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March 15, 2018

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BY HAND DELIVERY

Federal Election Commission
Office of the General Counsel
Attn: Erin Chlopak, Esq., Acting Associate General Counsel for Policy
1050 First Street NE
Washington, DC 20002

Re: Advisory Opinion Request

Dear Ms. Chlopak:

Pursuant to 52 U.S.C. § 30108, we request an advisory opinion on behalf of CaringCent, LLC seeking confirmation of the permissibility of its business plan under the Federal Election Campaign Act of 1971 (the “Act”).

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FACTUAL DISCUSSION

CaringCent, LLC (“CaringCent”) is a limited liability company registered in Delaware; it has elected to be treated as a corporation for federal tax purposes. For the purposes of this request, CaringCent would like to offer political committee customers two micro-contribution platforms: Round-Up and Micro-Pledge.

The first contribution platform, “Round-Up,” allows a political committee to engage donors by inviting individuals to make contributions to the political committee by “rounding up” their credit or debit card purchases over a month and contributing the difference. For example, a purchase made at a restaurant for \$35.20 means that the amount will be rounded to \$36, with 80 cents (net of relevant fees) going to a committee of the donor’s choosing, along with the other rounded up amounts in a given time period.

The second contribution platform, “Micro-Pledge,” allows a political committee to engage donors by inviting individuals to automatically make a contribution of a set amount every time a certain event happens. For instance, a donor could sign up to donate \$1 to a candidate’s authorized committee each time the candidate’s opponent tweets the candidate’s name. In that instance, CaringCent would monitor the relevant Twitter account, charge the donor’s credit card within specified limitations for each triggering tweet, and transfer that amount (net of relevant fees) to the designated recipient committee in a given time period.

These two platforms, available to political committees regardless of party or partisan affiliation, will allow committees to reach new donors, empower people to engage in the political process, and lower the barriers to entry in the realm of political speech and participation by engaging people in political conversations through accessible mediums.

1. User Direction and Control of Contributions

Round-Up

To receive political contributions through Round-Up, a political committee will sign up to use the platform by creating an account and agreeing to the terms of service at the Round-Up website. Then, CaringCent will validate the committee's information against the Federal Election Commission database to ensure the committee is in good-standing. Once confirmed, the committee will receive an activation email to fill out the rest of the committee's information and complete the creation of its Round-Up account. Once completed, each committee will receive a unique URL that they will be able to share with potential donors to encourage them to sign up for Round-Up. This URL will include the standard compliance language, discussed below, but may be otherwise tailored by the committee.

When a donor signs up with a political committee for Round-Up via the unique URL, they will input their credit card or debit card information and contribution preferences, including a cap on their monthly contribution. By default, the cap is set at \$75 per month. Then, each time an individual makes a purchase, the rounded-up amount (net of relevant fees) will be allocated to the committee, and then be charged and transferred to the committee along with the other rounded up amounts at the end of every month or at different times agreed upon between CaringCent and its clients. The donor will be able to cap, change, limit, suspend, or cancel their contribution preferences at any point through the Round-Up website prior to when the contribution is charged to their selected credit or debit card. If an individual wants to sign up to contribute to more than one committee, the individual will be required to create separate accounts for each committee and will be able to set separate contribution preferences for that committee.

Micro-Pledge

To receive political contributions through Micro-Pledge, a political committee will first sign up to use the platform by creating an account and agreeing to the terms of service at the Micro-Pledge website. Then, CaringCent will validate the committee's information against the Federal Election Commission database to ensure the committee is in good-standing. Once confirmed, the committee will receive an activation email to fill out the rest of the committee's information and complete the creation of its Micro-Pledge account. Once completed, each committee will receive a unique URL that they will be able to share with potential donors to encourage them to sign up

for Micro-Pledge. This URL will include the standard compliance language, discussed below, but may be otherwise tailored for the committee.

When a donor signs up with a political committee for Micro-Pledge via the unique URL, they will input their credit card or debit card information and pledge contribution preferences, including the event, the amount pledged each time the event occurs, and a cap on their monthly contribution. By default, the cap is set at \$75 per month. Then, each time the pledged event occurs, the amount pledged (net of fees) will be allocated to the committee, and then be charged and transferred to the committee along with any other pledged amounts at the end of every month or at different times agreed upon between CaringCent and its clients.

For instance, a donor could sign up to donate 5 cents to a candidate's authorized committee each time a certain hashtag is used on Instagram over a certain period. In that instance, CaringCent would monitor Instagram for that hashtag over that period, charge the donor's credit or debit card, within specified limitations, each time that hashtag is used, and transfer that amount (net of relevant fees) to the designated recipient committee. CaringCent plans to allow flexibility in the type of pledge event a committee could use as part of Micro-Pledge as long as the triggering events are public and verifiable. The donor will be able to cap, change, limit, suspend, or cancel their contribution preferences at any point through the Micro-Pledge website prior to when the contribution is charged to their selected credit or debit card. If an individual wants to sign up to contribute to more than one committee or based on more than one triggering event, the individual will be required to create separate accounts for each committee and will be able to set separate contribution preferences for that committee.

