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FIRST GENERAL COUNSEL'S REPORT

DOJ REFERRAL: Pre-MUR 487
DATE REFERRED: May 20, 2009
DATE OF NOTIFICATION: August 18, 2009
DATE OF LAST RESPONSE: September 1, 2009
DATE ACTIVATED: June 10, 2009

EXPIRATION OF SOL: April 14, 2009 to
September 13, 2013

SOURCE:

RESPONDENT:

Norman Hsu

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 441a
2 U.S.C. § 441b
2 U.S.C. § 441f
11 C.F.R. § 110.4(b)(1)(iii)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED:

I. INTRODUCTION

On May 19, 2009, Norman Hsu ("Respondent") was found guilty of four counts of knowingly and willfully violating the Federal Election Campaign Act of 1971, as amended, ("the Act") by making contributions in the names of others totaling almost \$140,000 to various political committees. 2 U.S.C. § 441f. Hsu previously pled guilty to five counts of mail fraud and five counts of wire fraud related to a fraudulent investment scheme. On September 29, 2009, Hsu was sentenced to more than 24 years in prison for all charges.

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For the reasons set forth below, we recommend that the Commission exercise its prosecutorial discretion and decline to open a matter under review as to all potential Respondents and close the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

On May 7, 2009, Norman Hsu pled guilty to five counts of mail fraud and five counts of wire fraud stemming from his role in an investment fraud scheme that defrauded numerous investors. Department of Justice, United States Attorney, Southern District of NY Press Release, *Norman Hsu Pleads Guilty to Investment Fraud*, May 7, 2009. Hsu was the managing director of two companies – Components, Ltd. and Next Components, Ltd. – which claimed to provide investment programs that extended short-term financing to businesses. *Id.* Hsu recruited victims by promising guaranteed short-term high returns on their investments. *Id.* In reality, the companies were vehicles for Hsu's "Ponzi" scheme, and money returned to earlier investors was paid with money received from subsequent investors. *Id.* From 2000 through August 2007, Hsu convinced his victims to invest at least \$60 million in his fraudulent scheme and defrauded his victims out of at least \$20 million.¹ *Id.* Hsu was sentenced to 240 months in prison for his convictions for mail and wire fraud.

In addition to pleading guilty to counts of mail and wire fraud, Hsu was tried and convicted of violating 2 U.S.C. § 441f by making contributions to various Federal political

¹ Specific details regarding Hsu's "Ponzi" scheme were obtained through publicly available information, including charging documents, press releases issued by DOJ, and statements from Hsu's guilty plea proceedings, as well as background information presented at the criminal trial for Hsu's violations of the Act.

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1 committees in the names of others. Department of Justice, United States Attorney, Southern
2 District of NY, Press Release, *Norman Hsu Found Guilty of Violating the Federal Election*
3 *Campaign Act*, May 19, 2009. Specifically, in 2004, Hsu asked individuals to make
4 contributions to Federal campaign committees totaling more than \$6,000; in 2005, more than
5 \$38,000; in 2006, more than \$50,000; and in 2007, more than \$43,000.² Transcript of Criminal
6 Trial, 07 Cr. 1066(VM), (May 12, 2009). Hsu then reimbursed the individuals for the
7 contributions. Evidence from Hsu's criminal trial indicated that Hsu made direct and implied
8 threats to the conduits, leading them to believe that if they did not make these contributions, their
9 ongoing investment relationship with Hsu would be adversely affected.³ *Id.* In all of the
10 instances where Hsu requested that the conduits contribute to political committees, Hsu
11 specifically named which candidates would receive the contributions. *Id.* One of the conduits
12 gave Hsu access to her credit card for the purpose of making contributions. *Id.* at 179-180. Hsu
13 later reimbursed her by check so that she could pay the credit card bill. *Id.* at 199.

14 In all, Hsu utilized five conduits to contribute almost \$140,000 to various candidate
15 committees. *Id.* Each of the conduits cooperated with the DOJ in the criminal investigation and
16 prosecution in exchange for immunity from criminal prosecution. *Id.* On May 19, 2009, Hsu
17 was found guilty of violating 2 U.S.C. § 441f by making contributions to political committees in
18 the names of others. Press Release, May 19, 2009. Hsu was sentenced to 52 months in prison, to

² The activity from 2004 is now outside of the statute of limitations period. Further, the statute of limitations period for 2005 activity begins to expire in January 2010.

