

441 North Lee Street, Suite 300
Alexandria, VA 22314

5805 State Bridge Road #G77
Johns Creek, GA 30097

Sent via email: ao@fec.gov
Office of the General Counsel
Attn: Lisa Stevenson
Federal Election Commission
1050 First Street, NE
Washington, D.C. 20463

RECEIVED

By Office of General Counsel at 5:49 pm, May 17, 2021

May 17, 2021

RECEIVED

By Office of the Commission Secretary at 8:03 am, Jun 01, 2021

RE: Advisory Opinion Request for PAC Management Services LLC
regarding processing services for political contributions

Dear Ms. Stevenson:

Pursuant to 52 U.S.C. § 30108, PAC Management Services LLC (“PACMS”) requests an advisory opinion concerning the permissibility of its intended services under federal campaign finance law. PACMS wishes to offer, as a commercial service, an online platform through which it will accept personal funds from clients and hold those funds on each client’s behalf. The platform will allow each client to designate one or more “solicitors,” chosen by the client herself, who may send the client solicitations through the platform. Each such solicitation will invite the client to make a contribution to a federal candidate, political committee, or political party committee recommended by the solicitor. The client may then, if she wishes, use the platform to make a contribution to that recipient. PACMS will follow the client’s directions, using the client’s funds to execute the client’s desired contribution on the client’s behalf, providing the recipient federal political committee with all information necessary to ensure adequate reporting to the Federal Election Commission (“FEC” or “Commission”).

In this way, PACMS intends to provide two valuable services. First, it will play a role in processing political contributions by allowing individuals who wish to be politically active to make lump-sum transfers of funds to PACMS, which will then execute each individual contribution from those funds as those individuals themselves direct. Second, PACMS’s platform will provide a convenient vehicle through which solicitors may seek contributions from individual contributors who have authorized them to do so.

FACTUAL BACKGROUND

PACMS is a private for-profit enterprise that operates solely as a commercial vendor. It is not owned, established, maintained, or controlled by any federal candidate or political party, and does not have any affiliated political committees. It has developed a new commercial business model to process political contributions by clients who wish to be politically active. PACMS will only contract for these services with clients who are eligible to make political contributions under federal law. Each contract will require the client to certify that she is: (i) a U.S. citizen, (ii) at least 18 years of age, (iii) not a federal contractor, (iv) transferring her own funds to PACMS, (v) will not be reimbursed for any such transfers or ensuing contributions, and (vi) will be making her own decisions regarding such potential future contributions from those funds. The contract will further specify any funds in PACMS’s possession will be returned to the client’s estate in the event a client dies or is declared mentally incompetent by a court.

Upon executing a contract, a client will receive login credentials to PACMS’s secure interface on the Internet. The client will be able to use the interface to transfer a minimum of \$5,000 to PACMS via online bank transfer or credit card. At any time, the client may either supplement those funds by transferring additional amounts of money to PACMS, or request and receive a refund of all such funds (except for any

funds the client has directed be contributed to a federal political committee). PACMS will hold all client funds in an FDIC-insured bank account separate from any of PACMS's own accounts, including its general treasury. The account, called the Client Fund Account, will not generate any interest.

Although the Client Fund Account will be in PACMS's name, PACMS will be contractually obligated to continue to treat the funds provided by each client as the property of that client and subject to that client's sole, complete direction. PACMS will follow the client's instructions with regard to the use of those funds for political contributions.

Each client may authorize one or more "solicitors" to solicit funds from her by entering the solicitor's name and e-mail address into the PACMS interface. There is no charge for solicitors to be registered with the service or use PACMS's interface. Each solicitor will receive their own login credentials. The interface will allow a solicitor to generate solicitations to be delivered through the platform to clients who have designated such solicitor. To generate a solicitation, a solicitor must log into the PACMS interface and choose a recommended recipient by selecting a federally registered candidate, political committee,¹ or political party committee. Based on an API of primary and general election dates, the interface will not allow solicitations for elections that have passed. The solicitor may type a solicitation message into the interface, explaining to the selected client(s) why they should consider making a contribution to that recommended recipient. The solicitor may also enter a recommended contribution amount, up to the applicable contribution limit. The interface will reject a recommended contribution above the statutory maximum for that particular type of recipient. If the solicitation is within the statutory limit, PACMS's interface will generate an e-mail to the client containing the solicitation. PACMS will not play any role in developing or revising the solicitations, but rather will pass them along directly from the solicitor to the client.

