

1                                   **FEDERAL ELECTION COMMISSION**  
2  
3                                   **FIRST GENERAL COUNSEL’S REPORT**

4  
5                                   **MUR 7584**

6                                   DATE COMPLAINT FILED: March 19, 2019

7                                   DATE OF NOTIFICATION: March 21, 2019

8                                   DATE OF LAST RESPONSE: April 3, 2019

9                                   DATE OF ACTIVATION: December 17, 2019

10  
11                                   ELECTION CYCLE: 2020

12                                   SOL EXPIRATION: February 28, 2024

13  
14 **COMPLAINANT:**

Gary Hirschcron

15 **RESPONDENTS:**

M Financial Holdings Incorporated (d/b/a M  
Financial Group)

M Political Advocacy Committee

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17  
18  
19 **RELEVANT STATUTES AND**  
20 **REGULATIONS:**

52 U.S.C. § 30118

11 C.F.R. § 114.5

21  
22  
23 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

24  
25 **FEDERAL AGENCIES CHECKED:**

None

26 **I. INTRODUCTION**

27           The Complaint alleges that M Financial Holdings Incorporated (“M Financial”) and its  
28 purported “affiliated PAC,” M Political Advocacy Committee (“MPAC”) (collectively,  
29 “Respondents”), violated the Federal Election Campaign Act of 1971, as amended (the “Act”),  
30 by improperly deducting contributions to MPAC from the Complainant’s pay.<sup>1</sup> The Complaint  
31 further alleges that Respondents have deducted such improper contributions from “hundreds of  
32 other persons with [Incentive Compensation Plan (“ICP”)] accounts” at M Financial.<sup>2</sup>  
33 Respondents contend that MPAC is not a “Political Action Committee,” but is merely a group

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<sup>1</sup> Compl. at 1 (Mar. 19, 2019).

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

1 that advises M Financial's Board of Directors.<sup>3</sup> According to Respondents, MPAC does not  
2 receive or accept any monetary contributions.<sup>4</sup> Based on the available information and for the  
3 reasons set forth below, we recommend that the Commission dismiss the allegations that M  
4 Financial and MPAC violated 52 U.S.C. § 30118(b)(3)(A) and 11 C.F.R. § 114.5(a)(1) by  
5 improperly deducting contributions from employees' pay.

## 6 **II. FACTUAL BACKGROUND**

7 M Financial Holdings Incorporated is a privately-held corporation registered in  
8 Delaware, doing business as M Financial Group and headquartered in Portland, Oregon.<sup>5</sup>  
9 M Financial provides marketing support services to approximately 150 independent firms in the  
10 United States — called “Member Firms” — that sell life insurance and provide other financial  
11 services.<sup>6</sup> The Member Firms own and govern M Financial; they are the stockholders of the  
12 corporation.<sup>7</sup> According to M Financial, MPAC is “an advisory body within M Financial” and  
13 not a political committee or a legal entity.<sup>8</sup> M Financial asserts that its Board of Directors has  
14 several such advisory committees.<sup>9</sup>

15 Respondents state that MPAC “does not directly engage in legislative advocacy activities,  
16 and does not make financial contributions to any candidates for political office,” nor does it

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<sup>3</sup> Resp. at 1-2 (Apr. 3, 2019).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 1; Delaware Dept. of State: Div. of Corporations, Entity Search (last visited Mar. 16, 2020), <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (search entity name: M Financial Holdings Incorporated).

<sup>6</sup> Resp. at 1.

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

<sup>8</sup> *Id.* at 1-2.

<sup>9</sup> *Id.*

1 “have any assets of its own, or receive or accept monetary or other contributions.”<sup>10</sup> Rather,  
2 MPAC “assist[s] the [M Financial] Board [of Directors] in making decisions about corporate  
3 contributions to industry groups that engage in legislative advocacy on matters affecting M  
4 Financial and its Member Firms.”<sup>11</sup> MPAC’s Charter states that the Board “[f]orm[ed] the M  
5 Political Advocacy Committee (MPAC) to serve as the governance liaison between M  
6 [Financial] and our advocacy partners.”<sup>12</sup> According to the Commission’s records, there is no  
7 registered committee named M Political Advocacy Committee nor is there any registered  
8 committee with M Financial as a connected organization.

