FEDERAL ELECTION COMMISSION
Washington, DC 20463

Stefan Passantino, Esq.
Dentons US LLP
1900 K Street NW
Washington, DC 20006

JUL - 8 2016

RE: MUR 6823
Mississippi Conservatives
Brian Perry, Treasurer

Dear Mr. Passantino:

On May 22, 2014, the Federal Election Commission ("Commission") notified your clients Mississippi Conservatives and Brian Perry in his official capacity as treasurer ("Respondents") of a complaint alleging that Respondents violated the Federal Election Campaign Act of 1971, as amended ("Act"), and provided Respondents with a copy of that complaint. After reviewing the allegations in the complaint, your clients' response, and publicly available information, the Commission, on June 27, 2016, found reason to believe that Respondents violated 52 U.S.C. § 30104(b), but found no reason to believe that Respondents violated 52 U.S.C. § 30118(a). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that Respondents have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless Respondents notify the Commission in writing that they wish the matter to be made public. Please be advised that although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.[1]

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter, prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering as a way to resolve this matter at an early stage and without briefing the issue of whether the Commission should find probable cause to believe that Respondents violated the law.

[1] The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

If your clients are interested in engaging in pre-probable cause conciliation, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receiving this letter. During conciliation, Respondents may submit any materials that they believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

On behalf of the Commission,

Matthew S. Petersen
Chair

Enclosures
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3

4 RESPONDENT:)
5)
6 Mississippi Conservatives) MUR: 6823
7 and Brian Perry in his official capacity as treasurer)
8)
9

10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission by
12 Tea Party Patriots Fund and its Chair, Jenny Beth Martin. *See* 52 U.S.C. § 30109(a)(1)
13 (formerly 2 U.S.C. § 437g(a)(1)). The Complaint, as amended, alleges that Mississippi
14 Conservatives and Brian Perry in his official capacity as treasurer (collectively, "MC") violated
15 the Act by: (1) not disclosing that a person made a contribution to MC by pledging a certificate
16 of deposit ("CD") worth approximately $250,543 as collateral for a $250,150 loan from
17 Trustmark National Bank ("Trustmark") to MC; and (2) by failing to disclose the identity of the
18 contributor and other loan details in reports filed with the Commission. The Amended
19 Complaint also alleges that MC received a prohibited national bank contribution when Trustmark
20 loaned $250,150 to MC without having a secured interest in the collateral for the loan.
21 The Commission finds no reason to believe that MC received a prohibited contribution
22 from Trustmark because the totality of the circumstances indicates that Trustmark was assured of
23 repayment when it made the loan. The Commission finds reason to believe that MC violated the
24 disclosure requirements of the Act and the Commission's regulations because the pledge of the
25 CD was a contribution, MC did not identify the contributor and now denies that it must, and MC
26 made repeated inaccurate representations regarding the loan on its reports.

II. BACKGROUND

MC, which registered with the Commission on January 15, 2014, is an independent-expenditure-only committee supporting multiple candidates, including Sen. Thad Cochran (Miss.), who was a candidate in the June 3, 2014, Republican Senatorial primary. MC Resp. at 2; MC Statement of Organization at 1-2. Brian Perry is the treasurer of MC and its sole director. Through October 15, 2014, MC had raised $3,357,903.00 and disbursed $3,020,285.90. MC Pre-General Report at 2 (Oct. 23, 2014). MC engaged in less activity after the primary election; since July 1, 2014, MC disclosed receipts of $390,250, disbursements of $84,901.35, and cash on hand of $337,617.10. *Id.*; Oct. Quarterly Rpt. at 2 (Oct. 15, 2014). MC's depository is Trustmark, MC Statement of Organization at 4 (Jan. 14, 2014), a nationally-chartered bank headquartered in Jackson, Mississippi. Harry M. Walker is Trustmark's Regional President of Central Mississippi.

A. Trustmark Loans $250,150 to MC and Takes a Security Interest in an Undisclosed Person's CD as Collateral

Information available to the Commission indicates that on September 3, 2013, Trustmark created a $250,000 CD with a nine-month term for an unidentified customer. Sometime before January 29, 2014, MC asked this unidentified customer to provide collateral for a loan from Trustmark to MC. Further, Walker received a request for Trustmark to loan $250,000 to MC to be secured by the undisclosed depositor's CD, which by that time was worth $250,543.74. Walker directed Jeremy Bond, a Vice President and Branch Manager at Trustmark's Jackson, Mississippi, main office, to prepare the loan paperwork and process the loan. Walker dictated the terms of the loan to Bond, including the interest rate, amount, and maturity date.

