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For meeting of July 15, 2021

July 8, 2021

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*
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Subject: AO 2021-07 (PACMS) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00pm (Eastern Time) on July 14, 2021.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2021-07

2

3 Dan Backer

DRAFT A

4 Chalmers & Adams LLC

5 441 North Lee Street, Suite 300

6 Alexandria, VA 22314

7

8 Dear Mr. Backer:

9 We are responding to your advisory opinion request on behalf of PAC Management

10 Services LLC (“PACMS”), concerning the application of the Federal Election Campaign Act, 52

11 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to PACMS’s proposal to allow

12 individuals to solicit and make contributions to political committees via its online platform. The

13 Commission concludes that the Act and Commission regulations would not prohibit PACMS’s

14 proposed services, and the proposed services would not cause PACMS to make, facilitate, or be a

15 conduit for contributions, to incur registration or reporting obligations, or to be a “commercial

16 vendor” under 11 C.F.R. § 114.2(f) or § 116.1(c). The Commission also concludes that PACMS

17 may allow individuals who work for corporations and trade associations, acting in their personal

18 capacities, to solicit contributions via its online platform.

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on May 17,

21 2021, and your emails received on June 25 and June 29, 2021, on behalf of PACMS

22 (collectively, “advisory opinion request”).

23 PACMS is a for-profit, limited liability company that has opted with the Internal Revenue

24 Service to be treated as a partnership for federal tax purposes, and each partner of PACMS is

25 taxed as an S corporation. PACMS is not owned, established, maintained, or controlled by any

26 federal candidate or political party, and has no affiliated political committees. Nor does PACMS

1 solicit any political contributions, or engage in express advocacy of any candidates, political
2 committees, or political party committees.

3 PACMS currently “offers a commercial service of facilitating independent expenditures,”
4 generally involving state-level legislative offices.¹ PACMS proposes to expand its services by
5 allowing individuals to use its online platform to solicit and make contributions to federal
6 candidates and political committees (other than separate segregated funds). PACMS describes
7 its proposal as providing “two valuable services”: (1) enabling its clients to transfer funds to
8 PACMS and make contributions from those funds, and (2) providing a “convenient vehicle”
9 through which individuals authorized by PACMS’s clients may solicit those clients for
10 contributions.²

11 A. Enrolling in the Service and Designating Solicitors

12 PACMS proposes to require each client who wishes to use its new service to execute a
13 contract certifying, among other things, that the individual is eligible to make political
14 contributions under federal law.³ The client will then receive login credentials to PACMS’s
15 secure interface on the internet, and will use that interface to transfer a minimum of \$5,000 to
16 PACMS by online bank transfer or credit card; the client may supplement those funds by making
17 additional transfers, or request and receive a refund of any unused remaining funds, at any time.
18 PACMS will hold all client funds in an FDIC-insured bank account (“Client Fund Account”)

¹ Advisory Opinion Request (“AOR”) at AOR002 n.2.

² *Id.*

³ Each contract will require the client to certify that he or she is (1) a U.S. citizen, (2) at least 18 years of age, (3) not a federal contractor, (4) transferring his or her own funds to PACMS, (5) not being reimbursed for any such transfers or contributions, and (6) making all of the decisions regarding the disposition of those funds. The contract will also obligate PACMS, in the event a client dies or is deemed mentally incompetent by a court, to return the funds to the client’s estate.

1 separate from its own accounts,⁴ and will be contractually obligated to treat each client's funds
2 as that client's property, the disposition of which is subject to the client's sole, complete
3 direction.

4 Once a client transfers funds to PACMS, the client may designate other individuals to
5 solicit contributions from the client by entering the individual's name and email address into the
6 PACMS interface.⁵ Each designated solicitor, in turn, will receive login credentials to use the
7 PACMS interface to make the authorized solicitations. Prior to receiving these credentials,
8 PACMS will require each solicitor to agree to terms and conditions, including that the solicitor is
9 eligible to solicit contributions under federal law.⁶ PACMS will not allow federal candidates,
10 political committees, political party committees, or their agents, to serve as solicitors, and will
11 require its clients and their solicitors to certify to the same. A client may decide not to contribute
12 in response to a solicitation and may remove authorization from any solicitor at any time.