³ It appears that in an effort to raise his public profile and thereby convince more victims to invest in his fraudulent scheme, Hsu also pressured his "Ponzi" scheme victims to individually make unreimbursed contributions to various Federal candidates. Department of Justice, United States Attorney, Southern District of NY, Press Release, *Manhattan U.S. Attorney Indicts Norman Hsu for Massive Fraud Scheme*, December 4, 2007.

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1 be served consecutively to his 240 month sentence, for his violations.⁴ Department of Justice,
2 United States Attorney, Southern District of NY, Press Release, *Former Political Fundraiser*
3 *Norman Hsu Sentenced*, September 29, 2009.

4 On August 18, 2009, we sent a pre-RTB notification letter to Hsu advising him of the
5 Commission's intention to consider enforcement action in relation to his violations of the Act.
6 On September 1, 2009, we received a letter from Hsu in which he acknowledged that he was
7 convicted of "campaign contribution violation[s]" in a criminal trial and is awaiting sentencing.
8 He claimed that he is indigent and requested that the Commission provide counsel to assist in
9 responding to the pre-RTB notification. At this time, we have not received any additional
10 response to the pre-RTB notification.⁵

11 **B. Contributions in the Name of Another**

12 The Act prohibits any person from making or accepting a contribution in the name of
13 another person. See 2 U.S.C. § 441f. Likewise, persons are prohibited from knowingly

⁴ Specific details regarding Hsu's reimbursement scheme were obtained through publicly available information, including charging documents and press releases from DOJ. In addition, we utilized the trial transcript and related exhibits for information regarding violations of the Act.

⁵ Hsu also requested an extension of time to file additional materials in response to the notification until after he was sentenced. Given our recommendation that the Commission decline to open a MUR, we did not wait for Hsu's additional response to the pre-RTB notification before making our recommendations. If the Commission were to determine that it is appropriate to proceed against Hsu, we will consider any additional materials submitted by Hsu when making future recommendations.

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1 permitting their names to be used to effect contributions made in the name of another person and
2 from knowingly assisting in making such contributions. *See id.*; 11 C.F.R. § 110.4(b)(1)(iii).⁶

3 Evidence from Hsu's criminal trial indicates that Hsu, after reaching his own contribution
4 limits for specific candidates, utilized conduits to make additional contributions to Federal
5 candidates and committees totaling almost \$140,000. Trial Transcript. The conduits in this
6 matter testified at Hsu's criminal trial that Hsu reimbursed them for the contributions, in
7 violation of 2 U.S.C. § 441f. *Id.*

8 Moreover, it appears that Hsu's conduct may have been knowing and willful. The
9 knowing and willful standard requires knowledge that one is violating the law. *See Federal*
10 *Election Commission v. John A. Dramez for Congress Committee*, 640 F. Supp. 985, 987 (D.
11 N.J. 1986). A knowing and willful violation may be established "by proof that the defendant
12 acted deliberately and with knowledge that the representation was false." *United States v.*
13 *Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful act may be
14 drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.* at 214-215.

15 In this matter, testimony from the criminal trial established that Hsu had knowledge of
16 individual campaign contribution limitations, and on more than one occasion, he discussed these

⁶ On June 8, 2009, a federal district court judge in California dismissed criminal charges that Pierce O'Donnell violated section 441f by reimbursing conduit contributions to the 2004 presidential campaign of Senator John Edwards, ruling in part that Congress did not intend that provision to outlaw indirect contributions made through conduits. *U.S. v. O'Donnell*, C.D. Cal., Criminal No. 08-872. However, the *O'Donnell* court's order is unlikely to be upheld on appeal because (1) it mistakenly assumes Section 441f prohibits all conduit contributions, including those reported under Section 441a(a)(1); (2) its analysis that the statutory construction of Section 441f is inconsistent with other provisions of the Act that explicitly identify "direct or indirect" contributions fails to realize that all "contributions in the name of another" are inherently indirect; and (3) it mischaracterizes the legislative history to support the conclusion that Section 441f does not prohibit the reimbursement of conduit contributions. *See* MUR 5818 (Feiger) General Counsel's Report #2 at 15;

| On September 23, 2009, the Commission filed an amicus curiae brief urging the Ninth Circuit to reverse the *O'Donnell* decision. *See* MUR 5504 (Karoly) and MUR 5818 (Feiger) (recent Commission matters involving Section 441f violations).