Information available to the Commission further indicates that in addition to the loan documents to be signed by MC, the loan paperwork included an Assignment of Deposit Account

("Assignment"), by which the unknown person would pledge the CD as collateral for Trustmark's loan to MC. The Assignment provides that it grants Trustmark "a security interest" in the CD "to secure" MC's debt to Trustmark, and describes Trustmark as a secured creditor under Mississippi law.[1]

The available information also indicates that on January 29, 2014, MC's Brian Perry met with Bond to execute the loan documents and Trustmark disbursed $250,000 to MC.[2] MC used the loan funds for a $219,540 independent expenditure it made two days later for communications opposing candidate Chris McDaniel, Sen. Cochran's opponent in the primary. Compl. at 4; MC Independent Expenditure Rpt. (January 31, 2014) (disclosing that an expenditure was made or obligation incurred on January 31, 2014, for communications opposing McDaniel); MC Amended Apr. Quarterly Rpt. at 17 (May 17, 2014) (describing MC's receipt of $250,150 in loan funds from Trustmark as "IE Loan"); *id.* at 2, 6, 11, 13 (May 17, 2014) (disclosing no cash on hand at the start of the reporting period and the receipt of a total of four itemized contributions before January 31, 2014, totaling $160,000).

Trustmark, however, did not receive the signed Assignment from the CD's owner until February 5—one week *after* it had disbursed the loan proceeds to MC.[3] There is information in

[1] Under the Assignment, Trustmark had the power to take all funds in the CD and apply them to the loan if MC defaulted. The Assignment also established that: Trustmark possessed the CD; in the event of MC's default on its loan, Trustmark could transfer title to all or part of the CD; the CD's owner, designated the "grantor", "irrevocably appoint[ed] [Trustmark] as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor (and each of them if more than one) as shall be necessary or reasonable"; and Trustmark enjoyed the rights and remedies of a "secured creditor." The CD's owner was also prohibited from transferring or encumbering the CD.

[2] The Promissory Note, dated January 29 and signed by Perry, specifies that the loan principal was $250,150, it had a maturity date of June 3, 2014, and the annualized interest rate was 2.650%. The Boarding Data Sheet indicates that the loan had a 2.864 % interest rate. The two rates were calculated using different formulas and the extra $150 of the loan principal in the promissory note was for a processing fee.

[3] The Assignment bears a pre-printed date of January 29, the date Bond generated the loan documents and the date that Perry met with Bond to sign them. It bears Perry's signature below the CD owner's signature, which Trustmark obscured.

the record before the Commission indicating that it is not unusual for a bank to close on a loan without the complete set of signed loan documentation when, as here, there is an existing banking relationship with the individual whose signature is requested, where the individual has committed to sign the paperwork, and where there is no reason to believe that the paperwork will not be signed.

B. MC Inaccurately Discloses the Trustmark Loan

On April 15, 2014, MC filed its first quarterly report disclosing the Trustmark loan, which contained a number of errors and omissions. MC Apr. Quarterly Rpt. at 26. Committees must disclose details about their loans on FEC Schedule C-1 and answer certain questions about these loans. The Schedule C-1 regarding the Trustmark loan inaccurately reported that a CD had *not* been pledged as collateral for the loan, and it erroneously listed the value of the collateral for the loan as "$0.00." *Id.* MC also reported that no other parties were secondarily liable for the loan. *Id.* The form Schedule also asked if the Committee had pledged its future receipts as collateral, and MC correctly responded "No." The Schedule also asked, "If neither of the types of collateral described above was pledged for this loan, or if the amount pledged does not equal or exceed the loan amount, state the basis upon which this loan was made and the basis on which it assures repayment." MC did not answer this question, nor did it attach the loan agreement, as the Schedule directs.