13 B. Fees

14 PACMS will charge each client a flat annual fee of at least \$100 annually, which PACMS
15 will determine and adjust based on its business judgment about what constitutes a commercially
16 reasonable figure reflecting the fair market value of its services. Moreover, if a client uses a
17 debit or credit card to deposit funds into her account, PACMS will automatically withdraw from
18 the account the service fee it is charged for the transaction by the debit or credit card company.

⁴ The Client Fund Account will not generate interest.

⁵ PACMS will not match clients with solicitors; thus, clients may designate as solicitors only individuals who are otherwise known to them. Although PACMS may advertise its services on the internet, it intends to operate primarily through word of mouth and referrals.

⁶ For example, the solicitor will certify that she is not a foreign national. The terms and conditions will also prohibit harassment and other unlawful activity and provide that PACMS reserves the right to remove any solicitor from the platform at any time.

1 The annual fee, along with debit and credit card service fees, are designed to allow PACMS to
2 cover its costs and realize a reasonable profit.

3 C. Solicitations and Contribution Forwarding

4 Once a client has enrolled in PACMS's service and designated a solicitor who has
5 accepted the terms and conditions and received login credentials, the solicitor may use PACMS's
6 interface to solicit the client via email. A solicitation email will permit a contributor to change
7 the contribution amount, reject the solicitation by clicking a "Do Not Contribute" button, or
8 contribute by clicking a "Contribute" button. If a contributor decides to contribute in response to
9 a solicitation, the interface will require the client to confirm affirmations and disclaimers

1 concerning the legality of the contribution.⁷ It “is PACMS’s intent to comply with the ‘safe
2 harbor’ [for screening procedures] the Commission has recognized in its advisory opinions.”⁸

3 After a client has initiated a contribution via the platform, PACMS’s interface will
4 “accept a contribution request” if the contribution (together with any previous contributions
5 made through the platform) does not exceed any applicable contribution limits and the client has
6 sufficient funds in the Client Fund Account to make the contribution.⁹ PACMS will then
7 forward funds from the client’s Client Fund Account to the client-designated political committee.
8 PACMS states that it intends to comply with all applicable contribution-forwarding requirements

⁷ The list of affirmations and disclaimers will state:

“1. I am not a federal contractor.

2. I am at least eighteen years old.

3. I am either a United States citizen or a lawful permanent resident of the United States.

4. This contribution is made from my own funds, and funds are not being provided to me by another person or entity for the purpose of making this contribution.

5. The funds being used for this contribution are my own, and not corporate funds, business funds or funds of another person.

6. This contribution, combined with other contributions I have made to this recipient (including any contributions made outside the PACMS interface) in connection with this election (for candidates) or this calendar year (for other recipients) will not exceed the federal contribution limit.

7. The personal information that I have provided to PACMS remains accurate and up-to-date:

Name: [CLIENT’S NAME ON RECORD WITH PACMS]

Address: [CLIENT’S ADDRESS ON RECORD WITH PACMS]

Phone: [CLIENT’S PHONE NUMBER ON RECORD WITH PACMS]

Email: [CLIENT’S EMAIL ON RECORD WITH PACMS]

Employer: [CLIENT’S EMPLOYER ON RECORD WITH PACMS]

Occupation: [CLIENT’S OCCUPATION ON RECORD WITH PACMS].”

AOR003 n.3.

⁸ AOR003.

⁹ AOR004.

1 provided in 52 U.S.C. § 30102(b) and 11 C.F.R. § 102.8, including timeframes and providing
2 recipient political committees with accurate information regarding the contributor and the
3 contribution.

