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For meeting of March 11, 2021
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March 5, 2021

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by NFS*
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Subject: AO 2021-01 (Aluminate, Inc.) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00pm (Eastern Time) on March 10, 2021.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2021-01

2

3 Robert L. Fealy

4 Aluminate, Inc.

5 820 W. Jackson Blvd., Suite 210

6 Chicago, IL 60607

7

8 Dear Mr. Fealy:

DRAFT A

9 We are responding to your advisory opinion request on behalf of Aluminate, Inc.

10 (“Aluminate”), concerning the application of the Federal Election Campaign Act, 52 U.S.C.

11 §§ 30101-45 (the “Act”), and Commission regulations to Aluminate’s proposal to use individual

12 contributors’ data obtained from Commission reports (“contributor data”) in providing

13 commercial services to universities, colleges, and not-for-profit organizations. Specifically,

14 Aluminate proposes to use contributor data to enhance its clients’ fundraising efforts. The

15 Commission concludes that Aluminate may not use contributor data as proposed, because the

16 Act and Commission regulations prohibit the sale or use of such information for solicitation or

17 commercial purposes.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on January

20 12, 2020, and your email received on January 27, 2021, on behalf of Aluminate (collectively,

21 “advisory opinion request”).

22 Aluminate is a for-profit corporation incorporated in Delaware with its headquarters in

23 Illinois. Aluminate provides personal data and information services to universities, colleges, and

24 not-for-profit organizations (“clients”) to assist in their fundraising and engagement efforts.

25 Aluminate’s clients rely on alumni and their family members, friends, and other individuals for

26 charitable donations and engagement, such as volunteering for leadership positions or advisory

1 roles, or mentoring students at a university.¹ Fundraising professionals employed by
2 Aluminate’s clients acquire substantial amounts of information about these individuals, including
3 current contact information, email addresses, demographic data, wealth indicators, professional
4 and educational histories, philanthropic proclivity, social media activities, and personal interests,
5 from the clients’ own records and by purchasing it from third party vendors. Clients maintain
6 this information in their “customer relationship management” systems, or databases.²

7 Aluminate is committed to helping its clients “engage donors and ignite their passions for
8 the [client’s] mission.”³ To that end, Aluminate uses its proprietary algorithms and information
9 obtained from third party vendors to “update and enrich” its clients’ information. Aluminate
10 uses data obtained from sources other than Commission reports to assign numeric scores to
11 individuals in a client’s database; these scores are based on estimates of the individuals’ relative
12 wealth, inclination to give to charitable causes, and affinity for the client.⁴ Aluminate does not
13 currently use, nor does it propose to use, contributor data in scoring or ranking individuals for
14 solicitation.

15 Aluminate’s final work product consists of hundreds of fields of information that “can be
16 searched, filtered, sorted, flagged, and parsed”⁵ and uploaded to the client’s database. Any
17 future use of the information is solely within each client’s purview and control. Aluminate
18 deletes all client-provided data and enriched data from its files after completing a project, and
19 requires its third party vendors to certify to doing the same.

¹ Advisory Opinion Request at AOR006.

² AOR001.

³ AOR004-005.

⁴ AOR001, AOR006.

⁵ AOR003.

1 Aluminate proposes to use contributor data as follows:

2 • To help verify that information it provides to a client correctly corresponds to the
3 individuals in the client’s database. Aluminate would do this by matching the full
4 name and, in some cases, the address, employer, and job title of contributors listed in
5 Commission reports to the individuals in a client’s database. This process is entirely
6 internal to Aluminate. Aluminate will not use contributor data for any individual not
7 already included in a client’s database, or provide any contributor data to a client.

8 • To “flag potential areas for further exploration and discussion” between individuals in
9 a client’s database and that client.⁶ As part of the hundreds of fields of data from
10 sources other than Commission reports that Aluminate provides to its clients,

11 Aluminate proposes to use contributor data to flag:

12 ○ “Clues” about an individual’s “social, causal and personal” interests.⁷ Aluminate
13 plans to develop a taxonomy that identifies the causes associated with a candidate
14 or officeholder, to match individuals in a client’s database to contributors to those
15 candidates or officeholders, and to determine whether the individual’s
16 contributions to that candidate or officeholder indicate a particular interest held by
17 the individual. An individual who has contributed to a candidate who champions
18 early childhood education, for example, may wish to engage with a client on the
19 subject, and possibly endow scholarships for students enrolled in early childhood
20 education programs. Aluminate will not, however, provide its clients with any

⁶ AOR006.