A solicitor may only send solicitations to client(s) who have authorized them through the PACMS interface to do so. PACMS itself will neither be a solicitor, nor recommend solicitors to clients. PACMS will not itself solicit clients (or anyone else) to make contributions to either itself or any other recipients, and will not engage in express advocacy of any candidates, political committees, or political party committees.²

The e-mail generated by PACMS will specify it is from the solicitor, note it was generated through PACMS, and contain the text of the solicitation. It will also contain a link which the client may click to log into their PACMS account. Upon logging in, the client will be presented with two buttons: "Contribute" and "Do Not Contribute." If the client clicks "Do Not Contribute," PACMS will notify the solicitor. An additional checkbox will be available, allowing the client to bar the solicitor from making any solicitations for that particular recipient again. A client may also de-authorize any solicitor at any time, preventing that person from sending her any future solicitations.

The "Contribute" button will appear immediately adjacent to a text field containing the amount of the contribution being solicited. The field will be pre-populated with the amount recommended by the solicitor, but the client is free to change that figure by typing in a different dollar amount. The screen will also specify the total amount the client has already contributed to that candidate for the specified election(s)

¹ The interface will not allow a solicitor to select, or a contributor to contribute to, a separate segregated fund.

² PACMS is a vendor that offers a commercial service of facilitating independent expenditures, at the usual and ordinary fair market price, by individuals and committees wishing to engage in political speech. These independent expenditures generally involve state-level legislative offices. In this capacity, PACMS is not engaging in its own political speech, but rather selling a service to those seeking to make expenditures.

through the PACMS system, and note any applicable contribution limits. Finally, the screen will notify the client, “By clicking CONTRIBUTE, you confirm the following affirmations and disclaimers are true and accurate,” followed by a list of representations concerning the legality of the potential contribution.³ It is PACMS’s intent to comply with the “safe harbor” the Commission has recognized in its advisory opinions. *See, e.g., Careau & Co., A.O. 2002-07, at 5-6 (Oct. 11, 2002)* (“[T]he screening procedures in your proposal for the electronic payment of the contributions are well within the ‘safe harbor’ discussed in previous opinions.” (citing *Bill Bradley for President, Inc., A.O. 1999-9, at 7 (June 10, 1999)*)). The client may press the “Contribute” button to confirm the accuracy of the affirmations and disclaimers and submit the request to contribute the specified amount of funds to the designated recipient. If the client changes any of her personal information in any of the text fields on the screen, her record with PACMS will be automatically updated, and that updated information will be transmitted to the recipient political committees along with her contribution.

It is completely up to the client whether to make any particular solicited contributions. The client may authorize or deauthorize any solicitor(s) she wishes, and terminate her account with PACMS at any time, in which case PACMS would return any remaining funds to the client.

When the client presses the “Contribute” button, the PACMS interface will engage in a two-step process to determine whether to accept the requested contribution. First, the system will determine the applicable contribution limit for the type of committee to which the client wishes to contribute. It will then review the client’s previous contributions to that entity through PACMS during the relevant time period and determine whether the requested contribution will cause the client to exceed that limit. If the

³ The list of affirmations and disclaimers will state:

- “1. I am not a federal contractor.
2. I am at least eighteen years old.
3. I am either a United States citizen or a lawful permanent resident of the United States.
4. 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.
5. The funds being used for this contribution are my own, and not corporate funds, business funds, or funds of another person.
6. This contribution, combined with other contributions I have made to this recipient (including any contributions made outside the PACMS interface) in connection with this election (for candidates) or this calendar year (for other recipients) will not exceed the federal contribution limit.
7. The personal information that I have provided to PACMS remains accurate and up-to-date:

Name: [CLIENT’S NAME ON RECORD WITH PACMS]
Address: [CLIENT’S ADDRESS ON RECORD WITH PACMS]
Phone: [CLIENT’S PHONE NUMBER ON RECORD WITH PACMS]
Email: [CLIENT’S EMAIL ON RECORD WITH PACMS]
Employer: [CLIENT’S EMPLOYER ON RECORD WITH PACMS]
Occupation: [CLIENT’S OCCUPATION ON RECORD WITH PACMS].”