4 ***Questions Presented***

5 1. *Do PACMS’s proposed services violate federal campaign finance law?*

6 2. *Do PACMS’s services—either in forwarding solicitations from client-authorized*
7 *solicitors to clients, or processing requested contributions from clients to designated recipients—*
8 *constitute either an illegal corporate contribution to the designated recipient in violation of 52*
9 *U.S.C. § 30118(a), or the illegal facilitation of a political contribution by a corporation in*
10 *violation of 11 C.F.R. § 114.2(f)(1)?*

11
12 3. *Does PACMS qualify as a “commercial vendor” under 11 C.F.R. §§ 114.2(f), 116.1(c)?*

13
14 4. *Does PACMS, either on its own or in conjunction with its clients, qualify as a “political*
15 *committee” subject to federal reporting requirements? Is PACMS required to file periodic*
16 *reports with the Commission, whether as a political committee or otherwise?*

17
18 5. *Do contributions that PACMS processes at a client’s direction, using client’s funds,*
19 *qualify as impermissible “conduit” contributions?*

20
21 6. *Does the annual fee or debit/credit card service fee that a client pays to PACMS for its*
22 *services qualify as a contribution to any of the candidates, political committees, or political*
23 *party committees to which the client makes contributions using PACMS’s services?*

24
25 7. *May PACMS permit a person who works for a corporation or trade association to be*
26 *designated as a “solicitor” to make solicitations through the interface?*

27
28 ***Legal Analysis and Conclusions***

29 1. *Do PACMS’s proposed services violate federal campaign finance law?*

30 2. *Do PACMS’s services—either in forwarding solicitations from client-authorized*
31 *solicitors to clients, or processing requested contributions from clients to designated recipients—*
32 *constitute either an illegal corporate contribution to the designated recipient in violation of 52*
33 *U.S.C. § 30118(a), or the illegal facilitation of a political contribution by a corporation in*
34 *violation of 11 C.F.R. § 114.2(f)(1)?*

35

1 No, PACMS’s proposed services—forwarding solicitations from client-authorized
2 solicitors to clients and processing requested contributions from clients to designated
3 recipients—would not constitute either an illegal corporate contribution to the designated
4 recipient in violation of 52 U.S.C. § 30118(a), or the illegal facilitation of a political contribution
5 by a corporation in violation of 11 C.F.R. § 114.2(f)(1)—because PACMS will be providing
6 commercial contribution-processing services to contributors and not to political committees.

7 *A. Contributions*

8 The Act and Commission regulations prohibit corporations from making contributions to
9 federal candidates and to political committees that make contributions to federal candidates.¹⁰
10 Under Commission regulations, contributions by an LLC that is treated as a partnership for tax
11 purposes are treated as contributions by a partnership.¹¹ Unlike corporations, partnerships may
12 contribute to federal candidates and all political committees, but each contribution must be
13 attributed both to the partnership itself and to the individual partners.¹² This dual attribution
14 requirement, combined with the ban on corporate contributions, means that a partnership in
15 which each partner is a corporation may not make contributions to federal candidates or to
16 political committees that make contributions to federal candidates.¹³

¹⁰ See 52 U.S.C. § 30118(a) (generally prohibiting corporations from making contributions); 11 C.F.R. § 114.2(b) (same). Corporations may, however, make contributions to nonconnected political committees that make only independent expenditures, *see, e.g.*, Advisory Opinion 2011-11 (Colbert); *Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*), and to non-contribution accounts of hybrid political committees, *see* FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 6, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-v-fec/>.

¹¹ 11 C.F.R. § 110.1(g)(2).

¹² *Id.* § 110.1(e).

¹³ See Advisory Opinion 2014-17 (Berkadia) at 3 (concluding that LLC treated as partnership and wholly owned by corporations may not be solicited for contributions because contributions would be attributed to its corporate owners); Advisory Opinion 2001-07 (NMC PAC) at 8 (concluding that LLC treated as partnership and wholly owned by corporations may not contribute to nonconnected political committee).