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1 limits with both reimbursed and unreimbursed contributors. Trial Transcript at 67. For example,
2 an investor testified at trial that Hsu asked him to make a contribution to a campaign because
3 Hsu himself had reached his contribution limit. *Id.* at 452-456. The witness also testified that
4 Hsu acknowledged to him that reimbursed contributions are illegal, but indicated that the witness
5 would be able to continue his investments with Hsu if he contributed to certain political
6 committees. *Id.* In another instance, Hsu convinced one of the conduits to give him access to
7 her credit card in order to make contributions. *Id.* at 179. Finally, the mere fact that Hsu sought
8 out conduits and apparently used coercion to make what would have been excessive
9 contributions suggests that his actions were knowing and willful. *See, e.g.,* MUR 5666 (MZM)
10 (coercing employees to make contributions which were reimbursed); *see also* MUR 5389 (Jose
11 Casal) (the Commission found reason to believe the actions of a foreign national who sought out
12 conduits to make prohibited contributions were knowing and willful).

13 In addition to potential liability for knowingly and willfully making contributions in the
14 name of another, Hsu's companies, and Hsu as an officer, may have violated the Act's
15 prohibitions on corporate contributions or, alternatively, violated the Act's contribution
16 limitations. *See* 2 U.S.C. §§ 441a and 441b(a).⁷ It appears that Hsu reimbursed at least some of
17 the contributors from company accounts. In fact, one of the conduit donors testified that in some
18 instances, Hsu would reimburse the contributions with the same check that he used to pay profits
19 on the investments. Trial Transcript at 198 and 453. However, the companies were organized
20 and managed by Hsu strictly as fronts for the "Ponzi" scheme. *Id.* After the collapse of the

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1 scheme and the resulting criminal charges, the companies are defunct. *Id.* We are therefore
2 making no recommendations regarding corporate or excessive contributions as to the companies,
3 nor are we recommending that we pursue Hsu, the only officer of the companies, for potential
4 violations of the Act in his capacity as officer.

5 Despite clear evidence that Hsu knowingly and willfully violated the Act, we do not
6 believe that it would be a prudent use of Commission resources to pursue this matter. First, it
7 appears that Hsu is indigent and would be unable to pay a civil penalty related to his violations.
8 After Hsu was indicted for mail and wire fraud, DOJ sought forfeiture of all property obtained as
9 a result of his offenses. In addition, several victims of the "Ponzi" scheme have obtained civil
10 judgments against Hsu, one of which is for more than \$28 million. Finally, Hsu has been
11 sentenced to more than 24 years in prison for his crimes. Therefore, we recommend that the
12 Commission exercise its prosecutorial discretion and decline to open a matter under review as to
13 Hsu.

14 **C. Conduits**

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1 _____ However, in other recent matters, the Commission has taken no further action
2 against conduits after opening an investigation when those conduits have not been in a position
3 of authority or were not elected officials. See MUR 5871 (Noe). _____

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7 Hsu suggested that if they were to refuse to cooperate in the reimbursement scheme, they would
8 be excluded from future investment opportunities. _____

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19 In light of this information, and because we are recommending that the Commission take
20 no action as to Hsu, the central figure in the reimbursement scheme, we believe it is appropriate
21 in this instance not to proceed as to the conduits. Accordingly, we believe that the Commission
22 should exercise its prosecutorial discretion and decline to open a matter under review as to all
23 conduits, known and unknown.

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III. RECOMMENDATIONS

1. Decline to Open a Matter Under Review;
2. Approve the appropriate letter; and
3. Close the File.

Thomasenia P. Duncan
General Counsel

October 8, 2009
Date

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