9 The Complaint states that “[t]he purpose of MPAC is to lobby for favorable federal tax  
10 legislation benefiting certain segments of the insurance industry.”<sup>13</sup> The Complaint alleges that,  
11 per Complainant’s 2018 Plan Year Annual Statement (“2018 Statement”), M Financial  
12 “deducted \$6,000 from [his] 2018 Incentive Compensation Plan award as a mandatory  
13 contribution to MPAC” “without [his] prior consent or knowledge.”<sup>14</sup> The Complainant states  
14 that “[his] understanding is that deducting a PAC contribution from [his] compensation without  
15 [his] consent is unlawful.”<sup>15</sup> The instructions accompanying Complainant’s 2018 Statement  
16 provide:

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<sup>10</sup> *Id.* Respondents also state that MPAC has no treasurer of. *Id.* at 1.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at Ex. 1; *see also id.*, Ex. 2 ¶ 1 (Decl. of Kevin Kukar) (identifying Exhibit 1 as MPAC’s Charter approved by M Financial’s Board of Directors).

<sup>13</sup> Compl. at 1.

<sup>14</sup> *Id.* at 1, Attach. 2 at 1. The Complaint alleges that “[s]imilar mandatory deductions are also being made to hundreds of other persons with ICP accounts with M [Financial]” and that “[m]any of them may also object but have not complained because of fear of economic intimidation from M Financial.” *Id.* at 1.

<sup>15</sup> *Id.* at 1.

1           **C.     Supplemental Adjustment**

2           To fund 2019 political advocacy efforts recommended by the M Political  
3           Advocacy Committee (MPAC) and approved by the MFH Board, M will assess  
4           each ICP Member Firm Group a flat fee of \$6,000 via a deduction from the ICP  
5           Distribution this Plan Year. If an ICP Member Firm Group has multiple ICP  
6           Participants, MFH will allocate the \$6,000 assessment on a pro-rata basis among  
7           the Group's ICP Participants.<sup>16</sup>

8           The Complainant notes that he is "count[ed] as one ICP Member Firm group," hence the entire  
9           \$6,000 was deducted from his ICP award.<sup>17</sup>

10           The Response describes the purpose and mechanics of the \$6,000 deduction. It states that  
11           M Financial planned to give approximately \$1.4 million to industry groups in 2019, including a  
12           membership fee of over \$1 million to the Association for Advanced Life Underwriting  
13           ("AALU").<sup>18</sup> "M Financial distributes its net profits annually to its stockholders, in the form of  
14           dividends, and to its current and former Member Firms" by issuing ICP awards.<sup>19</sup> M Financial's  
15           Board of Directors, which has the authority to adjust how its net profits are allocated across ICP  
16           awards,<sup>20</sup> chose to reduce the 2018 ICP awards by an amount that would account for the  
17           company's \$1 million donation to the AALU, which resulted in the \$6,000 deduction from  
18           Complainant's award.<sup>21</sup>

19           According to Respondents, the Complainant earned an ICP award for 2018, which was  
20           paid in February 2019,<sup>22</sup> for profits associated with insurance sales he made between 1987 and

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<sup>16</sup>        *Id.*, Attach. 1 at 1.

<sup>17</sup>        *Id.* at 2.

<sup>18</sup>        *Id.* at 2, Ex. 2 ¶ 3.

<sup>19</sup>        *Id.* at 2.

<sup>20</sup>        *Id.* at 2, Ex. 3 at Article III, ¶ 3.1(D).

<sup>21</sup>        *Id.*

<sup>22</sup>        *Id.*, Attach. 2.

