

525 SEVENTH STREET, NW WASHINGTON, DC 20004  
T 202 341 4000 F 202 244 6300 www.Venable.com

2016 JUN -2 PM 12:36

**June 1, 2016**

**Lawrence H. Norton**

**T 202.344.4541**  
**F 202.344.8300**  
**LHNonon@venable.com**

**VIA ELECTRONIC MAIL**

**Jeff S. Jordan**  
**Assistant General Counsel**  
**Complaints Examination & Legal Administration**  
**Federal Election Commission**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**OFFICE OF GENERAL COUNSEL**

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
2016 JUN -2 PM 1:51

**Re: MUR 7014**  
**Response from DE First Holdings and Vivek Garipalli**

**Dear Mr. Jordan:**

**This letter is submitted on behalf of our clients DE First Holdings (“DE First”) and Vivck Garipalli in response to a complaint (“Complaint”) filed with the Federal Election Commission (the “Commission”) in the above-captioned Matter Under Review (“MUR”).**

As explained below, the allegations in the Complaint are substantially similar to allegations made in four MURs recently dismissed by the Commission because the respondents lacked prior notice of the appropriate legal standard. Because the conduct alleged here predated the Commission's release of these matters, this MUR should be dismissed for the same reason. In addition, just as in those MURs, where the individual who participated in making the contribution acknowledged his role, Mr. Vivek Garipalli has publicly acknowledged his role by asking the recipient committee to amend its report. Thus, just like the closed MURs, there has been little or no informational harm to the public.

**I. The Commission recently announced a rule of prospective application for cases involving contributions by closely-held corporations and similar business entities.**

**The Complaint alleges that DE First and one or more unknown respondents violated 52 U.S.C. § 30122 and Commission regulations by making a contribution in the name of another to Coalition for Progress, an independent expenditure-only committee registered and reporting with the Commission.**

These allegations are substantially similar to the allegations in MURs 6485 (W Spann), 6487 and 6488 (F8/Eli Publishing), 6711 (Specialty Investments Group), and 6930 (Michel), which were

Letter to Jeff S. Jordan  
Response of DE First Holdings – MUR 7014  
Page 2.

recently dismissed by the Commission. The dismissed matters involved allegations of individuals using closely-held corporations and limited liability companies taxed as corporations (“corporate LLCs”) as straw donors to make contributions to Super PACs during the 2012 election cycle in violation of 52 U.S.C. § 30122.<sup>1</sup>

The closed MURs presented subtle questions of first impression for the Commission. Prior to these matters, the Commission had never addressed whether or under what circumstances a closely held corporation or corporate LLC may be considered a straw donor under section 30122.<sup>2</sup> As explained by Commissioners Petersen, Hunter, and Goodman in their Statement of Reasons (the “Controlling SOR”), it would have been reasonable for the respondents to conclude that contributions made by such entities in their own names were lawful based on existing Commission regulations and legal precedent recognizing that corporate and corporate LLC funds belong to the corporate or LLC entity, and not to the entity’s owners.<sup>3</sup>

The Controlling SOR thus announced a rule for future enforcement matters only, finding that the proper focus for determining whether closely held corporations and LLCs may be considered straw donors under section 30122 should be on “whether funds were intentionally funneled through the closely-held entity for the purpose of making a contribution that evades the Act’s requirements.”<sup>4</sup> Importantly, the Controlling SOR also determined that “principles of due process, fair notice, and First Amendment clarity counsel against applying a standard to persons and entities that were not on notice of the governing norm.”<sup>5</sup>

**II. Dismissal of the Complaint is required because the respondents were not on notice of the recently announced section 30122 legal standard.**

The respondents in the Complaint are identically situated to the respondents in the dismissed MURs in that they had no prior notice of the recently announced section 30122 legal standard, and thus the same result is compelled here.

---

<sup>1</sup> MURs 6485, 6487, 6488, 6711, and 6930, Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman, at 1-2.

<sup>2</sup> *Id.* at 7.

<sup>3</sup> *Id.* at 11.

<sup>4</sup> *Id.* at 8, 12.

<sup>5</sup> *Id.* at 2.

Letter to Jeff S. Jordan  
Response of DE First Holdings – MUR 7014  
Page 3

As a Delaware statutory trust that is taxed as a corporation, DE First is indistinguishable from the closely-held corporations and corporate LLCs that were the subject of the Commission's legal analysis in the dismissed MURs. Like a corporation or limited liability company, a Delaware statutory trust is a legal entity separate and distinct from its trustors and beneficiaries.<sup>6</sup> Also like a limited liability company, a statutory trust may elect to be taxed as a corporation or a partnership.<sup>7</sup> Under existing Commission regulations, an LLC that elects to be taxed as a corporation is treated as a corporation for purposes of the Act.<sup>8</sup>

The contribution at issue here was made on December 24, 2015—more than three months before the public release of the closed MURs. Thus, at the time of the contribution, the respondents were not on notice of the governing rule announced in the Controlling SOR. Based on Commission regulations and precedent at that time, like the respondents in the closed MURs, the respondents could reasonably conclude that a contribution made by and in the name of DE First was lawful.<sup>9</sup> In light of these circumstances, it would be “manifestly unfair” to pursue enforcement action against the respondents for violations of section 30122.<sup>10</sup>

Finally, there has been little or no informational harm to the public. Based on a careful review of the Complaint in light of the statements of reasons and other materials in the closed files, and in the interest of promoting public transparency, Mr. Garipalli has asked Coalition for Progress to amend its report on file with the Commission to reflect that he authorized a transfer of funds to DE First from his personal account for the purpose of making a contribution to the committee.<sup>11</sup>

In light of the respondents' lack of notice of the recently announced section 30122 legal standard, and with public disclosure occurring months before any election in which the recipient committee will participate,<sup>12</sup> the Commission should prudently exercise its prosecutorial discretion and dismiss the Complaint.

---

<sup>6</sup> Del. Code tit. 12, § 3801(g).

<sup>7</sup> Del. Code tit. 12, § 3809; 26 C.F.R. § 301.7701-3.

<sup>8</sup> 11 C.F.R. § 110.1(g).

<sup>9</sup> MURs 6485, 6487, 6488, 6711, and 6930, Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman, at 11.

<sup>10</sup> *Id.* at 8.

<sup>11</sup> *See, e.g., id.* at 13 n.70.

<sup>12</sup> According to reports filed with the Commission through the first quarter of 2016, it appears that Coalition for Progress has yet to make any expenditures for communications expressly advocating the election or defeat of a candidate for office.

**VENABLE<sup>®</sup> LLP**

**Letter to Jeff S. Jordan**  
**Response of DE First Holdings – MUR 7014**  
**Page 4**

**Thank you for your consideration. If you have any questions, please contact me at (202) 344-4541.**

**Respectfully submitted,**

Jason V. Zut

**Lawrence H. Norton**  
**Janice M. Ryan**