2. Required Disclaimer Language

When signing up to use either Round-Up or Micro-Pledge to contribute to a political committee, all users will be required to agree to the following statement:

This contribution is made from my own funds, and funds are not being provided to me by another person or entity for the purpose of making this contribution. I am making this contribution with my own personal purchase method and not with a corporate or business purchase method or a method issued to another person. I am at least eighteen years old. I am a U.S. citizen or lawfully admitted permanent resident (i.e. green card holder).

If a user does not agree to this statement, neither Round-Up nor Micro-Pledge will accept the user's designations and the user will not be allowed to designate contributions to political committees.

When completing their profile, users will be prompted to input their name, mailing address, occupation, and name of employer. The donor sign-up form will also include this statement: "To

comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year.” When political committees register, they will be able to set their relevant maximum contribution limit per year or per election. CaringCent will not allow an individual contributor to exceed that maximum amount via its platforms. Accordingly, given the required certifications regarding the source of the funds and the cap on maximum contributions, CaringCent’s procedures will adequately screen contributions to ensure they are not excessive or from prohibited sources.

3. Transferring User Funds to Designated Political Committees

To calculate donor contributions, CaringCent works with data aggregators to determine the contributed amount over a specific time. For Round-Up, CaringCent receives authorization to view the amounts, dates, and times of the relevant credit or debit card purchases through an API; the API will only provide access to the amounts, dates, and times of the transactions, not any related transaction vendor information. Similarly, for Micro-Pledge, CaringCent may work with partners to calculate the total number of pledged events.

Once each month, or as on time periods as otherwise agreed with its clients based on their reporting schedules, CaringCent calculates the total round-up and pledge-related transactions for each donor. Next, CaringCent’s software then charges the user’s credit and/or debit card(s) for the total amount of the transactions. CaringCent sends that money to a separate merchant bank account segregated for Federal political committees. This merchant bank account is separate from CaringCent’s own treasury funds and will be used solely to deposit user’s rounded-up and pledge-related funds to be contributed to Federal political committees.

At the same time CaringCent’s software charges the user’s card(s), the software also automatically produces a spreadsheet record of all users’ itemized contributions for the month and year-to-date, and all users’ itemized contributions separated by recipient organization or committee for the month and year-to-date. CaringCent keeps a separate accounting of the contributions designated to each committee, and sends each recipient political committee a monthly spreadsheet of all users’ itemized contributions to the committee, including the date, time, and amount of each contribution and the information each donor provided when signing up with CaringCent (e.g., name, address, occupation, and employer). Accordingly, this transmittal will include all information that political committees will need to comply with their Federal Election Commission reporting obligations.

Within one day of the periodic charge of users’ cards, CaringCent’s merchant bank account processes an automated transfer of contributions as designated by the users to the applicable recipient committee, less a fee that is charged to the political committee(s) before the funds are transferred to the recipient committee(s). Accordingly, CaringCent will always forward its political committee clients well within 10 days of its receipt of donors’ contributions.

Committees will report the entire amount (including the fee) as a contribution from the individual and then report the fee as a payment for the services rendered by CaringCent.

All transfers are made according to users' designations; CaringCent does not exercise any direction or control over the transfers. The merchant bank transfers the fee to CaringCent. The amount of the fee will represent the relevant fees for CaringCent to cover its operational costs associated with transferring users' funds, as well as a reasonable profit.

Finally, at the end of a monthly cycle, or at other times agreed upon between CaringCent and the relevant political committees given their reporting periods, CaringCent automatically emails a contribution confirmation to each donor after the contribution is processed and within the first 5 business days of the month following the contribution period.

LEGAL ANALYSIS

The entirety of CaringCent, LLC's business plan is consistent with the Act and Federal Election Commission ("FEC" or the "Commission") regulations. Specifically, none of CaringCent planned operations results in an impermissible contribution by CaringCent, LLC to political committees, as explained below. We respectfully request that the Commission confirm that CaringCent, LLC's business plan complies with federal campaign finance law.