1 Here, because PACMS is an LLC opting partnership tax status, it is treated as a
2 partnership under the Act and Commission regulations. But, because each partner is an
3 S corporation, PACMS may not make contributions to federal candidates or to political
4 committees that make contributions to federal candidates.¹⁴

5 The Commission has consistently concluded that an entity does not make contributions
6 merely by processing contributions as a service to the contributors.¹⁵ In such instances, the
7 Commission examines whether the entity processes contributions at the request and for the
8 benefit of the contributors, as opposed to the recipient political committees.¹⁶ The Commission
9 also considers whether the entity's services relieve the recipient committees of any financial
10 burden or obligation they would otherwise incur, thereby providing something of value that
11 would constitute a contribution from the entity to the recipient political committees.¹⁷

12 Here, PACMS will provide contribution-processing services to individual contributors;
13 deposit contributors' funds into a separate account to be used for future contributions; process
14 contributions only as the contributors request and direct; and charge the contributors a fee

¹⁴ The Act and Commission regulations make no distinction between S corporations and other types of corporations. Under the Internal Revenue Code, S corporations must be domestic corporations; have only up to 100 shareholders, none of which may be partnerships, corporations, or non-resident aliens; and allow shareholders to report the corporation's flow-through of income and losses on their personal tax returns. *See* 26 U.S.C. §§ 1361-1379 (addressing tax treatment of S corporations and their shareholders); S Corporations, Internal Revenue Service, <https://www.irs.gov/businesses/small-businesses-self-employed/s-corporations> (accessed June 17, 2021) (summarizing tax treatment of S corporations and individual shareholders).

¹⁵ Advisory Opinion 2019-04 (Prytany) at 5-6; Advisory Opinion 2017-06 (Stein and Gottlieb) at 4-5; Advisory Opinion 2016-08 (eBundler.com) at 6-8; Advisory Opinion 2015-15 (WeSupportThat.com) at 4; Advisory Opinion 2014-07 (Crowdpac) at 6; Advisory Opinion 2012-22 (skimmerhat) at 4-6; Advisory Opinion 2011-19 (GivingSphere) at 7; Advisory Opinion 2011-06 (Democracy Engine) at 5.

¹⁶ Advisory Opinion 2017-06 (Stein and Gottlieb) at 5; *see also, e.g.*, Advisory Opinion 2015-15 (WeSupportThat.com) at 4 (concluding that companies processing contributions as services to contributors are "analog[ous] . . . to widely available delivery services, such as United States Parcel Service, or an electronic bill-pay services, such as those provided by banks" (internal quotation marks omitted)).

¹⁷ *E.g.*, Advisory Opinion 2017-06 (Stein and Gottlieb) at 5; Advisory Opinion 2015-15 (WeSupportThat.com) at 5; Advisory Opinion 2015-08 (Repledge) at 9.

1 designed to cover PACMS's costs and generate a reasonable profit. In these respects, PACMS's
2 proposal is similar to prior proposals where the Commission concluded that the contribution-
3 processing services would not be contributions to the recipient political committees.¹⁸ Also like
4 those prior proposals, PACMS will not enter into any relationships with political committees
5 beyond those required to forward its clients' contributions and contributor information;¹⁹
6 although PACMS will allow contributors to designate solicitors, PACMS will prohibit solicitors
7 from being federal candidates or political committees or their agents.²⁰

8 Thus, consistent with the approach taken in prior advisory opinions, PACMS will provide
9 commercial contribution-processing services to contributors and not the recipient political
10 committees and will not relieve the recipient committees of any expenses they would otherwise
11 incur. Accordingly, the Commission concludes that PACMS's proposed services will not
12 constitute illegal corporate contributions in violation of 52 U.S.C. § 30118(a).