The Schedule C-1 includes both Perry's electronic signature as MC's treasurer as well as what purports to be Walker's electronically-signed certification, on behalf of Trustmark, that the disclosures on the Schedule were accurate, Trustmark was aware that loans had to be made on a

basis that assures repayment, and the loan complied with the requirements set forth at 11 C.F.R. §§ 100.82 and 100.142.[4]

MC filed an April 30, 2014, Miscellaneous Report that attached some of the loan documents: the Promissory Note, the Board Resolution, and the Errors and Omissions Agreement. MC did not, however, attach the Assignment, the document indicating that it did not own the pledged CD. MC asserts that "the existence of this certificate of deposit as collateral was clearly established" in the Promissory Note. MC Resp. at 11. Indeed, the Promissory Note states that the collateral for the loan was "certificates of deposit described in an Assignment of Deposit Account dated January 29, 2014." Even so, the documents MC disclosed do not indicate that a third party owned the CD, and MC's Schedule C-1 erroneously states that there was *no* collateral and no secondarily liable party. Trustmark certified these inaccurate representations as true.

On May 12, 2014, MC filed an amended April Quarterly Report, which repeated the misstatements that a CD had not been pledged as collateral, the value of the collateral was $0.00, Trustmark did not have a secured interest in the collateral, and there were no secondarily liable parties. MC continued to leave blank the space provided to explain how the loan's repayment was assured if the loan was not secured by collateral or future receipts. MC Amended Apr. Quarterly Rpt. at 26 (May 12, 2014). It also continued to represent that Trustmark had certified the accuracy of the information on the form and the loan's compliance with the Commission's regulations. *Id.*

[4] This Schedule C-1, bearing what purports to be Walker's electronic signature and filed by MC with its original April Quarterly Report, is dated January 29, 2014 – the date that Trustmark disbursed the loan funds to MC. About two weeks later, MC submitted, as part of a Miscellaneous Report, the original Schedule C-1 hand-signed by Walker, which was also dated January 29. *See* MC Miscellaneous Rpt. at 1 (Apr. 30, 2014). The record evidence includes information that Walker was not given the C-1 to sign until April 15.

On May 15, 2014, the Complainant filed the original Complaint, which relied on the Schedule C-1 in MC's April Quarterly Report stating that there was no collateral for the loan. The Complaint alleged that Trustmark made a prohibited national bank contribution to MC because its loan to MC violated the Commission's regulations at 11 C.F.R. § 100.82, which require a lender to have an assurance of repayment. Compl. at 4-7.

Two days later, MC filed its Second Amended April Quarterly Report on which it checked "Yes" in response to the question asking if the loan was collateralized by any one of various types of security, including a certificate of deposit. MC Second Amended Apr. Quarterly Rpt. at 26 (May 17, 2014). In response to the form's direction, "If yes, specify," MC wrote "Certificate of Deposit." *Id.* MC claims that this Amended Report established that its loan was secured by the undisclosed person's CD. MC Resp. at 11. But MC neither disclosed that it did not own the CD that secured the loan, nor did MC provide the loan document that showed that another party owned the CD, much less identify the owner of the CD. MC stated in response to another question on the form that Trustmark had a perfected security interest in the collateral, but it continued to state that no other party was secondarily liable for Trustmark's loan to MC.[5] MC Second Amended April Quarterly Rpt. at 26 (May 17, 2014).

The Amended Complaint, filed on May 19, alleges that the as-yet-unidentified owner of the pledged CD is an undisclosed contributor to MC, and MC violated the Act's reporting requirements by not disclosing this contributor's identity. Amended Compl. at 5-8. It also alleged that Trustmark violated the Commission's regulations because it lacked a perfected security interest in the CD serving as collateral for the loan. *Id.* at 5.

[5] This Amended Report also purported to bear Walker's electronic signature on the amended form's certification. But there is evidence in the record that never consulted Walker prior to amending and filing the reports that continued to bear his electronic signature certifying their accuracy.

MC repaid the loan by May 30, 2014, a few days short of its June 3 maturity date. To date, MC has not identified the owner of the pledged CD.

As to MC's alleged failure to disclose the identity of the person who pledged collateral for the loan, MC contends that it need not do so. MC Resp. at 13-19 (asserting that Commission regulations require only the disclosure of "guarantors" and "endorsers," thus, "[n]othing in federal campaign finance law provide[s] a reasonable basis upon which to assert that the provider of a certificate of deposit collateralizing a loan is automatically a guarantor or endorser of that loan"). As to MC's receipt of an allegedly prohibited contribution when Trustmark made the loan to MC, Trustmark responds that the loan was not a contribution because the loan complied with the Act and the Commission's regulations. MC Resp. at 8-13.

III. ANALYSIS

A. Trustmark's Loan Was Not a Contribution to MC Because Trustmark Was Assured that It Would be Repaid

The Amended Complaint alleges that MC received a prohibited contribution from Trustmark when Trustmark loaned it $250,150 without having a perfected security interest in the CD later pledged as collateral. Amend. Compl. at 5.

