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July 26, 2006

FEDERAL EXPRESS

Christine C. Gallagher, Esq.
Office of the General Counsel
United States Federal Election Commission
999 E Street, NW, Ste. 623
Washington, DC 20463

Re: MUR 5766
Amalgamated Bank

Dear Ms. Gallagher:

The undersigned law firm, Meyer, Suozzi, English & Klein, P.C., represents Amalgamated Bank (the "Bank") with respect to the inquiry of the United States Federal Election Commission ("FEC") designated by FEC as Matter Under Review 5766. On July 14, 2006, the Bank provided you with a Statement of Designation of Counsel appointing this law firm as its counsel. A copy of such Statement of Designation is attached as Exhibit A to the Bank's Appendix of Exhibits ("Appendix") which accompanies this letter submission.

Through its designated undersigned counsel, the Bank hereby responds to the letter, dated July 3, 2006, to the Bank from FEC notifying the Bank that FEC has opened Matter Under Review 5766, the FEC finding reason to believe that the Bank violated 2 U.S.C. § 441(b) and enclosing a copy of Finding One of the Commission's Final Audit Report on the Democrat Republican Independent Voter Education -- PAC of the International Brotherhood of Teamsters (the "Finding"). The Bank requests that the MUR and all information and documents concerning same remain confidential.

A. The Bank's Request For Pre-Probable Cause Conciliation

Pursuant to 11 C.F.R. § 111.18(d), the Bank hereby requests that the Bank and FEC engage in pre-probable cause conciliation and that the Office of the General Counsel recommend to the FEC that the FEC propose an agreement in settlement of the matter.

The basis for such request, and the Bank's statement of position as to the Finding, is set forth below.

STATEMENT OF FACTS

B. Background of the Bank

The Bank is a New York State chartered commercial bank whose deposits are insured by the Federal Deposit Insurance Corporation (the "FDIC"). It is not a member of the Federal Reserve System. Accordingly, the Bank is subject to examination, supervision and regulation by both the New York State Banking Department and the FDIC. As such, the Bank is required by law and its regulators to operate in a safe and sound manner and all of its extensions of credit are approved after a thorough credit approval process. In addition, when the Bank has been asked to lend to a political action committee ("PAC"), it has recognized that such loans must meet specified legal requirements and has consistently sought and received advice of counsel before making the loans. All such extensions of credit have been made in accordance with applicable laws and regulations. Indeed, because of the Bank's unique ownership and heritage, it regards its obligation to conduct its business in a safe and sound and fully lawful manner as imperative.

The Bank was founded by the Amalgamated Clothing Workers of America in 1923 and is currently owned by UNITEHERE and certain of its affiliated organizations. UNITEHERE is a labor organization that resulted from the July 2004 merger of UNITE -- the clothing, apparel, textile manufacturing and industrial laundry union (that itself resulted from the merger of the International Ladies Garment Workers Union and the successor to the Amalgamated Clothing Workers of America) and HERE (the hotel, food service, restaurant and gaming industry union). The Bank was originally founded for the purpose of providing financial services to working people for whom such services were too often not available. In 1929, Princeton University reported that the Bank's policies were "cautious and yet progressive," predicting that "[w]ith the continuance of the confidence which both the bank and the present union administration have enjoyed, the Amalgamated Bank will become all the more the outstanding labor bank." The Bank has continued to provide banking services to its labor constituency and the general public on a conservative, professional and safe and sound basis.

The Bank is "well capitalized" under applicable bank regulatory standards and, as of December 31, 2005, had $4.021 billion in assets. It currently has nine (9) branches in New York City, as well as single branches in New Jersey, Washington, D.C. and Pasadena, California.

The Bank's commitment to making loans in a conservative, professional, safe and sound and fully lawful manner is fully evidenced in its origination and administration of the loan to the PAC of the International Brotherhood of Teamsters.

C. The Loans To DRIVE

In October, 2002, the Bank considered and ultimately approved a request by the Democrat, Republican, Independent Voter Education Committee -- The PAC of the International Brotherhood of Teamsters ("DRIVE") for the Bank to provide to DRIVE a credit facility in the amount of $300,000. The request was subsequently amended to increase the loan amount to $500,000 and, as amended, approved by the Bank. Pursuant to its standard operating procedures, the Bank reviewed the request, the financial and other information submitted by DRIVE, including the Bank's lending history with DRIVE, performed a standard credit review and profitability analysis of DRIVE and, as stated, approved the loans.