1. The Commission Has Approved Programs Similar to the Proposals of CaringCent

The Act and Commission regulations generally prohibit corporations and LLCs taxed as corporations from making a contribution in connection with a federal election, and place limits on the amounts that permissible sources may contribute. *See* 52 U.S.C. § 30118; 11 C.F.R. 114.2. A contribution includes "anything of value made by any person for the purpose of influencing any election for Federal Office." 11 C.F.R. § 100.52(a). "Anything of value" includes all in-kind contributions, including the provision of goods or services at less than the usual and normal charge. *Id.* § 100.52(d)(1). "Usual and normal charge" is defined as the price of goods in the market from which they ordinarily would have been purchased at the time of the contribution, or the commercially reasonable rate prevailing at the time services were rendered. *Id.* § 100.52(d)(2).

In its previous advisory opinions, the Commission has permitted vendors to offer programs similar to CaringCent (which the Commission often refers to as "affinity programs") provided two conditions are met ensuring that no prohibited contribution has taken place: first, that the vendor and the political committee enter into a commercially reasonable transaction in which the user or the political committee pays the usual and normal charge for services provided; and second, that the amounts transferred to the political committee are from the individual customer's funds and not from the corporation's funds. *See, e.g.,* Advisory Opinions 2015-11

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(FYP, LLC); 2014-09 (REED Marketing); 2010-06 (Famos LLC); 2006-34 (Working Assets); 2003-16 (Providian National Bank).

CaringCent's proposed operations meet the Commission's two-part test for permissible affinity-like programs. First, prior to making the transfers to the recipient political committees, CaringCent will deduct a fee, paid by the recipient committee, for services rendered in rounding up users' purchases, calculating the pledge-related transactions, and transferring the funds to the users' designated committee. The fee is calculated to cover all costs incurred by CaringCent in providing the services, including transaction processing fees and other bank fees, and to provide CaringCent with a reasonable profit. The fee therefore represents the "usual and normal charge" for CaringCent's services as the Commission has interpreted this requirement. *See, e.g.,* Advisory Opinion 2007-04 (Atlatl).

Second, the funds transferred to the recipient committees represent users' funds, not CaringCent's funds. Once each month, or as needed given its clients reporting periods, CaringCent charges a user's credit card or debit card for the total amount of rounded-up funds on the card for that period. The user's issuing bank then transfers funds to CaringCent's merchant bank account. CaringCent has established a merchant bank account that is separate and segregated from its treasury funds and is used only to hold users' funds designated for Federal political committees. CaringCent's merchant bank then transfers the users' funds to the recipient organizations (less the fee). At no point in this process does CaringCent exercise any direction or control over any funds transferred to political committees. Accordingly, all amounts transferred are from the individual user's funds, not from CaringCent's funds. *See* Advisory Opinion 2006-34 (Working Assets) (concluding that transfer of rebated and rounded-up amounts to political committees were contributions by customers, rather than the vendor, where the rebates and round-ups occurred in the ordinary course of the entity's business and the user, not the entity, controlled the disposition of rebated and rounded up funds).

CaringCent is therefore similar in all material respects to several affinity programs the Commission has approved in the past. The example with facts closest resembling CaringCent is Advisory Opinion 2015-11, where the Commission approved a contribution processing platform offered by FYP, LLC, allowing donors to "round up" participating user's credit or debit card transactions to the next whole dollar and provide the rounded-up amount to political committees or other nonprofit organizations designated by the user. Customers were also allowed to contribute by rounding up monthly charges and designating the rounded-up amount as a contribution. Customers made their designations at the time of enrollment; could change their designations at any time; could set a monthly cap; and received a monthly notice of their total contribution. FYP, LLC deposited users' funds in a separate merchant account, and exercised no discretion or control over the disposition of the funds. Under those similar facts, the Commission ruled that FYP, LLC rounding-up proposal complied with the Act and FEC regulations.

Notably, the CaringCent, LLC business plan is distinguished from the FYP, LLC plan in that the political committee will pay the fee, rather than the user.¹ Moreover, the committees will report the entire amount (including the fee) as a contribution from the individual, even though the CaringCent fee will be removed prior to the committee receiving the contribution, and then report the fees retained by CaringCent as an operating expense paid to CaringCent. As noted above, this practice has been repeatedly approved by the Commission. *See, e.g.,* Advisory Opinions 2016-08 (eBundler.com, LLC); 2007-04 (Atlatl).

2. CaringCent's Contribution Processing System Meets Commission Requirements

As noted above, CaringCent plans to process all rounded-up and pledge-related funds for Federal political committees through a separate, segregated merchant account and use adequate screening procedures to prevent the forwarding of illegal contributions. All other contributions, intended for non-profit and other organizations, will be processed through a different account.

As with similarly approved programs, the Commission allows a vendor to use a single merchant account to process contributions for all Federal political committees the vendor works with as long as the vendor keeps separate records for contributions to each committee. *See* Advisory Opinions 2006-34 (Working Assets); Advisory Opinion 1999-22 (Aristotle); 2016-08 (eBundler.com, LLC). Moreover, CaringCent will always forward its political committee clients their contributions within 10 days of receiving them, and usually within one day of the charge to the donors' accounts.

