FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUL 2 9 2002

Precision Marketing, Inc.
Arthur L. Speck, Jr., President
4935 Rock Spring Road,
Arlington, VA 22207

RE: MUR 5181
Precision Marketing, Inc.

Dear Mr. Speck:

On July 23, 2002, Federal Election Commission found that there is reason to believe Precision Marketing, Inc. violated 2 U.S.C. § 441b(a) a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Subpoena to Produce Documents and Order To Submit Written Answers must be submitted within 30 days of your receipt of this order and subpoena. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause

conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Mary L. Taksar, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

David M. Mason
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis
Procedures
Designation of Counsel Form

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Precision Marketing, Inc. ("PMI") MUR: 5181

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

II. RELEVANT LAW

It is unlawful for any corporation to make a contribution or expenditure in connection with any federal election. 2 U.S.C. § 441b. It is also unlawful for any officer or director of a corporation to consent to any corporate expenditures which may be prohibited contributions to candidates or committees. *Id.* For purposes of Section 441b, the term "contribution" includes any direct or indirect payment, distribution, loan (other than from a national or State bank made in accordance with the applicable banking laws and regulations in the ordinary course of business), advance, deposit, or gift of money, or any services, or anything of value to any candidate or campaign committee in connection with a Federal election. 2 U.S.C. § 441b(b)(2). The Commission's regulations provide that "anything of value" includes all in-kind contributions, including the provision of goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services. 11 C.F.R. § 100.7(a)(1)(iii)(A). For purposes of 11 C.F.R. § 100.7(a)(1)(iii)(A), usual and normal charge for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 C.F.R. § 100.7(a)(1)(iii)(B). The regulations specifically include

mailing lists as an example of such goods or services. *Id.* *See also* 11 C.F.R. § 100.8(a)(1)(iv)(A). The entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution. 11 C.F.R. § 100.7(a)(2).

The Commission has historically considered the exchange of fundraising lists, usually called mailing lists, as potential contributions, both as items of value given to political committees and as items that are sold or rented out by committees and therefore, the payment for the property or use of the property must not be from prohibited sources and must not exceed the contribution limits. See 2 U.S.C. §§ 431(8)(A)(i), 441a(a), 441b and 11 C.F.R. §§ 100.7(a)(1)(iii)(A) and 100.7(a)(2). The Commission has specifically advised that when a committee asset is sold or used to produce revenue for a committee, the proceeds are considered contributions to the committee. See Advisory Opinions 1992-40 (committee's receipt of funds raised in a phone service marketing project would constitute contributions); 1991-34 (committee's receipts from ongoing enterprise involving sale of data from a leased database of registered voters would constitute contributions); 1983-2 (committee's receipt of funds from "fee-for-services" use of its computer would constitute contributions).

The Commission has also permitted isolated sales of committee assets without inherent contribution consequences where the assets had been purchased or developed for the committee's own particular use rather than for sale in fundraising activity and such assets had ascertainable market value. See Advisory Opinions 1989-4, 1986-14, and 1981-53. Specifically, the sale or rental of a mailing list does not result in a purchaser or renter making a contribution when two criteria are met: the mailing list must be developed by the campaign committee in the normal course of its operations and for its own use rather than as an item to be sold or rented to third parties; and the list must be sold or rented at the "usual and normal" charge. See Advisory

Opinions 1989-4 (a committee's sale of its mailing lists and other assets to a state committee at the usual and normal charge would not result in a contribution); 1988-12 (a committee providing membership lists for reimbursement from a federally chartered savings bank in the form of an unspecified portion of the annual membership fee on each credit card issued is not bargained-for consideration in a commercial transaction and results in a prohibited contribution); 1981-53 (a committee's sale of a mailing list it had developed to a commercial list vendor for usual and normal charge for such a list would not constitute a contribution).

For example, in Advisory Opinion 1981-53, the Commission examined whether a committee's sale of its computer tape mailing list to a corporation would constitute a contribution prohibited by 2 U.S.C. § 441b. The committee stated that it had developed its mailing list by compiling names from publicly available voter registration lists in Indiana and that the $4,216 in expenses that were incurred relative to the list included travel expenses, supplies, copying, labor, and equipment. The committee proposed selling the list to a corporation for $4,000. The Commission determined that the Act would permit the committee to sell its computer tape mailing list to the corporation provided that: the committee developed the mailing list in the normal course of its operations and primarily for its own use rather than for sale as a fundraising item; and the price the committee charged represented the usual and normal charge for such tapes under 11 C.F.R. § 100.7(a)(1)(iii), which indicates that "the usual and normal charge" for goods means the price of the goods in the market from which they ordinarily would have been purchased at the time of the contribution.

III. ANALYSIS

Based on Ashcroft 2000 disclosure reports and information in the Commission's possession, it appears that during 2000, Ashcroft 2000 rented a mailing list to Precision

Marketing, Inc. (PMI), a Virginia corporation, for amounts totaling over $116,922. As noted earlier, in order for the sale or rental of a mailing list to qualify for the narrow exception that allows the sale or rental of a campaign asset not to be considered a contribution: the mailing list must have been developed by the campaign committee in the normal course of its operations and for its own use; and must have been rented or sold for the "usual and normal" charge. Because the mailing list that PMI rented was not developed by Ashcroft 2000 for its own use, but rather was developed for or by the Spirit of America PAC, the transaction between Ashcroft 2000 and PMI, Inc. fails to meet the first criterion required for the narrow exception – the sale or rental involves a mailing list developed by the campaign committee in the normal course of its operations and for its own use. See Advisory Opinions 1989-4, 1988-12, and 1981-53. In addition, it is not apparent from the available information that the transaction meets the second criterion of the narrow exception, i.e., whether PMI, Inc., the renter, licensee or sub-licensee, paid the usual and normal charge for the mailing list. See 11 C.F.R. §§ 100.7(a)(1)(iii)(A) and (B) and 100.7(a)(2).

The rental, licensing or sublicensing of the mailing list by the campaign committee to PMI, Inc. therefore results in the making of a corporate contribution by PMI, Inc. to Ashcroft 2000. See 2 U.S.C. § 441b and 11 C.F.R. § 100.7(a)(2). Consequently, there is reason to believe that Precision Marketing, Inc. violated 2 U.S.C. § 441b(a).