The information referenced in brackets in #7, above, will appear in editable text fields, allowing the client to make any necessary corrections.

contribution, combined with the client's previous contributions through the PACMS system, would cause the client to exceed that limit, the PACMS system will generate an error message indicating the contribution cannot be made, and why. Second, the system will confirm whether the amount of the client's funds remaining in the Client Fund Account is sufficient to provide the requested contribution. If the client lacks sufficient funds, the PACMS system will reject the contribution request and notify the client about the deficiency. The PACMS interface will accept a contribution request only if the contribution, together with other contributions made to that recipient through the PACMS system, is within federal contribution limits, and the client has sufficient funds in the Client Fund Account to make that contribution.

At the end of each business day, PACMS personnel will receive a list of all contributions that have been requested by clients and accepted through the interface. PACMS personnel then will contact all recipient committees to request, or confirm, their wiring information. In the event PACMS is unable to obtain such wiring information by the next business day, PACMS personnel will, by the end of the second business day, mail a check made out to the designated recipient, drawn upon the Client Fund Account, to the recipient's Treasurer as reported on the recipient's operative FEC Form 1. These timeframes are well within the ten-day deadline established by 52 U.S.C. § 30102(b)(2)(B) and 11 C.F.R. § 102.8(a); *see Points for Politics, LLC*, A.O. 2012-09, at 7 (Apr. 27, 2012). Whether the contribution is made by wire or check, PACMS will provide the recipient with each client contributor's name, address, occupation, and employer information, to facilitate accurate reporting. "Providing this information satisfies the requirements of 11 C.F.R. § 102.8(b)(2)." *Points for Politics, LLC*, A.O. 2012-09, at 7 (Apr. 27, 2012). PACMS will not provide any information to the recipient about the identity of the solicitor who initiated the contribution process. The system will notify both the client contributor and the solicitor about completed contributions.

PACMS's clients will be able to specify in the interface how frequently they would like to receive periodic statements about their account balance and any account activity. PACMS will charge each client a flat annual fee for its services. The amount of the fee will not be based on either the amount of money a client deposits or the number or amount of contributions the client chooses to make. PACMS will determine and adjust this fee based on what it determines is a commercially reasonable figure reflecting the fair market value of its services. In the event the client chooses to deposit funds into her account by using a debit or credit card, PACMS will also automatically withdraw from the account whatever service fee it is charged for the transaction by the debit or credit card company, typically limited to a few percent of the overall amount of the transaction. PACMS reserves the right to advertise its services on the Internet, but intends to proceed primarily via word of mouth and referrals.

PACMS does not intend to register as a political committee or file disclosure statements required for political committees.

QUESTIONS PRESENTED

1. Do PACMS's proposed services violate federal campaign finance law?
2. Do PACMS's services—either in forwarding solicitations from client-authorized solicitors to clients, or processing requested contributions from clients to designated recipients—constitute either an illegal corporate contribution to the designated recipient in violation of 52 U.S.C. § 30118(a), or the illegal facilitation of a political contribution by a corporation in violation of 11 C.F.R. § 114.2(f)(1)?
3. Does PACMS qualify as a "commercial vendor" under 11 C.F.R. §§ 114.2(f), 116.1(c)?
4. Does PACMS, either on its own or in conjunction with its clients, qualify as a "political committee" subject to federal reporting requirements? Is PACMS required to file periodic reports with the Commission, whether as a political committee or otherwise?