13 B. Corporate Facilitation

14 Commission regulations prohibit corporations from facilitating the making of
15 contributions to political committees.²¹ The regulations define "facilitation" as using corporate

¹⁸ See Advisory Opinion 2019-04 (Prytany) at 5-6 (concluding that commercial contribution-processing service would not result in contributions); Advisory Opinion 2017-06 (Stein and Gottlieb) at 4-5 (same); Advisory Opinion 2016-08 (eBundler.com) at 6-8 (same); Advisory Opinion 2015-15 (WeSupportThat.com) at 4 (same); Advisory Opinion 2015-08 (Repledge) (same); Advisory Opinion 2014-07 (Crowdpac) at 6 (same); Advisory Opinion 2012-22 (skimmerhat) at 4-6 (same); Advisory Opinion 2011-19 (GivingSphere) at 7 (same); Advisory Opinion 2011-06 (Democracy Engine) at 5 (same); Advisory Opinion 2006-08 (Brooks) at 1-2 (same); Advisory Opinion 2002-07 (Careau) at 5-6 (same).

¹⁹ See, e.g., Advisory Opinion 2017-06 (Stein and Gottlieb) at 5 (citing lack of relationship with political committees as reason to conclude services provided to contributors, not political committees); Advisory Opinion 2016-08 (eBundler.com) at 5-6 (same); Advisory Opinion 2015-08 (Repledge) at 5-6 (same).

²⁰ Cf., Advisory Opinion 2019-04 (Prytany) at 6-7 (permitting political committees to make solicitations through platform); Advisory Opinion 2016-08 (eBundler.com) at 4-7 (permitting individuals and political committees to make solicitations through platform).

²¹ 11 C.F.R. § 114.2(f).

1 “resources or facilities to engage in fundraising activities in connection with any election.”²²
2 The Commission has noted that corporate facilitation does not result, however, where a vendor
3 “is not providing services to any candidate or political committee.”²³ Here, PACMS proposes to
4 provide services to its individual client contributors, and not to the recipient political committees.
5 Accordingly, PACMS’s proposal will not result in the illegal facilitation of a political
6 contribution by a corporation in violation of 11 C.F.R. § 114.2(f)(1).

7 C. Other Requirements for Entities Processing and Forwarding Contributions

8 PACMS will hold all client funds in an account separate from PACMS’s own accounts,
9 including its general treasury.²⁴ PACMS has represented that it will comply with the
10 contribution-forwarding requirements of the Act and Commission regulations, including
11 forwarding contributions to authorized committees with required information within 10 days
12 after receipt, and forwarding contributions to other political committees with required
13 information within 30 days after receipt for contributions of \$50 or less and within ten days after
14 receipt for contributions of more than \$50.²⁵ PACMS will collect users’ names, addresses,
15 occupations, and employers to provide to the recipient committees, to enable them to meet their
16 own reporting obligations under the Act and Commission regulations.²⁶ Finally, PACMS states
17 that it will screen for excessive contributions and will require clients to affirm that they are using
18 their own, permissible funds for their contributions.²⁷ The Commission concludes that the

²² *Id.*

²³ Advisory Opinion 2011-06 (Democracy Engine) at 5 n.4.

²⁴ *See, e.g.*, Advisory Opinion 2017-06 (Stein and Gottlieb) at 8.

²⁵ AOR004; *see* 52 U.S.C. § 30102(b); 11 C.F.R. § 102.8.

²⁶ AOR003; *see* 11 C.F.R. § 102.8(a).

²⁷ AOR003; *see, e.g.*, 52 U.S.C. § 30119(a) (prohibiting contributions by federal government contractors); *id.* § 30121(a) (prohibiting contributions by foreign nationals).

1 proposed methods of information collection, recordkeeping, and handling of funds are consistent
2 with the Act and Commission regulations, and with previous advisory opinion requests.

3 3. *Does PACMS qualify as a “commercial vendor” under 11 C.F.R. §§ 114.2(f), 116.1(c)?*

4
5 No, PACMS does not qualify as a “commercial vendor” under 11 C.F.R. § 114.2(f) or
6 § 116.1(c), because it does not provide goods or services to any candidate or political committee.