1 1995 when he was an owner or employee of Management Compensation Group, Northwest  
2 (“MCG”).<sup>23</sup> MCG was a Member Firm that M Financial acquired in 2000.<sup>24</sup> Respondents state  
3 that the Complainant became an employee of M Financial in 2000 after the acquisition, but he  
4 did not earn compensation as an employee of M Financial; the annual ICP award is tied only to  
5 his work at MCG between 1987 and 1995.<sup>25</sup>

### 6 **III. LEGAL ANALYSIS**

7 The Act and Commission regulations prohibit corporations from making contributions to  
8 political committees (other than an independent expenditure-only political committee) in  
9 connection with a federal election.<sup>26</sup> Corporations are permitted to establish and solicit  
10 contributions to a separate segregated fund (“SSF”).<sup>27</sup> A corporation or its SSF may only solicit  
11 contributions from its stockholders and their families and its executive or administrative  
12 personnel and their families.<sup>28</sup> All contributions to a SSF must be voluntary and without  
13 coercion.<sup>29</sup>

14 A corporation may use a payroll-deduction or check-off system to collect contributions to  
15 its SSF.<sup>30</sup> A contributor, however, must affirmatively authorize such payroll deductions from the

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<sup>23</sup> Resp. at 2.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 2-3.

<sup>26</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b); Advisory Op. 2010-11 (Commonsense Ten) at 2-3.

<sup>27</sup> 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii).

<sup>28</sup> 52 U.S.C. § 30118(b)(4)(A)(i); 11 C.F.R. § 114.5(g)(1) (stating that corporations may also solicit the executive or administrative personnel of their subsidiaries, branches, divisions, and affiliates and their families).

<sup>29</sup> 52 U.S.C. § 30118(b)(3); 11 C.F.R. § 114.5(a); *see also* Advisory Op. 2003-14 at 3 (Home Depot).

<sup>30</sup> *See* 11 C.F.R. § 114.2(f)(4)(i) (exempting enrollment of restricted-class members in payroll-deduction or check-off system from facilitation prohibition).

1 contributor's wages.<sup>31</sup> A reverse check-off, by which SSF contributions are deducted from  
2 wages unless an employee opts out, is "per se violative of section 441b(b)(3)(A)'s [now  
3 30118(b)(3)(A)'s] prohibition."<sup>32</sup> To ensure that contributions solicited for an SSF are voluntary  
4 the Act and the Commission's regulations make it unlawful for any person to solicit a  
5 contribution to an SSF without informing the employee of the political purpose of the SSF and of  
6 the right to refuse to contribute to the SSF without reprisal.<sup>33</sup>

7 The available information does not indicate that MPAC is an SSF or any other type of  
8 federal political committee, nor does it suggest that MPAC accepted any contributions (or any  
9 other money) from the Complainant.<sup>34</sup> Instead, the record indicates that MPAC advises M  
10 Financial's Board of Directors regarding "corporate contributions to industry groups that engage  
11 in legislative advocacy on matters affecting M Financial," and M Financial, not MPAC, received  
12 the \$6,000 deducted from Complainant's ICP award.<sup>35</sup> Respondents state that MPAC "does not

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<sup>31</sup> See 11 C.F.R. § 114.2(f)(4)(i); *see also* Statement of Policy; Recordkeeping Requirements for Payroll Deduction Authorizations, 71 Fed. Reg. 38513 (July 7, 2006).

<sup>32</sup> *FEC v. Nat'l Educ. Ass'n*, 457 F. Supp. 1102, 1110 (D.D.C. 1978); *see also* Advisory Op. 2001-04 (MSDWPAC); MUR 4351 (UMWA) (the Commission found reason to believe based on the apparent use of a reverse check-off system, but took no further action after the investigation demonstrated that the deductions were not deposited in an account used to make federal contributions).

<sup>33</sup> 52 U.S.C. § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(4).

<sup>34</sup> The Act and Commission regulations define a "political committee" as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5. In *Buckley v. Valeo*, the Supreme Court held that defining political committee status "only in terms of [the] amount of annual 'contributions' and 'expenditures'" might be overbroad, reaching "groups engaged purely in issue discussion." 424 U.S. 1, 79 (1976) (per curiam). To cure that infirmity, the Court concluded that the term "political committee" "need only encompass organizations that are under the control of a candidate or the *major purpose of which is the nomination or election of a candidate.*" *Id.* (emphasis added). Accordingly, under the statute as thus construed, an organization that is not controlled by a candidate must register as a political committee only if (1) it crosses the \$1,000 threshold and (2) it has as its "major purpose" the nomination or election of federal candidates. The Complaint does not allege that MPAC is a political committee or that its primary purpose is the nomination or election of federal candidates, and the available record does not support a finding that MPAC is a political committee.