5. Do contributions that PACMS processes at a client's direction, using a client's funds, qualify as impermissible "conduit" contributions?

6. Do the annual fee or debit/credit card service fee that a client pays to PACMS for its services qualify as contributions to any of the candidates, political committees, or political party committees to which the client makes contributions using PACMS's services?

7. May a person who works for a corporation or trade association be designated as a "solicitor" and make solicitations through the interface?

ANALYSIS

1. PACMS's Services are Legal Under Federal Campaign Finance Law

Federal campaign finance law prohibits corporations from making political contributions in connection with federal elections. 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b). Federal regulations further prohibit corporations "from facilitating the making of contributions to candidates or political committees." 11 C.F.R. § 114.2(f)(1). A corporation does not facilitate a contribution, however, "if it provides goods or services in the ordinary course of its business as a commercial vendor in accordance with 11 CFR part 116 at the usual and normal charge." 11 C.F.R. § 114.2(f). A "commercial vendor" under part 116 is "any persons providing goods or services to a candidate or political committee whose usual and normal business involves the . . . provision of those goods or services." *Id.* § 116.1(c).

Here, PACMS will not be contributing any of its funds to candidates, political committees, or political party committees. Rather, it will be holding its clients' funds for them, for a fee, and following each client's instructions by transferring those client funds to the recipient the client designates in the amount the client determines at the time the client chooses. The contributor in these transactions is only the client, not PACMS. *See Careau & Co.*, A.O. 2002-07, at 5 (Oct. 11, 2002) (concluding, where a client's funds were forwarded through a corporation's merchant account to a political committee, the funds would neither "become corporate treasury funds" nor "be deemed corporate contributions to the Federal committees"); *see also GivingSphere*, A.O. 2011-19, at 7 (Aug. 2, 2012) ("[T]he rebates that GivingSphere proposes to transmit to political committees will be the property of its customers, and not of GivingSphere.").

PACMS will neither contribute its own funds to any recipients nor exercise any discretion or control over the contributions its clients choose to make. "[E]ntities that process contributions as a service to contributors without entering into agreements with—or receiving compensation from—the recipient political committees are not making contributions because the entities are not providing any services to the recipient political committees." *Repledge*, A.O. 2015-08, at 5 (Nov. 7, 2015); *see also eBundlers.com*, A.O. 2016-08, at 5 (Aug. 16, 2016); *Democracy Engine*, A.O. 2011-06, at 4 (May 26, 2011) ("[T]he Vendor's services in processing subscribers' contributions to . . . recipient political committees would not result in impermissible corporate contributions by the Vendor to those political committees because the Vendor is not providing services or anything else of value to . . . [any] recipient political committee."). PACMS's services to its clients do not amount to illegal corporate contributions to political committees.

Likewise, PAC is not impermissibly *facilitating* contributions to candidates or political committees in violation of 11 C.F.R. § 114.2(f)(1). To the contrary, PACMS's proposed business activities fall squarely within the exception for commercial vendors under 11 C.F.R. §§ 114.2(f), 116.1(c). Its "usual and normal business" involves the provision of the services described above: holding funds for clients; forwarding solicitations from authorized solicitors to those clients; and processing contributions at the direction of a

client, using the client's funds. It will provide those services to clients at a reasonable market price. As the Commission has concluded, "[a] corporation does not make contributions if it provides goods or services in the ordinary course of business as a commercial vendor at the usual and normal charge." *CTIA – The Wireless Association*, A.O. 2010-23, at 5 (Nov. 19, 2010). PACMS's proposal is "analogous to . . . an electronic bill-pay service, such as those provided by banks." *skimmerhat*, A.O. 2012-22, at 5-6 (Aug. 2, 2012). Thus, PACMS's intended activities do not constitute illegal facilitation of a political contribution.