To evidence its credit review and approval, the Bank prepared a memorandum entitled Amalgamated Bank of New York, Commercial Loan Portfolio, Credit Approval Memorandum, dated October 25, 2002 (the "Credit Memo"). A copy of the Credit Memo is attached to the Appendix as Exhibit B. In addition, the Bank prepared its Credit Facility Offering memoranda, one dated October 24, 2002 evidencing the Bank's internal process for approval of DRIVE's request for a loan in the amount of $300,000 (the "$300,000 Loan") and the second, dated November 1, 2002, for DRIVE's request to increase the loan amount by $200,000 to $500,000. To expedite processing, the Bank treated the request for an increased loan amount as a request for a second loan and thus the November 1, 2002 Credit Facility Offering approved a second loan to DRIVE in the amount of $200,000 (the "$200,000 Loan," together with the $300,000 Loan, the "Loans"). Both Credit Facility Offerings show the initials of eleven individuals of the Bank including the officers of the Bank who constituted its loan review committee. A copy of both Credit Facility Offerings is attached to the Appendix as Exhibit C.

D. The Loan Documentation

The Bank's Loans to DRIVE were fully and properly documented in accordance with the Bank's standard operating procedures for commercial loans to PACs. In addition to the Credit Memo and the Credit Facility Offerings, each of the following documents (the "Loan Documents") was duly executed by an appropriate officer of DRIVE and delivered to the Bank (a copy of each document being attached as an Exhibit to the Appendix as noted).

(i) $300,000 Loan:

-Revolving (Grid) Promissory Note, dated October 24, 2002 ("$300,000 Note") (Exhibit D);

-Continuing Security Agreement, dated October 25, 2002 ("Security Agreement") (Exhibit E);

-UCC-1 Financing Statement, filed December, 1998, and Continuation Statement, filed May, 2003 ("UCC-1") (Exhibit F);

-Deposit Account Pledge Agreement, dated October 25, 2002 ("Pledge Agreement") (Exhibit G);

-Covenant Agreement, dated October 24, 2002 ("$300,000 Covenant Agreement") (Exhibit H)[1]; and

-Certificate of Resolutions Authorizing Secured And/Or Unsecured Borrowings And Execution Of Promissory Notes, Security Agreements and Related Documents, dated October 25, 2002 (Exhibit I).

(ii) $200,000 Loan:

-Revolving (Grid) Promissory Note, dated November 1, 2002 ("$200,000 Note") (Exhibit J);

-the Security Agreement;

-the UCC-1;

-the Pledge Agreement;

-Covenant Agreement, dated November 1, 2002 ("$200,000 Covenant Agreement") (Exhibit K); and

-Certificate of Resolutions Authorizing Secured And/Or Unsecured Borrowings And Execution Of Promissory Notes, Security Agreements and Related Documents, dated November 4, 2002 (Exhibit L).

[1] The Covenant Agreement is a form developed by counsel to the Bank specifically to address the requirements of campaign financing.

E. The Bank's Underwriting of the Loans

The Bank's Loans to DRIVE were fully and carefully underwritten. The credit review included a D&B report indicating a clear credit history and no liens, judgments or suits of record against DRIVE. In addition, the Bank reviewed draft financial statements for DRIVE for the years 2000 and 2001 including DRIVE's income and expense statements and balance sheets. A copy of these financial statements is attached to the Appendix as Exhibit M.

Because DRIVE derives its revenue almost exclusively from contributions, the Bank's review of DRIVE's income for 2000 and 2001 was an important part of the decision to approve the credit. DRIVE had a proven track record of receiving cash contributions as reflected in revenue of $4.2 million in 2000 and $4.6 million in 2001.

The Bank also received an eight month interim financial statement for DRIVE for the period January through August, 2002 (Exhibit M). This statement showed a trend similar to the prior years for DRIVE's collection of cash contributions.

DRIVE had been a customer of the Bank for some time. DRIVE maintained both a non-interest bearing demand account (referred to as a zero balance account ("ZBA Account") in which it maintained a constant balance of $5,000 and an interest bearing negotiable order of withdrawal account ("NOW Account," together with the ZBA Account, the "Accounts") with the Bank. Because of DRIVE's status as a "non-profit" organization, it was able to maintain the bulk of its funds in an interest bearing transaction (checking) account.[2] Accordingly, the bulk of its checks were drawn against the NOW Account and the bulk of its deposits were made directly to the NOW Account rather than the ZBA Account. Indeed, at inception of each Loan, the Bank disbursed the proceeds directly into DRIVE's NOW Account. This arrangement is typical of nonprofit organizations' deposit banking relationships and differs from for-profit business organizations that are constrained by the prohibition against payment of interest on demand deposits. Although DRIVE did not need to use the Accounts in a linked fashion, the NOW Account was linked to the ZBA Account as a "sweep" account, such that funds needed to clear a check written by DRIVE on the ZBA account could be automatically transferred from the NOW Account and, likewise, funds deposited into the ZBA Account could be swept into the NOW Account at certain intervals in order to earn interest.