The Act prohibits national banks from making contributions and prohibits political committees from knowingly receiving them. 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)). Contributions include "loans" or "anything of value" made for the purpose of influencing an election, 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)), but do not include bank loans made in the ordinary course of business "on a basis which assures repayment," that are "evidenced by a written instrument and subject to a due date or amortization schedule," and which are made at a usual and customary interest rate for the lender for the category of loan involved. 52 U.S.C. § 30101(8)(B)(vii) (formerly 2 U.S.C. § 431(8)(B)(vii));

see also 11 C.F.R. § 100.82(a) (a bank loan is not a contribution if it has those characteristics). The record establishes that the loan was made through a written instrument with a due date. Further, there is no allegation or information in the record suggesting that the interest rate (2.86%) on the loan was not Trustmark's usual and customary rate applicable to a loan backed by collateral on deposit equal in value to the loan.

The Complaint alleges, however, that Trustmark's loan to MC was not made on a basis that assures repayment because there was no collateral for the loan, Compl. at 6, or, alternatively, Trustmark did not have a perfected security interest in the loan. Amended Compl. at 4-5. For a loan to be considered "made on a basis that assures repayment," the Commission's regulations require that the lender (a) "has perfected a security interest in collateral *owned by the candidate or political committee receiving the loan*"; (b) that "the fair market value of the collateral is equal to or greater than the loan amount and any senior liens as determined on the date of the loan"; and (c) "the political committee provides *documentation* to show that the lending institution has a perfected security interest in the collateral." 11 C.F.R. § 100.82(e)(1)(i) (emphasis added).

The transaction between Trustmark and MC clearly did not meet the section 100.82(e)(1)(i)(a) criterion because MC did not own the collateral for the loan.[6] If, as in this matter, a loan does not meet the requirements in 100.82(e), "the Commission will consider the totality of the circumstances on a case-by-case basis in determining whether a loan was made on

[6] Further, it is questionable whether the loan satisfied 100.82(e)(1)(i)(c) because Trustmark did not receive the signed documentation pledging the CD as collateral for the loan until seven days after it disbursed the loan funds to MC. Trustmark instead relied on a *verbal* pledge from the CD's owner to provide collateral for the loan until the bank received the Assignment, which one of Trustmark's affiants asserted was not unusual. Bond Aff. ¶ 12. (Upon its later receipt of the Assignment, Trustmark obtained a perfected security interest under Mississippi law in the CD because it was both pledged as collateral and on deposit with Trustmark. *See* Miss. Code Ann. 75-9-314; Trustmark Resp. at 8.)

a basis that assures repayment." 11 C.F.R. § 100.82(e)(3).[7] In past matters, the Commission has concluded that a bank loan did not constitute a prohibited contribution under the totality of the circumstances when the bank made the loan while intending that it would be assured of repayment. *See* General Counsel's Rpt. No. 2 at 3-8, MUR 5496 (Huffman) (loan that was not secured by collateral for a period of 90 days nonetheless was assured of repayment under the totality of the circumstances because the bank intended that repayment be assured where, *inter alia*, the candidate verbally pledged to use retirement savings to repay the loan); First General Counsel's Rpt. at 5-10, MUR 5262 (Second National Bank) (under the totality of the circumstances, bank intended to assure repayment of the loan and therefore did not make a prohibited contribution where it required a cosigner, and the cosigner had a suitable credit history and relationship with the bank).

The available information indicates that Trustmark was assured of repayment when it made the loan to MC. Trustmark prepared the Assignment at the same time that it prepared the remainder of the loan documents, obtained a verbal pledge that a CD on deposit with Trustmark worth approximately the same as the loan principal would serve as the loan's collateral, and received the executed Assignment from the CD's owner one week after the loan was made.

Consequently, the Commission finds no reason to believe that Mississippi Conservatives and Brian Perry in his official capacity as treasurer received a prohibited contribution from Trustmark in violation of Section 30118(a) (formerly 441b(a)).

[7] *See also* Factual and Legal Analysis at 2-7, MUR 5766 (Amalgamated Bank) (Commission took no further action after investigation revealed that bank loan that failed to meet regulation's requirements was nevertheless made on a basis assuring repayment under the totality of the circumstances); General Counsel's Rpt. No. 2 at 4-10, MUR 5685 (BancorpSouth Bank) (same); General Counsel's Rpt. No. 4 at 10-16, MUR 5652 (First Bank) (same); First General Counsel's Report at 20-25, MUR 5381 (Bishop) (bank assured of repayment for candidate's line of credit under the totality of the circumstances).