This matter is materially comparable to *Brooks*, A.O. 2006-08 (May 9, 2006), in which the Commission approved a similar arrangement. Brooks wished to create a for-profit company that would "accept funds from subscribers" and deposit them "into a separate merchant account." *Id.* at 1-2. The subscriber could later direct the corporation to contribute those funds to candidates, political committees, or other non-profit organizations, or request they be returned. *Id.* at 1-2. "Once the subscriber indicates to the Corporation that he or she would like to make a contribution or donation, the Corporation will forward the designated amount of funds to the recipient . . ." *Id.* at 2. The corporation would provide the contributor's "mailing address, occupation, and employer information" to the recipient of the contribution "whenever necessary." *Id.* The corporation would "employ various screening and verification procedures to prevent . . . prohibited contributions, and will forward contributions only insofar as the Corporation deems them permissible." *Id.* Subscribers would pay the corporation a service fee. *Id.*

The Commission concluded in *Brooks* the corporation's proposed business plan was legal. It explained the corporation would "provide services to individual subscribers to assist them in making contributions, similar to corporations that provide delivery services, bill paying services, or check writing services." *Id.* at 4; *accord Democracy Engine*, A.O. 2011-06, at 5 (May 26, 2011). Moreover, the subscribers would compensate the corporation through the service fee. Accordingly, "the Corporation's receipt and distribution of subscribers' contributions would be permissible under the Act and Commission regulations." *Brooks*, A.O. 2006-08, at 4. The Commission added the corporation would be required to "use a separate merchant account for funds that will be dispersed as contributions," *id.* at 4-5.

PACMS's proposed service would operate similarly to that approved in *Brooks*, except PACMS's service includes allowing solicitors designated by each client to use PACMS's online platform to prepare and send solicitations to that client. PACMS will require clients to affirm certain declarations and attestations at the time of each requested contribution to confirm the legality of the transaction. PACMS will refuse to process transactions which its records show would lead to violations of federal limits. Moreover, PACMS will hold client money in a separate merchant account. Thus, PACMS' proposed arrangement does not violate federal campaign finance law. *See also Democracy Engine*, A.O. 2011-06, at 5 (May 26, 2011) (concluding campaign finance law was not violated where "the Vendor plans to enter into agreements with each of its subscribers and to process contributions at the request of its subscribers from the Vendor's own website").

Similarly, in *Atlatl*, A.O. 2007-04, at 1 (Apr. 20, 2007), the Commission concluded federal law did not prohibit a corporation from processing credit card transactions to make online contributions to candidates and political committees more convenient. In that case, an individual wishing to contribute to a particular committee would click a link, bringing them to Atlatl's website. They would input their credit card information, as well as other information that Atlatl would forward to the recipient of the contribution for FEC reporting purposes. *Id.* at 2. The Commission determined Atlatl would neither be making an illegal contribution, nor illegally facilitating a contribution, by providing these services. *Id.*

In reaching this conclusion, the Commission focused on three key facts. *Id.*; *see also Points for Politics, LLC*, A.O. 2012-09, at 5-6 (Apr. 27, 2012) (reaffirming the same three considerations for determining whether an entity qualifies as a "commercial vendor"). **First**, Atlatl was providing its processing services "in the ordinary course of business for the usual and normal charge." *Atlatl*, A.O. 2007-

04, at 3. Here, too, PACMS would be providing its services to clients in the ordinary course of business for a commercially reasonable charge of at least \$100 annually.⁴ *Second*, Atlatl would “forward[] earmarked contributions to candidates through separate merchant accounts.” *Id.* at 3-4. Likewise, here, PACMS would store its clients’ funds in a discrete Client Fund Account, segregated from PACMS’s own funds and general treasury. PACMS would process its clients’ requested contributions by transferring the client’s funds from the Client Fund Account to the designated recipient. Accordingly, “the funds transferred to [the designated recipients] would be the funds of the individual contributors and not the funds of [PACMS].” *Id.* at 4. *Third*, Atlatl’s website “incorporated adequate screening procedures to ensure that [it was] not forwarding illegal contributions.” *Id.* Similarly, PACMS will require clients to make various declarations and attestations to confirm their requested contributions are legal. It will refuse to process contributions which, combined with the client’s previous contributions through the PACMS platform, would exceed federal limits.