[2] Banks are barred by Section 19(i) of the Federal Reserve Act, 12 U.S.C. § 371a, from paying interest on demand deposits. NOW accounts are actually interest bearing savings accounts that permit unrestricted checking capability. Only individuals and nonprofit organizations, including those operated primarily for political purposes such as a PAC, are permitted to hold such accounts. *See* 12 C.F.R. § 204.130. In the present case, the Bank provided a demand deposit account as well as a NOW account to DRIVE. Because the NOW account had full transaction capability, it became the primary account used by DRIVE and held the bulk of DRIVE's funds.

Significantly, the Bank had previously made loans to DRIVE that were repaid in full and on time. In October, 1998, the Bank provided DRIVE with a secured six-month loan facility that was repaid by DRIVE pursuant to its terms. Again, in October, 2000, the Bank provided DRIVE with a $1,000,000 loan facility which was also repaid pursuant to its terms. Both prior loans were based upon the Bank's receipt of a perfected security interest in DRIVE's receipt of pledged contributions and in DRIVE's ability to convert such pledges into cash.

Based on the foregoing information, the Bank performed its credit review, including a profitability analysis for DRIVE, and determined that the Loans would be approved. DRIVE timely repaid the Loans to the Bank in February and April 2003.

ARGUMENT

F. The Loans Were Not A Contribution

The Bank respectfully submits that the Loans were not a contribution under 2 U.S.C. § 441(b) because they met the statutory and regulatory criteria for a true loan. The Loans were made in the ordinary course of business and in accordance with applicable banking laws and regulations. The Finding does not raise any issues concerning whether the Loans were not in accordance with applicable banking laws and regulations. The Loans have never been the subject of any particular inquiry or scrutiny by any state or federal regulator having jurisdiction over the Bank.

The Loans were made in the ordinary course of business because they bore the Bank's usual and customary rate of interest, were evidenced by written instruments, were subject to a due date and were made on a basis which assures repayment. FEC does not raise any issues concerning the rate of interest for the Loans, evidence of written instruments or being subject to a due date. These criteria are all expressly set forth in the Loan Documents including that the Loans bore interest at the Bank's "Base Rate" which was 4.75% at the origination of the Loan and was a variable rate. The Loans were both for a term of six months and each Note set forth a specific maturity date.

G. The Loans Were Made On A Basis That Assured Repayment

The Loans were made on a basis that assured the Bank of repayment in that the Bank obtained a perfected security interest in property of DRIVE. The Bank respectfully disagrees with and disputes FEC's conclusion in Finding 1 that assurance of repayment was not provided because "[a]lthough the loan documents appear to demonstrate that each loan was secured, in fact, neither loan was secured by collateral." Rather, as demonstrated herein, both Loans were fully secured by two different forms of collateral. FEC regulations recognize the propriety of combining multiple forms of collateral.

First, both Loans were secured by the Bank having a perfected security interest in DRIVE's pledged contributions and its receipt of cash for contributions. This is evidenced by the Loan Documents. Under the Security Agreement, DRIVE provided the Bank with a security interest and lien upon substantially all of its assets. In particular, under section 1(a)(ii) of the Security Agreement, the Bank's collateral is defined to include "Revenues." Revenues, in turn, is defined in section 11(u) of the Security Agreement as "all income, revenues, and receipts of the Borrower, including, without limitation, contributions, pledges, public financing payments, interest income and investment earnings."

DRIVE's financial statements reported that its income from contributions and interest totaled over $4.2 million in 2000, over $4.6 million in 2001 and over $3 million for the eight month period ended August, 2002 (which, extrapolated for the entire year, would total over $4.6 million). DRIVE's income as thus reported constituted "Revenues" under the Security Agreement. Thus, the Loans, in the principal amount of $500,000, were secured by DRIVE's demonstrated ability to collect contributions that exceeded the $500,000 principal amount of the Loans by a factor of nine.

The Bank's favorable assessment of DRIVE's collateral, including DRIVE's ability to collect contributions, proved accurate in that DRIVE timely repaid the Loans to the Bank in February and April 2003.