CaringCent's business plan fits squarely within these approved models: CaringCent will use a single merchant account to process contributions for all Federal political committees while also keeping separate records for contributions to each committee.

Conclusion

CaringCent, LLC requests the Commission's confirmation that all aspects of its business plan described above comply with federal campaign finance law and that, by engaging in these activities, it will not incur any independent registration or reporting obligations to the Commission.

Numerous authorized candidate committees who have primary elections within 60 calendar days are potential users of Round-Up and Micro-Pledge and the requestor needs guidance from the Commission immediately in order to confirm how its platforms can be used during this active

¹ In the FYP, LLC Advisory Opinion, the Commissioners raised question about FYP, LLC declining to work with certain political committees since the transaction fee was not part of the contribution to the recipient committee. *See* Advisory Opinion 2015-11 (FYP, LLC). Here, since the fee is a part of the contribution to the recipient committee, this is not at issue.

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election year. Accordingly, we request that the Commission issue an advisory opinion within 20 days, or otherwise as soon as possible, pursuant to 11 C.F.R. § 112.4(b)(2).

We appreciate the Commission's consideration of this request.

Very truly yours,



Graham M. Wilson
Emma Olson Sharkey
Counsel to CaringCent, LLC

GMW

From: Wilson, Graham M. (Perkins Coie)
To: [Esther Gyory](#)
Cc: [Olson Sharkey, Emma \(Perkins Coie\)](#)
Subject: RE: Request for an Advisory Opinion - CaringCent LLC
Date: Thursday, March 22, 2018 11:42:38 AM

Hi Esther,

Your factual statements below are correct.

Please let us know if you need any additional information.

Best,

Graham

Graham M. Wilson | Perkins Coie LLP

PARTNER

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From: Esther Gyory [mailto:EGyory@fec.gov]
Sent: Wednesday, March 21, 2018 5:26 PM
To: Wilson, Graham M. (WDC) <GWilson@perkinscoie.com>
Cc: Olson Sharkey, Emma (WDC) <EOlsonSharkey@perkinscoie.com>
Subject: Request for an Advisory Opinion - CaringCent LLC

Mr. Wilson,

Thank you for taking the time to speak with me today about the advisory opinion request you submitted on behalf of CaringCent LLC. I have set out below my understanding of some of the information that you provided in that conversation.

As we discussed, please confirm by return email the accuracy of the following statements or correct them if they are not accurate as written:

1. Contributors may cancel their enrollment or change their contribution at any time before their credit or debit card is charged, even if the contributor has already accumulated pledged contributions by using their credit or debit card for purchases (under the Round-Up platform) or by virtue of a designated triggering event having occurred (under the Micro-Pledge platform).
2. When a contributor signs up to make a contribution through a CaringCent platform, they will be required to fill in the fields for name, mailing address, occupation, and name of employer. CaringCent will fulfill its obligation to use its best efforts to obtain accurate information, but will not necessarily verify the information provided by each contributor.

3. An “API,” or Application Programming Interface, is a mechanism by which a third party that maintains a database (for example, a credit card company that maintains records of its customers’ credit card transactions), can make certain information in that database available to another party.

4. The “partners” with which CaringCent may work to calculate the total number of events triggering pledges are third-party entities that provide services to track and aggregate social media activity.

5. CaringCent LLC will provide each political committee client with a spreadsheet that indicates both the total contribution from each contributor, as well as the amount of the fee deducted and retained by CaringCent.

6. CaringCent LLC currently provides fundraising services similar to those proposed in the request to nonprofit and charitable organizations. CaringCent LLC may charge different fees to political committee clients than it does for its non-political clients, but any variation in fees will be based on business considerations and will not be based on political considerations.

Finally, based on the information provided in your request and during our conversation, we have identified the questions on which you would like the Commission to opine as: 1) whether the proposal would result in an impermissible contribution from CaringCent LLC to a political committee; 2) whether the proposal would cause CaringCent LLC to have any registration or reporting requirements to the Commission; 3) whether the proposed activity complies with the Act and Commission regulations with respect to contribution processing and forwarding services provided by a commercial vendor; and 4) whether by engaging in the proposed activity, CaringCent LLC would be acting as a conduit or intermediary. To the extent that we see any other issues that are implicated by the facts presented, we will address them, but if there are other specific questions on which you would like the Commission to opine, please let us know.

Your response may be considered part of your advisory opinion request; if so, it will be posted as such on the Commission’s website.

Thank you,

Esther Gyory
Attorney
Office of the General Counsel
Federal Election Commission
(202) 694-1387

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