Thus, the Commission should conclude PACMS’s proposed plan is lawful. It involves neither illegal contributions by PACMS nor illegal corporate facilitation of contributions. To the contrary, PACMS is a commercial vendor providing services for a commercially reasonable fee in the ordinary course of business.

2. PACMS would not be acting as an illegal corporate “conduit.”

Under FEC regulations, an entity which is prohibited from making contributions or expenditures is likewise barred from acting as a conduit or intermediary for contributions. *See* 11 C.F.R. § 110.6(b)(2)(ii). Because corporations are prohibited from making contributions, *see* 52 U.S.C. § 30118(a), they may not serve as conduits. PACMS’s proposed activities, however, would not constitute acting as a “conduit.”

The term “conduit” is defined as “any person who receives and forwards an earmarked contribution to a candidate.” 11 C.F.R. § 110.6(b)(2). An “earmark” is “a designation, instruction, or encumbrance . . . which results in all or part of a contribution . . . being made . . . to a clearly identified candidate.” *Id.* § 110.6(b)(1). The Commission has held, however, “certain electronic transactional services that assist a contributor in making a contribution do not run afoul of the prohibition on corporations acting as a conduit or intermediary for earmarked corporations because [they] . . . are akin to ‘delivery services, bill-paying services, or check writing services.’” *skimmerhat*, A.O. 2012-22, at 10 (Aug. 2, 2012). In *skimmerhat*, for example, a private business wished to establish a website through which individuals could search for federal candidates based on certain criteria and make contributions to them. *Id.* at 2-3. When a user made a contribution, *skimmerhat* would charge the user’s credit card, placing the funds obtained through that transaction in its merchant account. *Id.* at 3. *Skimmerhat* would then transfer those funds from its merchant account to the recipient committees. *Id.* It also would charge users an 8% convenience fee to “cover credit card processing and provide a profit to the company;” that fee was deposited into *skimmerhat*’s general treasury account. *Id.* The Commission concluded, “The contributions made through the *skimmerhat* platform are not contributions to an intermediary and earmarked for a candidate or authorized committee; they are direct contributions to the candidate or authorized committee made via a commercial processing service.” *Id.* at 10.

Likewise in *Repledge*, A.O. 2015-08, at 5 (Nov. 7, 2015), the Commission concluded the commercial corporation was not acting as a conduit. *Repledge*, like PACMS, “propose[d] to establish a web platform that its customers can voluntarily choose to employ to make contributions to political committees.” *Id.* The company would “operate on a commercial basis” and charge its clients to cover its costs. *Id.* It intended to “process and transmit its members’ contributions to political committees in the ordinary course

⁴ Since there are no other services that are exactly comparable to PACMS, it is difficult to speak of “the usual and normal charge” for such services. *Cf. DollarVote*, A.O. 2004-19, at 4 (Aug. 20, 2004) (concluding proposed business arrangement was “commercially reasonable” even though the requester’s “activities are somewhat novel”).

of business and only at the request of its members.” *Id.* The Commission concluded contributions made through Repledge were not made through a conduit, but rather were deemed to be made directly from the client to the recipient. *Id.* at 8; *see also eBundlers.com*, A.O. 2016-08, at 8 (Aug. 16, 2016) (“[W]here a commercial vendor provides contribution processing services to contributors, the contributions made through the platform are not earmarked through an intermediary to a candidate . . . but are instead direct contributions to the candidate . . . made via a commercial processing service.” (quotation marks omitted)).

Here, PACMS will be providing an online platform through which a client can direct PACMS to process a contribution of the client’s funds—which are already in PACMS’s possession—to a candidate. PACMS is providing contribution processing services acting akin to a check-writing service. And it is charging a commercially reasonable fee to cover the cost of its services. As in *skimmerhat*, A.O. 2012-22 (Aug. 2, 2012), and *Repledge*, A.O. 2015-08, at 5 (Nov. 7, 2015), PACMS is not acting as a conduit.