The Loan Documents provided further protection to the Bank of its interest in the Collateral. For example, section 2(a)(ii) of each of the Covenant Agreements provided that DRIVE was obligated to deposit its receipts into the NOW Account maintained by DRIVE at the Bank. To the best of the Bank's knowledge, information and belief, DRIVE fully complied with this obligation.

FEC's "[a]udit staff concluded that the loans were not made on a basis that assures repayment" in part because "[t]here were no documented outstanding accounts receivable and neither Bank documents described the make up of 'general intangibles'. Further, there was no evidence made available that DRIVE provided the Bank with any of the financial statements or revenue estimates required by the covenant agreement."

The Bank respectfully disagrees and disputes such conclusions. The Loans were not made to DRIVE on the basis of DRIVE's grant of a security interest to the Bank in its general accounts receivable or general intangibles. The Loans were based, rather, on the contributions (and, to a lesser extent, on cash deposits maintained at the Bank as discussed below). As demonstrated above, DRIVE did provide the Bank with sufficient information including financial statements demonstrating DRIVE's actual record through the end of August, 2002, preceding the Loans' origination by just two months, of actual collected cash receipts from contributions.

The regulatory standard cited by FEC provides that where pledged future receipts are used to assure repayment, loan amounts must be based upon reasonable expectations that the pledged funds will be received and upon the borrower furnishing financial information that reasonably establishes that such funds will be available (emphasis added). The Bank submits that the historical financial information provided to it by DRIVE together with the Bank's successful prior lending relationship with DRIVE and its experience with the deposit balances maintained by DRIVE prior to making the Loans amply satisfied the regulatory standard. The information and documentation supplied by DRIVE, as well as the information the Bank had from holding DRIVE's Accounts, allowed the Bank to have a reasonable expectation that DRIVE would collect contributions that would enable it to repay the Loans according to their terms and, in fact, such was the case.

H. The Accounts Also Provided the Bank with Cash Collateral

In addition to being secured by DRIVE's cash receipts from pledges and contributions, the Loans were also secured by the cash maintained by DRIVE in its Accounts at the Bank. The Loan Documents evidence this. The Pledge Agreement provided the Bank with a valid, duly perfected security interest in and lien upon the NOW Account maintained by DRIVE at the Bank. Moreover, Sections 1(c) of both Notes and Section C of the Terms and Conditions section of the Notes provided the Bank with a lien upon, and right to set off against, any account (including both the NOW Account and the ZBA Account) maintained at the Bank by DRIVE to repay any and all amounts due under the Notes.

The Accounts provided additional collateral of substantial value to the Bank. As set forth on a spreadsheet prepared by the Bank comparing the balances on the Loans with the Accounts, on all but eleven (11) business days on which the Loans were outstanding, the aggregate value of the Accounts exceeded the balance of the Loans. A copy of the spreadsheet is attached to the Appendix as Exhibit N.

In support of FEC's conclusion that the loan was not secured, which the Bank disputes, FEC stated in Finding 1 that "DRIVE did not maintain any certificates of deposit and even though DRIVE maintained its checking accounts at the Bank, it appears that there were no holds or restrictions on the use of funds from these accounts."

The Bank respectfully disputes these findings and conclusions as follows. The Bank never contemplated that DRIVE would pledge a certificate of deposit as collateral. As stated above, the Accounts maintained by DRIVE at the Bank, and which were pledged to the Bank under the Pledge Agreement, constituted additional collateral to the Bank. However, the Bank was fully secured at all times by its security interest and lien on the other assets of DRIVE and the Revenues in particular.

FEC's concern with the apparent requirement that the Accounts be subject to a "block" must be considered in the proper context. As explained above, DRIVE used the Accounts in the ordinary course of its business. Neither the ordinary banking relationship between DRIVE and the Bank nor the specific terms of the Pledge Agreement contemplated or provided for the Accounts to be blocked in such a way as to deny DRIVE access to the funds contained therein. Such an arrangement would make no economic or practical sense in that DRIVE needed to and did draw on the funds in such Accounts to pay its operating expenses and make political donations as appropriate. Indeed, the proceeds of the Loans were deposited by the Bank into the NOW Account. It would make no sense for the Bank to make a loan to DRIVE and then deny DRIVE access to the funds as placed into the Accounts. Moreover, interest payments were made to the Bank by direct debits from the Now Account.

