Services Agreement, Schedule 1. Several components of this agreement have already terminated, with the remainder expected to terminate within twelve months of the date of the AOR.

The Tax Matters Agreement allocates the post spin-off rights, responsibilities, and obligations of RYAM and Rayonier with respect to taxes, the preparation and filing of tax returns, and similar matters. *See generally*, Tax Matters Agreement.

The Employee Matters Agreement apportions the post-separation liabilities and responsibilities of RYAM and Rayonier with respect to employment matters, employee

³ AOR, Exh. 1 (Aug. 19, 2014).

⁴ AOR, Exh. 2 (Aug. 19, 2014).

⁵ AOR, Exh. 3 (Aug. 19, 2014).

⁶ AOR, Exh. 4 (Aug. 19, 2014).

⁷ AOR, Exh. 5 (Aug. 19, 2014).

compensation and benefits plans and programs, and similar issues. *See generally*, Employee Matters Agreement.

Finally, the Intellectual Property Agreement addresses various intellectual property rights issues associated with the spin-off. This includes, as part consideration for the \$950 million payment under the Separation and Distribution Agreement, Rayonier's granting to RYAM an exclusive, worldwide, royalty-free, irrevocable license to use and display certain of Rayonier's trademarks. *See Intellectual Property Agreement*, § 2.01. Aside from these agreements, neither RYAM nor Rayonier has ongoing ordinary course business with the other, and neither entity derives any business income from sales to the other.

Rayonier had no role in the formation of RYAM's SSF, which registered as a political committee with the Commission on August 8, 2014, after the spin-off. RYAM's SSF was organized, developed, and created solely by RYAM's personnel, and all financial and non-financial support associated with its launch came solely from RYAM. The request states that "[t]here will be no coordination between RYAM and Rayonier for the purposes of operating their respective [SSFs]." AOR at 8 (Aug. 19, 2014).

RYAM's SSF has made two contributions, one of which was to a principal campaign committee of a candidate who also received contributions from Rayonier's SSF. RYAM's SSF has received itemized contributions from four contributors, all of whom are current officers of RYAM and some of whom, as officers of Rayonier, contributed to Rayonier's SSF up until the separation of the two companies, but not after.⁸

By letter, Rayonier has stated that it "supports RYAM's request" for a Commission determination that the two corporations' SSFs are not affiliated. Letter from Mark R. Bridwell, Vice President and General Counsel, Rayonier, Inc., to Cheryl Hemsley, Attorney, FEC (Sept. 19, 2014) (appended to AOR of Oct. 17, 2014, as Exh. 1).

Question Presented

Are RYAM's SSF and Rayonier's SSF affiliated?

Legal Analysis and Conclusions

No, RYAM's SSF and Rayonier's SSF are not affiliated.

⁸ *See* Rayonier Advanced Materials, Inc. Good Government Committee, FEC Form 3X (Oct. 14 and 23, 2014), <http://docquery.fec.gov/pdf/828/14978206828/14978206828.pdf>, <http://docquery.fec.gov/pdf/077/14952397077/14952397077.pdf>. Rayonier Inc. Good Government Committee, FEC Form 3X (Apr. 15, July 10, Oct. 14 and 21, 2014), <http://docquery.fec.gov/pdf/388/14960689388/14960689388.pdf>, <http://docquery.fec.gov/pdf/085/14961548085/14961548085.pdf>, <http://docquery.fec.gov/pdf/302/14978206302/14978206302.pdf>, <http://docquery.fec.gov/pdf/740/14951888740/14951888740.pdf>.

Political committees, including SSFs, are “affiliated” if they are established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof. *See* 52 U.S.C. § 30116(a)(5) (formerly 2 U.S.C. § 441a(a)(5)); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1)(ii). For purposes of the Act’s contribution limits, contributions made to or by affiliated political committees are considered to have been made to or by a single political committee. *See* 52 U.S.C. § 30116(a)(5) (formerly 2 U.S.C. § 441a(a)(5)); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1).