⁷ AOR003.

1 specific contributor data from Commission reports, such as the date, amount, or
2 recipient of the contribution.

- 3 ○ Individuals appearing to hold leadership positions, because these individuals may
4 be interested, for example, in taking on leadership, advisory, or mentoring roles at
5 the client’s organization. Aluminate will not, however, provide its clients with
6 any specific contributor data from Commission reports, such as the individual’s
7 title or employer.
- 8 ○ Individuals who made “meaningful” political contributions, and whether they did
9 so for the first time.⁸ Aluminate posits that such activity may be one indication
10 (“although not a dispositive one”) of an individual’s “financial capacity” or
11 “philanthropic inclinations.”⁹ Aluminate will not, however, provide its clients
12 with any specific contributor data from Commission reports, such as the date,
13 amount, or recipient of the contribution.

14 Aluminate proposes to consider contributor data only for individuals already known to its
15 clients and in the clients’ customer relationship management systems. Aluminate describes
16 contributor data as “at best interesting,” and as “serv[ing] mainly to confirm the existing
17 knowledge of the [client], either in the positive in or the negative.”¹⁰ Aluminate explains that
18 information about individuals is just one factor in a successful fundraising program, and that it
19 “must be combined with great personal effort on the part of the institution’s leadership and

⁸ AOR002-003. Aluminate states that a “meaningful contribution” will likely be defined as any single contribution of \$2,000 or more, or contributions aggregating \$5,000 or more in a one-year period. AOR003.

⁹ AOR002-003.

¹⁰ AOR004 (internal quotation marks omitted).

1 fundraising professionals to engage donors and ignite their passions.”¹¹ Finally, Aluminate
2 suggests that the limited use of contributor data is common industry practice, noting that other
3 data vendors to not-for-profit institutions already provide website links to reports filed with the
4 Commission and statements explaining the predictive value of contributor information, or generate
5 indicators based on information shown in Commission reports.¹²

6 ***Question Presented***

7 *Is Aluminate’s proposal to use information in reports filed with the Commission*
8 *permissible under the Act and Commission regulations?*

9 ***Legal Analysis and Conclusions***

10 Aluminate may not use contributor data as described in the request because such use
11 would be for solicitation and commercial purposes, and thus is prohibited under the Act and
12 Commission regulations.

13 The Act requires each political committee to report the name, mailing address,
14 occupation, and employer of any individual who contributes more than \$200 to the committee in
15 a calendar year, along with the amount and date of the individual’s contributions.¹³ The Act also
16 requires the Commission to make these reports available for public inspection and copying.¹⁴

17 In enacting these requirements, Congress was concerned about “protect[ing] the privacy
18 of the generally very public-spirited citizens who may make a contribution to a political

¹¹ AOR004-005.

¹² AOR005.

¹³ See 52 U.S.C. §§ 30101(13)(A), 30104(b)(3)(A); see also 11 C.F.R. §§ 100.12, 104.8(a).

¹⁴ See 52 U.S.C. § 30111(a)(4); see also 52 U.S.C. § 30112 (requiring Commission to make all reports publicly available online).

1 campaign or a political party.”¹⁵ Accordingly, the Act prohibits any information copied from
2 Commission reports from being “sold or used by any person for the purpose of soliciting
3 contributions or for commercial purposes, other than using the name and address of any political
4 committee to solicit contributions from such committee.”¹⁶ The Commission has interpreted
5 “soliciting contributions” to include soliciting any type of contribution or donation, such as
6 political or charitable contributions.¹⁷

7 The Commission has previously determined that the use of individuals’ contribution
8 histories for solicitation or commercial purposes is prohibited. In Advisory Opinion 1985-16
9 (Weiss), for example, the Commission concluded that a list vendor could not compare the names
10 of potential contributors on the vendor’s list to the names of actual contributors in Commission
11 reports before selling the list for commercial or solicitation purposes, because doing so would
12 enable the vendor to purge the names of non-contributors from its list or to identify individuals
13 who had made contributions. Similarly, in Advisory Opinion 2004-24 (NGP), the Commission
14 concluded that the Act would prohibit a commercial software vendor from integrating
15 individuals’ contribution histories from Commission reports into a commercially available
16 software product because “[s]uch use is for a commercial purpose.”¹⁸

17 Here, similarly, Aluminate would use individuals’ contribution histories for solicitation
18 and commercial purposes. Aluminate’s clients engage in fundraising and contract with

¹⁵ 117 Cong. Rec. S30057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon).