Rather, as is typical in standard commercial lending and banking arrangements, the Accounts provided additional collateral to the Bank for the Loans but were always subject to DRIVE's ability to use the funds in the Accounts absent DRIVE being in default of its obligations under the Loan Agreements, a circumstance that never occurred. While FEC quotes a portion of section 2(b) of the Pledge Agreement, further language from that provision must be considered:

> Unless an Event of Default occurs and is continuing, the Bank agrees to remit amounts deposited in the Account to the Borrower General Account in accordance with the terms specified in the Covenant Agreement . . .

The Covenant Agreement provides, at section 2(a)(ii), that

> The Borrower agrees that, upon receipt of all checks, drafts, cash and other remittances in payment or on account of the Collateral (collectively, the "payments" and individually, a "payment"), the Borrower will deposit the same in the Account, over which the Bank has sole dominion and control and the exclusive right of withdrawal (as more fully provided in the Deposit Account Pledge Agreement applicable thereto), for the purposes of repaying the Note under the terms specified in the Loan Documents, . . . Notwithstanding the foregoing, the Bank will, pursuant to the telephonic or written instructions of the Borrower, remit funds in the Account to the Borrower General Account, . . .

Indeed, the Bank placed a "hold" on the NOW Account in the amount of $500,000 but subject to the Bank's obligation to provide DRIVE with access to the funds in the Account absent DRIVE being in default under the Loan Documents. *See* Exhibit O to the Appendix, which contains a copy of a printout of the status of the Account indicating a hold for $500,000.

The Loan Documents did not require that DRIVE maintain a particular amount of cash in such Accounts. FEC's attention to this issue in the Finding is thus misplaced. Moreover, as demonstrated in Exhibit N, DRIVE did maintain a balance in the Accounts that exceeded the principal amount of the Loans for all time when the Loans were outstanding except for eleven (11) business days.

I. Prior Statements By DRIVE Should Be Discounted

It appears that some of FEC's concerns about the Loans arise from statements made by a representative of DRIVE. For example, FEC states that "[t]he DRIVE representative acknowledged that the collateral did not exist, with the exception of the bank deposits, which were not restricted." Such statements are not binding upon the Bank and cannot and should not be attributed or imputed to the Bank. Moreover, they are clearly inaccurate. As indicated above, the Loans were fully secured, DRIVE's Revenues including cash received from contributions provided more than ample collateral for the Loans and the Accounts were never intended to be restricted in such a way as to deny DRIVE access to them given that the Accounts constituted DRIVE's primary operating bank accounts.

FEC states that the DRIVE representative "indicated that the Bank is a 'labor bank' that is privately owned and is willing to extend credit to unions and their political action committees."

While it is literally true that the Bank is privately owned by a labor organization and its market includes unions and their PACs, no adverse implications or connotations should be inferred from this statement. As set forth above, the Bank is subject to examination, supervision and regulation by both the New York State Banking Department and the FDIC and has always engaged in lending activities in a safe and sound commercially prudent manner and in accordance with all applicable laws and regulations. As stated before, regardless of the Bank's ownership or heritage, it regards its obligation to conduct its business in a safe and sound and fully lawful manner as imperative. Indeed, the Loans have never been the subject of any particular inquiry by the Bank's regulators. In addition, while the equity ownership in the Bank is held privately, by a labor organization, the Bank has always been, and continues to be, operated as an independent entity pursuant to traditional commercial banking standards and banking regulations.

Moreover, FEC may have been concerned with a statement made by an employee of the Bank, in an earlier letter apparently sent to DRIVE and obtained by FEC, that the DRIVE Account balances always exceeded the outstanding balance of the Loans. This was not literally true and apparently resulted from such employee's failure to scrutinize carefully the daily balance information, but, as noted herein, the significance of such information is lessened by an understanding of the full context of the role of the Accounts in the lending relationship. The Bank apologizes for any misunderstanding.

CONCLUSION

For all of the reasons set forth herein, the Bank respectfully submits that the Office of the General Counsel should recommend to FEC that pre-probable cause conciliation be granted and that, in such phase, FEC agree to dismiss and discontinue MUR 5766. The Bank submits that it fully complied with the regulatory criteria such that FEC can and should conclude that the Loans were true loans and did not constitute a contribution under 2 U.S.C. § 441(b) and regulations. While the Bank believes that this conclusion can and should be reached based on the regulations that directly apply on their merits, the Bank asserts, in the alternative, that the matter also can and should be dismissed under the totality of circumstances criteria set forth in 11 C.F.R. § 100.7(b)(11)(A) and (B) (2002). The Bank fully reserves all of its rights, claims, defenses, arguments and remedies.

Very truly yours,

Howard B. Kleinberg

HBK:mm
cc: Lawrence D. Fruchtman, Esq.

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