Commission regulations identify certain committees that are *per se* affiliated, such as those established, financed, maintained, or controlled by a single corporation and its subsidiaries. *See* 11 C.F.R. §§ 100.5(g)(3)(i), 110.3(a)(2)(i). None of these criteria are met here.

In the absence of *per se* affiliation, the Commission examines “the relationship between organizations that sponsor committees, between the committees themselves, [and] between one sponsoring organization and a committee established by another organization to determine whether committees are affiliated.” *See* 11 C.F.R. § 100.5(g)(4)(i). Commission regulations provide a non-exhaustive list of ten “circumstantial factors” to be considered “in the context of the overall relationship” to determine whether the respective SSFs are appropriately considered affiliated. *See* 11 C.F.R. §§ 100.5(g)(4)(i)-(ii), 110.3(a)(3)(i)-(ii); Advisory Opinion 1999-39 (WellPAC) at 2; *see also* Advisory Opinion 2014-14 (Health Care Services Corp. Employees’ PAC) (“HCSC”); Advisory Opinion 2009-18 (Penske); Advisory Opinion 2007-12 (Tyco). The Commission considers these factors in turn.

(A) *Controlling Interest*

This factor asks whether a sponsoring organization owns a controlling interest in the voting stock or securities of the other sponsoring organization. 11 C.F.R. §§ 100.5(g)(4)(ii)(A), 110.3(a)(3)(ii)(A). Rayonier owns no RYAM voting stock and vice versa. Thus, neither Rayonier nor RYAM owns a controlling interest in the other’s voting stock or securities. The absence of such a controlling interest suggests that RYAM’s SSF and Rayonier’s SSF are not affiliated.

(B) *Governance*

This factor concerns whether a sponsoring organization has the authority or ability to direct or participate in the governance of the other sponsoring organization through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures. 11 C.F.R. §§ 100.5(g)(4)(ii)(B), 110.3(a)(3)(ii)(B).

The Commission has found in some instances that a spun-off company remained affiliated with its former parent where bylaw provisions entrenched the positions of board members appointed by the former parent and limited control by new shareholders. *See*

Advisory Opinion 1987-21 (MAXUS Energy) (concluding that entities were affiliated where former parent selected all members of former subsidiary's board and "the spun-off corporation's articles of incorporation and by-laws make it very difficult to wrest control of the new corporation from the control of the previously appointed board"); Advisory Opinion 1986-42 (Dart & Kraft) (concluding that entities were affiliated where former parent selected former subsidiary's entire board and "took steps . . . to perpetuate the control . . . for the foreseeable future and to make it more difficult for shareholders to acquire control" of former subsidiary). On the other hand, where such control is merely a temporary condition designed to further the success of the spin-off transaction, the Commission has found spun-off companies not to be affiliated with their former parents. Advisory Opinion 1993-23 (Pacific Telesis) (concluding that control provisions were aimed at preventing outside or hostile takeovers rather than entrenching board members appointed by former parent); *see also* Advisory Opinion 2012-21 (Primerica) (concluding that effect of parent company's pre-spin-off selection of majority of spun-off company's board was outweighed by other factors, including minimal overlap between companies' directors and officers and absence of parent company ownership of spun-off company's stock).

Here, Rayonier has no authority or ability to direct or participate in the governance of RYAM. Each corporation has its own board of directors, and the boards have no control over each other or cross-membership. Although Rayonier selected RYAM's current board of directors, all of these directors are required to stand for election by RYAM's public shareholders by the end of 2017. Because Rayonier owns no stock in RYAM, Rayonier will not be able to control the results of such elections or to otherwise ensure that its selected directors are retained. Thus, the instant request does not present the entrenchment concerns that led the Commission to find affiliation in Advisory Opinion 1987-21 (MAXUS Energy) and Advisory Opinion 1986-42 (Dart & Kraft). Rather, the fact that most of RYAM's current directors hold prior connections to Raynoier is merely a temporary result of the recent spin-off. *See* Advisory Opinion 1993-23 (Pacific Telesis); Advisory Opinion 2012-21 (Primerica). This affiliation factor therefore suggests that RYAM's SSF and Rayonier's SSF are not affiliated.