3. PACMS does not qualify as a political committee and is not otherwise required to submit periodic reports to the FEC

PACMS does not qualify as a political committee and therefore is not required to file periodic reports with the Commission under 52 U.S.C. § 30104(a)(1). There are two ways in which an entity may qualify as a political committee; it must either receive more than \$1,000 in contributions in a calendar year, or make more than \$1,000 in expenditures in a calendar year. 52 U.S.C. § 30101(4)(A). PACMS will not satisfy either of these requirements.

On the one hand, PACMS will neither solicit nor accept contributions from anyone, including its clients. Its only source of income will be the payments it receives for providing commercial services. Moreover, PACMS will not engage in express advocacy or other expenditures in connection with federal elections. Thus, it does not satisfy either of the requirements for qualifying as a political committee. *skimmerhat*, A.O. 2012-22, at 9 (Aug. 2, 2012) (concluding a “commercial service provider” is “not a political committee, and therefore will not be subject to the reporting requirements for political committees”); *see also GivingSphere*, A.O. 2011-19, at 10 (Aug. 2, 2012) (concluding a private business which operated an online portal through which clients could contribute to political committees was not, itself, a political committee subject to reporting requirements).

Moreover, because PACMS “will not make communications that contain express advocacy,” it “will not be subject to the reporting requirements for persons making independent expenditures.” *GivingSphere*, A.O. 2011-19, at 10 (Aug. 2, 2012); *accord skimmerhat*, A.O. 2012-22, at 9. Likewise, “given that all the relevant communications will take place on the Internet, [PACMS’s] proposal will not implicate the reporting requirements for persons making electioneering communications.” *GivingSphere*, A.O. 2011-19, at 10 (Aug. 2, 2012); *accord skimmerhat*, A.O. 2012-22, at 9. Thus, PACMS will not be required to file any reports with the Commission.

4. The Annual Fee and Debit/Credit Card Fees Which Clients Pay to PACMS Do Not Qualify as Contributions

PACMS will charge each client an annual fee for the use of its platform to authorize solicitors, receive solicitations, have PACMS hold their funds, and process contributions on their behalf. The client pays this fee exclusively to PACMS, which the company uses to defray the cost of its services and earn a profit. Likewise, if a client uses a debit or credit card to transfer or deposit funds into their account with PACMS, PACMS will charge the client any service fee the debit or credit card company charges in connection with that transaction. Neither the annual fee a client pays up front to use the PACMS platform, nor any debit or credit card fee a client may incur in connection with any deposits into their PACMS account, should be regarded as contributions to any candidates, political committees, or political party

committees to which the client may later choose to contribute too through the PACMS platform.

In this respect, PACMS's platform differs from *Atlant*, A.O. 2007-04. In that case, a separate "convenience fee" was charged to the user in connection with each credit card contribution the company processed. *Id.* at 5. The Commission concluded the amount of the convenience fee constituted a "contribution" because, by paying the fee, "contributors would relieve recipient political committees of a financial obligation that political committees would otherwise have to pay for themselves, thereby providing something of value to these committees." *Id.* Here, in contrast, the annual fee the client pays does not relieve any recipient political committees of financial obligations to which they would otherwise be subject.

In *Democracy Engine*, A.O. 2011-06, at 6 (May 26, 2011), the Commission recognized the key distinction between "situations in which a company provides services to recipient political committees, and situations in which a company provides services to its subscribers." In the latter case, a client's payment of a fee to the vendor does not relieve any political committee of a financial burden for which it would otherwise be responsible. *Id.* Here, both the client's payment of the annual fee to PACMS, as well as any service fee for use of a credit or debit card, defray the cost of services PACMS provides to the client herself, rather than to any political committees. Consequently, a client's payment of an annual fee or service fees do not constitute contributions to any political committee. *Id.*; *see also Repledge*, A.O. 2015-08, at 8 (Nov. 7, 2015) (concluding payment of a commercially reasonable transaction fee to a corporate business which processes online contributions to political committees does not constitute a contribution to either that business or any political committees); *skimmerhat*, A.O. 2012-22, at 6 (Aug. 2, 2012). Accordingly, neither the client nor PACMS is required to report any such payments to the FEC, and neither the annual fee nor service fees count against a client's contribution limit to any political committee.