¹⁶ 52 U.S.C. § 30111(a)(4); *see also* 11 C.F.R. § 104.15(a) (prohibiting, in pertinent part, “information copied, or otherwise obtained, from any report or statement, or any copy, reproduction, or publication thereof, filed under the Act,” from being “sold or used by any person for the purpose of soliciting contributions or for any commercial purpose”).

¹⁷ 11 C.F.R. § 104.15(b).

¹⁸ Advisory Opinion 2004-24 (NGP) at 2 (internal quotation marks omitted).

1 Aluminate to aid them in that practice; indeed, as explained in the request, Aluminate’s aim is to
2 provide clients “the most accurate information available” on their prospects, “therefore
3 facilitating the most effective and efficient fundraising efforts possible, which is vital to their
4 financial well-being.”¹⁹ Similar to Advisory Opinion 1985-16 (Weiss), Aluminate would
5 compare its clients’ lists of potential donors to the names of actual contributors on Commission
6 reports, and would use that information “to increase the commercial value of” its work product.²⁰
7 And, as in Advisory Opinion 2004-24 (NGP), Aluminate would use contributor data in a
8 commercially available product. Although Aluminate would not provide clients with specific
9 information about an individuals’ contribution history, Aluminate would still use such history to
10 make inferences about the financial capacity of individuals to make donations, which in turn
11 would aid Aluminate clients’ solicitation efforts.

12 Moreover, Aluminate’s proposal differs materially from the “sale or use” proposals that
13 the Commission has previously approved. In Advisory Opinion 2017-08 (Point Bridge Capital),
14 for example, the Commission approved an investment firm’s proposal to use aggregated
15 contributor data from Commission reports to create an index of companies. Similarly, in
16 Advisory Opinion 2014-07 (Crowdpac), the Commission approved a company’s proposal to
17 provide users an online platform to find information on candidates by, among other things,
18 displaying aggregated campaign finance data about candidates and using contribution histories of
19 individuals in algorithms to match users to candidates. The Commission approved these

¹⁹ AOR004.

²⁰ See Advisory Opinion 1985-16 (Weiss) at 2.

1 proposals because they would not include individuals' contact information or be used to solicit
2 contributors.²¹

3 Here, by contrast, Aluminate proposes to use individual contributors' data to enhance its
4 clients' fundraising efforts. This use of contributor data would be for both solicitation and
5 commercial purposes. Accordingly, the Commission concludes that it would be prohibited under
6 the Act and Commission regulations.

7 This response constitutes an advisory opinion concerning the application of the Act and
8 Commission regulations to the specific transactions or activities set forth in Aluminate's
9 request.²² The Commission emphasizes that, if there is a change in any of the facts or
10 assumptions presented, and such facts or assumptions are material to a conclusion presented in
11 this advisory opinion, then Aluminate may not rely on that conclusion as support for its proposed
12 transactions or activity. Any person involved in any specific transaction or activity which is
13 indistinguishable in all its material aspects from the transaction or activity with respect to which
14 this advisory opinion is rendered may rely on this advisory opinion.²³ Please note that the
15 analysis or conclusions in this advisory opinion may be affected by subsequent developments in
16 the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any
17 advisory opinions cited herein are available on the Commission's website.

18 On behalf of the Commission,
19

²¹ See also Advisory Opinion 2015-12 (Ethiq) (approving use of aggregated contributor data to match users to candidates and corporations with similar values); Advisory Opinion 2013-16 (PoliticalRefund.org) (approving display of aggregate number of donors requesting refunds); Advisory Opinion 2009-19 (Club for Growth PAC) (approving use of contributor data to inform contributors of their right to request refunds); *FEC v. Political Contributions Data Inc.*, 943 F.2d 190, 197-98 (2d Cir. 1991) (concluding that corporation may sell compilation of Commission reports that did not include individual contributors' mailing addresses and phone numbers).

²² See 52 U.S.C. § 30108.

²³ See *id.* § 30108(c)(1)(B).

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Shana M. Broussard
Chair