(C) Hiring Authority

This factor concerns whether a sponsoring organization has the authority or ability to hire, appoint, demote, or otherwise control the officers or other decisionmaking employees of the other sponsoring organization. 11 C.F.R. §§ 100.5(g)(4)(ii)(C), 110.3(a)(3)(ii)(C).

As discussed above regarding RYAM's directors, any residual control that Rayonier might have over RYAM's personnel decisions is temporary: Such control will decrease over time as RYAM's public ownership begins to overlap less with Rayonier's ownership, and as Rayonier's initial appointees are replaced by officers and directors selected by the new owners. Indeed, the officers and directors of the two companies are already entirely distinct, with no person holding such a position in both companies.

Accordingly, these facts suggest that RYAM's SSF and Rayonier's SSF are not affiliated. *See* Advisory Opinion 1993-23 (Pacific Telesis); Advisory Opinion 2012-21 (Primerica).

(D) Common Membership

This factor considers whether a sponsoring organization has common or overlapping membership with the other sponsoring organization that indicates a formal or ongoing relationship between the sponsoring organizations. 11 C.F.R. §§ 100.5(g)(4)(ii)(D), 110.3(a)(3)(ii)(D). Neither RYAM nor Rayonier is a labor organization, membership organization, cooperative, or trade association. 11 C.F.R. § 100.5(g)(4)(ii)(D), 110.3(a)(3)(ii)(D). Accordingly, this factor does not apply.

(E) Common Officers or Employees

This factor asks whether sponsoring organizations have common or overlapping officers or employees, indicating a formal or ongoing relationship between the organizations. 11 C.F.R. §§ 100.5(g)(4)(ii)(E), 110.3(a)(3)(ii)(E). As discussed above in factor (C), RYAM and Rayonier do not have any common or overlapping officers or employees. Further, RYAM's SSF and Rayonier's SSF will not have any common or overlapping officers or employees. Thus, this factor weighs against finding that RYAM's SSF and Rayonier's SSF the entities are affiliated. *See* Advisory Opinion 2014-11 (HCSC) (determining that affiliation is not indicated where there are no common or overlapping officers or employees).

(F) Former Officers or Employees

This factor concerns whether a sponsoring organization has any members, officers, or employees who previously were members, officers, or employees of the other sponsoring organization, indicating a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. §§ 100.5(g)(4)(ii)(F), 110.3(a)(3)(ii)(F).

In addition to the RYAM directors discussed above, the requestor estimates that more than 90% of RYAM's current employees are former employees of the Rayonier business unit that was spun-off as RYAM. This high percentage of former Rayonier employees appears to be no more than the necessary consequence of a parent company spinning off a business unit. Under these circumstances, RYAM's employment of former Rayonier employees is essentially a historical artifact; it does not indicate "a formal or ongoing relationship" within the meaning of 11 C.F.R. § 100.5(g)(4)(ii)(F) and 110.3(a)(3)(ii)(F). And because none of the other facts presented in the request demonstrate such a relationship, this factor weighs against finding that RYAM's SSF and Rayonier's SSF are affiliated.

(G)-(H) *Providing Funds or Goods and Arranging for the Provision of Funds or Goods*

Factor (G) considers whether a sponsoring organization provides funds or goods in a significant amount or on an ongoing basis to the other sponsoring organization or committee. 11 C.F.R. §§ 100.5(g)(4)(ii)(G), 110.3(a)(3)(ii)(G). Factor (H) concerns whether a sponsoring organization causes or arranges for funds or goods to be provided to the other sponsoring organization in a significant amount or on an ongoing basis. 11 C.F.R. §§ 100.5(g)(4)(ii)(H), 110.3(a)(3)(ii)(H).