5. Officers and Employees of Corporations and Trade Associations May Be Designated as Solicitors and Make Solicitations for Candidates and Political Committees Through the Interface

An officer or employee of a corporation or trade association may, in their personal capacity, use the PACMS platform to solicit contributions. Federal law prohibits corporations from contributing to political candidates or committees (except through their separate segregated funds). 52 U.S.C. § 30118(a). The Commission has construed this provision as prohibiting corporations "from facilitating the making of contributions to candidates or political committees." 11 C.F.R. § 114.2(f)(1). This prohibition includes "using corporate . . . resources or facilities to engage in fundraising activities in connection with any election." *Id.* Trade associations are likewise prohibited from soliciting contributions, subject to certain narrow exceptions. *See* 52 U.S.C. § 30118(b)(4); 11 C.F.R. *id.* § 114.8(c).

Regulations further specify, however, that corporate employees and stockholders may "make occasional, isolated, or incidental use" of a corporation's facilities "for individual volunteer activity in connection with a Federal election." *Id.* § 114.9(a)(1). Such individuals must "be required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased." *Id.* Moreover, any person may "engage[] in Internet activities" without it being deemed a contribution, "regardless of who owns the equipment and services." *Id.* § 100.94(a)(2).

An officer or employee of a corporation or trade association may use the PACMS platform to solicit contributions for federal candidates and committees from any legal contributor who has authorized them to do so through the platform—regardless of whether that contributor happens to be a member of an applicable restricted class. *Cf. Am. College of Allergists*, A.O. 1984-12, at 2 (May 31, 1984) (recognizing members of a corporation may take actions in their individual capacities which would otherwise violate restrictions applicable to corporations). Moreover, they may access the platform to solicit the contribution using their

corporate computer and the corporation's access. Such actions constitute neither impermissible contributions, nor facilitation of contributions, by the corporation of trade association. Rather, such activity is permissible on two grounds. First, it constitutes "occasional, isolated, or incidental use" of corporate or association resources that does not increase the entity's marginal costs. 11 C.F.R. § 114.9(a)(1). Second, it constitutes a permissible "Internet activity." *Id.* § 100.94(a)(2). Use of the PACMS platform falls within this provision because it "includes a communicative element . . . by directly expressing a message" from the solicitor to the potential contributor. *OsioNetwork LLC*, A.O. 2018-13, at 6 (Apr. 25, 2019). The Commission should not deny individuals the full and lawful exercise of their fundamental constitutional right to engage in pure political speech, *see Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1979) (holding that solicitation is protected by the First Amendment because it is "characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues"), especially based on the nature of their employment, *see Citizens United v. FEC*, 558 U.S. 310, 350 (2010) ("[T]he First Amendment generally prohibits the suppression of political speech based on the speaker's identity.").

CONCLUSION

For these reasons, the Commission should issue an Advisory Opinion concluding PACMS's proposed services do not violate federal campaign finance law. PACMS neither makes contributions nor "facilitat[es] contributions" when it forwards solicitations from authorized solicitors to clients or transfers client funds to political committees at a client's direction. Rather, PACMS will be acting as a commercial vendor providing services in the ordinary course of business on commercially reasonable terms. It neither qualifies as a political committee nor is otherwise required to file periodic reports with the FEC. And its transactions on behalf of clients do not amount to "conduit" contributions. Additionally, because the annual fee and other service fees PACMS will receive for these services do not qualify as contributions from a client to any political committee, they do not count against any of that client's contribution limits. Finally, officers and employees of corporations and trade associations, acting in their personal capacities, may use the PACMS platform to solicit contributions from PACMS clients who have authorized them to do so. Such officers and employees may make these solicitations through the PACMS platform with computer systems and internet access provided by their employer corporations or trade associations, so long as it does not involve an additional marginal cost to that entity.

Respectfully submitted,



Dan Backer
dbacker@chalmersadams.com
202-210-5431