B. MC Reporting Violations

1. The Pledged CD was an In-Kind Contribution, which MC Received and Did Not Disclose

All political committees, including those like MC, must disclose the contributions they receive, including the identity of any person who makes over $200 in contributions within a calendar year, together with the date and amount of any such contribution. 52 U.S.C. § 30104(b)(2), (3) (formerly 2 U.S.C. § 434(b)(2), (3); *see also SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*) (independent-expenditure-only political committee may be required to comply with the Act's contribution disclosure requirements); Advisory Op. 2010-11 (Commonsense Ten) (proposed independent-expenditure-only committee would comply with the Act's disclosure requirements if, among other things, it disclosed its contributors). A contribution includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.52(a) (same). "[T]he term *loan* includes a guarantee, endorsement, and any other form of security." 11 C.F.R. § 100.52(b) (emphasis in original); *see also id.* § 100.52(d)(1) (provision of a security is an in-kind contribution). Although neither the Act nor the regulations defines the word "security," the term is universally understood to mean "[c]ollateral given or pledged to guarantee the fulfillment of an obligation; esp., the assurance that a creditor will be repaid . . . any money or credit extended to a debtor." BLACK'S LAW DICTIONARY, 1476-1477 (9th ed. 2009).

Given these basic tenets, it follows that a person who pledges property as collateral for a bank's loan to a committee or candidate makes an in-kind contribution. For example, when a candidate secures a loan that is used for the candidate's campaign through the use of collateral the candidate jointly owns with a spouse, that spouse will be considered a contributor if the

amount of the loan exceeds the value of the candidate's ownership share of the collateral. 11 C.F.R. § 100.52(b)(4); General Counsel's Rpt. No. 2 at 1-2, 4-7, MUR 5421 (John Kerry for President) (loan to candidate secured by $12.8 million house that candidate and spouse jointly owned would have constituted a contribution from the spouse if loan amount exceeded $6.4 million, the value of the candidate's ownership share of the house, but it did not); Certification, MUR 5421 (Dec. 12, 2005); Conciliation Agreement at ¶ 14, MUR 5685 (Joe Turnham for Congress) (individual's provision of real estate and stock to serve as collateral for bank loan to candidate constituted a contribution from the owner of the collateral to the candidate); *cf.* Conciliation Agreement at ¶¶ IV.8-12, V.1, MUR 5453 (Trovato) (respondent made a contribution to candidate when he loaned candidate $300,000 to create a certificate of deposit for use as collateral for loan to candidate).

Similarly, the Commission's bank loan exception to the definition of "contribution" provides, among other criteria, that loans secured by "collateral *owned by the candidate or committee* receiving the loan" are not contributions. 11 C.F.R. § 100.82(e)(1)(i) (emphasis added). Thus, if the borrower does not own the collateral for the loan, other issues — such as contribution limits, prohibitions, and disclosure requirements — may be implicated. To illustrate this point, 11 C.F.R. § 100.82(e)(1)(ii) provides that loan "[a]mounts guaranteed by secondary sources of repayment, *such as* guarantors and cosigners, shall not exceed the contribution limits of 11 CFR part 110 or contravene the prohibitions of 11 CFR 110.4, 110.20, part 114 and part 115." (emphasis added). *See also* 11 C.F.R. § 100.52(b)(3) (endorsers and guarantors "shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement").[8]

[8] We do not need to address Respondents' contention that the contributor did not qualify as either a guarantor or endorser, as Respondents understand those terms, because the disclosure obligations under the Act and

The facts and law are clear. MC asked an individual to provide collateral to secure Trustmark's $250,150 loan to MC. The individual executed an agreement with Trustmark providing that his or her CD would serve as collateral for the loan and be used to pay MC's loan if MC defaulted. As explained above, third-party pledges of collateral for loans to political committees are contributions. Because MC requested and knowingly received this valuable security in order to get its loan, it was an in-kind contribution from the individual to MC. As such, the Act required MC to disclose the identity of the contributor, the date of the contribution, and the amount of the contribution, and it did not.