Rayonier neither provides nor arranges the provision of funds or goods in a significant amount or on an ongoing basis to RYAM, or vice versa.⁹ As discussed above, RYAM and Rayonier have entered into a number of contractual agreements, but these focus almost exclusively on effectuating and managing the spin-off, such as by transitioning to separate tax and employee-benefits systems. *See* Advisory Opinion 2007-12 (Tyco) (finding no affiliation where agreements to manage spin-off “were merely aimed at sorting out the companies’ post-spin-off obligations”); Advisory Opinion 2012-21 (Primerica) (same). The only agreement that appears to contemplate a meaningful, ongoing relationship between the companies is Rayonier’s grant to RYAM of an irrevocable license to use certain of Rayonier’s marks. Although this agreement — which reflects, among other things, the companies’ shared name — signifies that they have some commonalities of interest, a trademark license agreement by itself is not a strong indication that the parties to the license are affiliated for purposes of the Act. *See* Advisory Opinion 2014-11 (HCSC). Particularly here, where the license is royalty-free and involves no ongoing payments between the companies, the trademark license does not constitute a “significant” provision of goods or funds within the meaning of the Commission’s regulations. Accordingly, the separation agreements and other arrangements between RYAM and Rayonier do not suggest that RYAM’s SSF and Rayonier’s SSF are affiliated.

(I) *Formation*

This factor involves whether a sponsoring organization had an active or significant role in the formation of the other sponsoring organization. 11 C.F.R. § 100.5(g)(4)(ii)(I).

Because Rayonier formed RYAM, this factor weighs in favor of finding the entities affiliated. In the context of a spin-off, however, one entity’s formation of another “does not necessitate a finding of continued affiliation when significant changes in the relevant relationships have occurred, such as arrangements separating the operations of the companies and apportioning their assets and obligations and nearly complete separation of corporate leadership and personnel.” Advisory Opinion 2007-12 (Tyco). Such “significant changes” have occurred in the relationship between RYAM and Rayonier, as discussed below.

⁹ In fact, neither RYAM nor Rayonier has ongoing ordinary course business with the other.

(J) *Contribution Patterns*

This factor pertains to whether the sponsoring organizations' SSFs have similar patterns of contributions or contributors that would indicate a formal or ongoing relationship between the sponsoring organizations or committees. 11 C.F.R. §§ 100.5(g)(4)(ii)(J), 110.3(a)(3)(ii)(J).

RYAM's SSF was established after the June 2014 separation of RYAM from Rayonier. One recipient of the two contributions that RYAM's SSF has made to date also received contributions from Rayonier's SSF. Some of the contributors to RYAM's SSF also contributed to Rayonier's SSF, although these contributors contributed only to Rayonier's SSF when they were employed by Rayonier and only to RYAM's SSF after the spin-off.

The Commission concludes that there is too little data at this time to determine whether there are patterns of similar contributions made by or to the SSFs so as to indicate a formal or ongoing relationship between them for the purposes of the Commission's regulations.

Context of the Overall Relationship Between the Entities

In considering the foregoing circumstantial factors, the Commission examines the "context of [the] the overall relationship" between the entities to determine whether they are properly considered affiliated. *See* 11 C.F.R. §§ 100.5(g)(4)(i)-(ii), 110.3(a)(3)(i)-(ii). Neither Rayonier nor RYAM owns stock in the other, controls the day-to-day operations of the other, provides financing to the other, or has overlapping directors or officers with the other. Although the companies maintain a contractual relationship by virtue of RYAM's exclusive license to use certain of Rayonier's marks, this license does not appear to involve the ongoing transfer of any funds or to otherwise entangle the companies to such an extent that their SSFs should be deemed affiliated. To the contrary, the context of the overall relationship shows that RYAM has been a financially, administratively, and operationally independent entity since its June 2014 spin-off from Rayonier. And as RYAM's public ownership diversifies over time, it seems likely that this independence would increase. Accordingly, the Commission concludes that RYAM's SSF is not affiliated with Rayonier's SSF.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestors may not rely on that conclusion as support for their proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or

conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

(signed)
Lee E. Goodman
Chairman