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For meeting of March 25, 2021
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March 22, 2021

MEMORANDUM

TO: The Commission

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

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 5:00pm (Eastern Time) on March 24, 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 B

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 provide its clients with generalized information

15 that does not include contributors’ contact information. The Commission concludes that

16 Aluminate may use contributor data as proposed, because such use is not prohibited by the Act

17 or Commission regulations.

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 Yes, Aluminate may use contributor data as described in the request because such use is
11 not prohibited under the Act and Commission regulations.

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

16 In enacting these requirements, Congress was concerned about “protect[ing] the privacy
17 of the generally very public-spirited citizens who may make a contribution to a political
18 campaign or a political party.”¹⁵ Accordingly, the Act prohibits any information copied from

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).

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

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

6 The Commission has previously determined that the use of contributor data to produce
7 generalized factual information that does not disclose individual contributors’ contact
8 information is not prohibited. In Advisory Opinion 2017-08 (Point Bridge Capital), for example,
9 the Commission approved an investment advisory firm’s proposal to use contributor data from
10 Commission reports to create an index that scored companies based on their employees’ and
11 separate segregated funds’ aggregate contributions and expenditures. And, in Advisory Opinion
12 2014-07 (Crowdpac), the Commission approved a for-profit company’s proposal to use
13 contributor data in an algorithm that analyzed, among other things, the contribution histories of
14 individuals who had contributed to certain candidates, to enable its users to identify and make
15 contributions to like-minded candidates.¹⁸ Although both companies planned to use contributor
16 data in commercial ventures to produce information for their customers, the Commission

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 Crowdpac also planned to display aggregated campaign finance data, as well as the names and locations of certain individual contributors.

1 determined that the Act and Commission regulations did not prohibit their proposed uses because
2 the resulting information would not provide “sufficient information to generate solicitations.”¹⁹

3 Here, Aluminate would also use contributor data to produce information for its clients
4 that would not include individual contributors’ contact information. Specifically, Aluminate
5 proposes to run contributor data through an algorithm to glean information about an individual’s
6 potential interests, and whether an individual has made a contribution or holds a leadership
7 position at work.²⁰ Even if Aluminate’s clients were to use this information to enhance their
8 fundraising and engagement efforts, by itself this information is not sufficient to generate
9 solicitations. Aluminate would provide these few bits of information to its clients along with
10 potentially hundreds of other fields of data, at least some of which would bear directly on the
11 question of whom they should solicit — including, in fact, a ranking of prospects for solicitation
12 — which Aluminate would derive from sources other than Commission reports, and on
13 potentially hundreds of thousands of individual records.²¹ Similar to Advisory Opinion 2017-08

¹⁹ Advisory Opinion 2017-08 (Point Bridge Capital) at 4 (quoting Advisory Opinion 1995-09 (NewtWatch PAC) at 7); *see also* Advisory Opinion 2014-07 (Crowdpac) at 10 (concluding that “Crowdpac may also use data derived from Commission reports in its algorithm, provided that doing so does not entail disclosing individual contributors’ contact information”); Advisory Opinion 2021-02 (FEN-PAC) (approving use of aggregated data to inform Members of Congress and congressional candidates in communications advocating legislative issue or policy); Advisory Opinion 2015-12 (Ethiq) (approving use of 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).

²⁰ Regarding Aluminate’s representation that it will use contributor data to verify that a contributor listed in a Commission report and an individual appearing in a client’s database are the same person, the Commission understands this step to be part of Aluminate’s wholly internal verification process, and to be taken before Aluminate flags areas of potential interest about the individual for the client. Further, the Commission assumes that Aluminate will not use contributor data at this step in the process to change any information in the client’s database such as, for example, by updating an individual’s contact information or by adding to or removing information about any individual. As such, this use of contributor data would not implicate privacy concerns under the Act.

²¹ *See* Letter from Bob Fealy, President and Co-founder Aluminate, Inc., to Federal Election Commission

1 (Point Bridge Capital) and Advisory Opinion 2014-07 (Crowdpac), the use of contributor data in
2 such a way “do[es] not implicate the privacy concerns at the heart of section 30111(a)(4).”²²

3 Moreover, Aluminate’s proposal differs materially from the “sale or use” proposals that
4 the Commission has previously determined to be prohibited. In Advisory Opinion 1985-16
5 (Weiss), for example, the Commission concluded that a list vendor could not compare the names
6 of potential contributors on the vendor’s list to the names of actual contributors in Commission
7 reports before selling the list for commercial or solicitation purposes, because doing so would
8 enable the vendor to purge the names of non-contributors from its list or to identify individuals
9 who had made contributions. And, in Advisory Opinion 2004-24 (NGP), the Commission
10 concluded that the Act would prohibit a commercial software vendor from providing each client
11 with detailed information obtained from Commission reports about “contributions that the
12 client’s donors may have made to other candidates, PACs, and party organizations” to enable the
13 client “to resolicit existing donors who may have given more to other committees.”²³ Here, by
14 contrast, Aluminate does not propose to provide its clients with individuals’ contribution
15 histories or any information copied from Commission reports, or to reconstitute lists of potential
16 donors based on contributor data.

17 Accordingly, the Commission concludes that Aluminate’s proposal would not be
18 prohibited under the Act and Commission regulations.

(Mar. 8, 2021) at 1 (commenting on Advisory Opinion 2021-01 (Aluminate), Draft A),
https://www.fec.gov/files/legal/aos/2021-01/202101C_1.pdf.

²² Advisory Opinion 2017-08 (Point Bridge Capital) at 3; *see also* Advisory Opinion 2014-07 (Crowdpac) at 10 (“Mere aggregations of data regarding contributions to candidates, without identifiable contributor information, do not implicate the privacy concerns that the solicitation and commercial use prohibitions in section [30114(a)(4)] are intended to mitigate.”).

²³ Advisory Opinion 2004-24 (NGP) at 1, 2 (internal quotation marks omitted).

1 This response constitutes an advisory opinion concerning the application of the Act and
2 Commission regulations to the specific transactions or activities set forth in Aluminate's
3 request.²⁴ The Commission emphasizes that, if there is a change in any of the facts or
4 assumptions presented, and such facts or assumptions are material to a conclusion presented in
5 this advisory opinion, then Aluminate may not rely on that conclusion as support for its proposed
6 transactions or activity. Any person involved in any specific transaction or activity which is
7 indistinguishable in all its material aspects from the transaction or activity with respect to which
8 this advisory opinion is rendered may rely on this advisory opinion.²⁵ Please note that the
9 analysis or conclusions in this advisory opinion may be affected by subsequent developments in
10 the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any
11 advisory opinions cited herein are available on the Commission's website.

12 On behalf of the Commission,
13
14

15 Shana M. Broussard
16 Chair
17

²⁴ See 52 U.S.C. § 30108.

²⁵ See *id.* § 30108(c)(1)(B).