MC argues that MC does not have to disclose the contributor's name because that person was not a "guarantor" or "endorser." MC Resp. at 18-19. This argument essentially ignores the Act's expansive definition of "contribution" to mean "anything of value," including "loans," as well as the Commission's regulations at section 100.52(b) expressly stating that the provision of a security is a "loan" and the statement in section 100.52(d)(1) that provision of a security is a thing of value, thus, an in-kind contribution.

Consequently, the Commission finds reason to believe that Mississippi Conservatives and Brian Perry in his official capacity as treasurer violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).

2. MC Inaccurately Disclosed Other Information About Trustmark's Loan

Additionally, MC was required to disclose, *inter alia,* "the types and value of traditional collateral or other sources of repayment that secure the loan . . . whether that security interest is perfected" and "[a]n explanation of the basis upon which the loan was made . . . if not made on the basis of either traditional collateral or the other sources of repayment described in 11 C.F.R.

Commission regulations are not limited to only those specific subsets of persons who otherwise provide security for a loan to a political committee. The particular requirements of disclosing in-kind contributions are addressed in 11 C.F.R. § 104.13.

100.82(e)(1) and (2) and 100.142(e)(1) and (2)." 11 C.F.R. 104.3(d)(1)(iv). As explained above, MC was also required to submit an appropriate certification from Trustmark regarding the loan. 11 C.F.R. § 104.3(d)(1)(v).

MC repeatedly violated these regulations by failing to disclose that the loan was secured by collateral and concealing the CD owner's identity. And by failing to reveal the CD's existence for a time, MC obviously failed to disclose that Trustmark had a perfected security interest in it. Additionally, Complainant also alleges that MC violated the Commission's regulations by providing incorrect bank certifications, including the untrue representations in its amended reports that Walker had certified all of the statements in them. MC submitted Amended 2014 April Quarterly Reports with Schedule C-1s that appeared to contain Walker's certification of the inaccurate statements in that report. Amended Compl. at 7, 9.

The Commission's regulations at 11 C.F.R. § 104.3(d)(1)(v) require committees borrowing funds to submit a certification from the lending institution that (1) the borrower's statements on the Schedule C-1 are accurate, to the best of the lender's knowledge; (2) the loan or line of credit was made or established on terms and conditions no more favorable at the time than those imposed for similar credit granted to borrowers of comparable credit worthiness, and (3) the institution is aware of the requirement for terms which assure repayment and the bank has complied with 11 C.F.R. § 100.82 and 100.142.[9] *See* 11 C.F.R. § 104.3(d)(1)(v); AO 1994-26 at 4 (Scott Douglass Cunningham Campaign Committee). As the Commission explained when it promulgated these regulations, in addition to helping banks avoid making prohibited

[9] Schedule C-1 accordingly states that by signing the form, the lending institution is certifying that "To the best of this institution's knowledge, the terms of the loan and other information regarding the extension of the loan are accurate as stated" on the form, the loan was made on terms "no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness," and that "This institution is aware of the requirement that a loan must be made on a basis which assures repayment, and [the lender] has complied with the requirements set forth at 11 CFR 100.82 and 100.142 in making this loan."

contributions, these lender certifications serve an important and public role by ensuring the reliability of committee loan disclosures based on information exclusively in the possession of the banks. *See Loans from Lending Institutions to Candidates and Political Committees*, 56 Fed. Reg. 67,118, 67,122. (Dec. 27, 1991) ("Explanation and Justification").

The information on the Schedule C-1 was not accurate despite Walker's certification that it was. The record includes information that Walker focused on the statements on the schedule regarding the loan amount and interest rate, but not the other statements, apparently believing MC was "versed in FEC regulations" and assuming that the other statements on the form were accurate. The available information indicates that Walker took a number of MC's representations at face value and did not independently verify them. It also appears that MC applied Walker's electronic signature to its amended reports without Walker's knowledge. Consequently, the Commission finds reason to believe that Mississippi Conservatives and Brian Perry in his official capacity as treasurer violated 11 C.F.R. §§ 104.3(d)(1)(iv)-(v).

IV. CONCLUSION

The Commission finds no reason to believe that Mississippi Conservatives and Brian Perry in his official capacity as treasurer received a prohibited contribution from Trustmark in violation of Section 30116(f) (formerly 441a(f)). The Commission finds reason to believe that Mississippi Conservatives and Brian Perry in his official capacity as treasurer violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) and 11 C.F.R. §§ 104.3(d)(1)(iv)-(v).