<sup>35</sup> Resp. at 2.

1 directly engage in legislative advocacy activities, and does not make financial contributions to  
2 any candidates for political office,” nor does it “have any assets of its own, or receive or accept  
3 monetary or other contributions,”<sup>36</sup> and we have no information to the contrary. Further, the  
4 Respondents explain that the \$6,000 deduction from Complainant’s 2018 ICP Award resulted  
5 from a decision by M Financial’s Board of Directors to “allocate the reduction” of the amount of  
6 the 2018 ICP awards by an amount that would cover the costs of the company’s \$1 million  
7 donation to the AALU and divide the donation “equally among all [ICP] participants.”<sup>37</sup> Thus,  
8 M Financial, not MPAC, assessed the \$6,000 deduction.<sup>38</sup>

9 Although MPAC’s very name suggested that a “PAC” (*i.e.*, political committee) was the  
10 recipient here, MPAC is not a registered SSF, and the available information does not suggest that  
11 it is one. Accordingly, we recommend that the Commission dismiss the allegations that M  
12 Financial and MPAC violated 52 U.S.C. § 30118(b)(3)(A) and 11 C.F.R. § 114.5(a)(1) by  
13 improperly deducting contributions from employees’ pay.<sup>39</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 2, Ex. 3 at Article III, ¶ 3.1(D) (stating that the Board of Directors has the authority to adjust how net profits are allocated across the annual ICP awards). Further, AALU is not itself a political committee registered with the Commission. Respondents note that the Complainant “did not earn compensation under the M Financial Incentive Compensation Plan as an employee of M Financial.” *Id.* at 2. Instead, Respondents state, the Complainant “earned” the ICP award “solely based on his insurance sales made during 1987-1995 while an owner and/or employee of MCG, prior to the acquisition of MCG by M Financial.” *Id.* at 2-3.

<sup>38</sup> *See id.*, Attach. 1 at 1 (“M [Financial] will assess each ICP Member Firm Group a flat fee of \$6,000 via a deduction from the ICP Distribution this Plan Year” “[t]o fund 2019 political advocacy efforts recommended by the M Political Advocacy Committee (MPAC) and approved by the [M Financial] Board.”). In addition, there is information supporting Respondents’ assertions that they seek to influence legislative issues, not elections. The Commission’s records show that MPAC, M Financial, and AALU did not disclose making independent expenditures, electioneering communications, or other communications to the public, and no federal political committee disclosed receiving contributions from MPAC, M Financial, or AALU. Further, the Commission’s records show that AALU’s SSF, AALU PAC, did not disclose receiving contributions MPAC or M Financial.

<sup>39</sup> *See* Factual & Legal Analysis at 5-6, MUR 6520 (National Ass’n of Realtors) (dismissing allegations that the National Association of Realtors “forc[ed]” complainant to provide funds to the organization for purposes of making independent expenditures where the Commission determined that complainant was paying “standard dues to

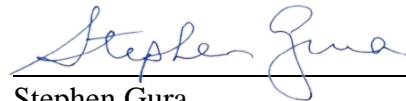
1 **IV. RECOMMENDATIONS**

- 2 1. Dismiss the allegations that M Financial Holdings Incorporated and M Political  
 3 Advocacy Committee violated 52 U.S.C. § 30118(b)(3)(A) and 11 C.F.R.  
 4 § 114.5(a)(1) by improperly deducting contributions from employees' pay;
- 5 2. Approve the attached Factual and Legal Analysis;
- 6 3. Approve the appropriate letters; and
- 7 4. Close the file.

8 Lisa J. Stevenson  
 9 Acting General Counsel

10 Charles Kitcher  
 11 Acting Associate General Counsel for  
 12 Enforcement

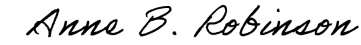
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21 Stephen Gura  
 22 Deputy Associate General Counsel for  
 23 Enforcement

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26 Mark Allen  
 27 Assistant General Counsel

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30 Anne B. Robinson  
 31 Attorney  
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