7 Under 11 C.F.R. § 116.1(c), the phrase “commercial vendor” means “any person[]
8 providing goods or services to a candidate or political committee whose usual and normal
9 business involves the sale, rental, lease, or provision of those goods and services.” Section
10 114.2(f) incorporates this definition by reference.²⁸

11 As explained in the answer to Questions 1 and 2 above, PACMS does not propose to
12 provide goods or services to any candidate or political committee. Accordingly, PACMS would
13 not be a “commercial vendor” for purposes of 11 C.F.R. § 114.2(f) and § 116.1(c).

14 4. *Does PACMS, either on its own or in conjunction with its clients, qualify as a “political*
15 *committee” subject to federal reporting requirements? Is PACMS required to file periodic*
16 *reports with the Commission, whether as a political committee or otherwise?*

17
18 5. *Do contributions that PACMS processes at a client’s direction, using client’s funds,*
19 *qualify as impermissible “conduit” contributions?*

20
21 No, PACMS would not qualify as a “political committee” subject to federal reporting
22 requirements or otherwise be required to file reports with the Commission, nor would PACMS
23 qualify as an impermissible conduit of contributions.

24 A “political committee” includes any group of persons that receives contributions or
25 makes expenditures in excess of \$1,000 and has as its major purpose the election or defeat of a

²⁸ 11 C.F.R. § 114.2(f)(1); *see also* Corporate and Labor Organization Activity; Express Advocacy and Coordination With Candidates, 60 Fed. Reg. 64,260, 64,264 (Dec. 14, 1995) (“The term ‘commercial vendor’ [as used in § 114.2(f)] is defined in 11 CFR 116.1(c).”).

1 clearly identified federal candidate.²⁹ The “treasurer of a political committee shall file reports of
2 receipts and disbursements.”³⁰

3 As explained in the answer to Question 1, above, PACMS would not make any
4 contributions under its proposal. Further, PACMS states that it will not make any
5 expenditures.³¹ Thus, PACMS’s proposed service would not cause it to be a political committee.
6 It is therefore not subject to the reporting requirements for political committees.³²

7 In addition to the periodic reporting requirements that apply to political committees,³³
8 persons who make independent expenditures or electioneering communications are also subject
9 to reporting requirements.³⁴ “The term ‘independent expenditure’ means an expenditure by a
10 person . . . expressly advocating the election or defeat of a clearly identified [federal] candidate
11”³⁵ “The term ‘electioneering communication’ means any broadcast, cable, or satellite
12 communication which . . . refers to a clearly identified candidate for Federal office”³⁶

13 Based on PACMS’s representation that it will not expressly advocate the election or
14 defeat of a clearly identified federal candidate,³⁷ the Commission concludes that PACMS will
15 not make independent expenditures and, accordingly, will not be subject to the reporting

²⁹ 52 U.S.C. § 30101(4); *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (construing “political committee” to “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”). Political committees also include separate segregated funds and certain local committees of a political party. 52 U.S.C. § 30101(4).

³⁰ 52 U.S.C. § 30104(a)(1); *see* 11 C.F.R. § 104.1 (implementing 52 U.S.C. § 30104(a)(1)).

³¹ AOR008.

³² *See* Advisory Opinion 2012-22 (skimmerhat) at 9 (reaching same conclusion about commercial service provider); Advisory Opinion 2011-19 (GivingSphere) at 10 (same).

³³ Although the text of your question refers only to “periodic” reporting requirements, the Commission also answers whether PACMS must satisfy any other reporting requirements under the Act and Commission regulations.

³⁴ *See* 52 U.S.C. §§ 30104(c) (independent expenditures), (f) (electioneering communications); 11 C.F.R. §§ 109.10 (independent expenditures); 100.29 (electioneering communications)

³⁵ 52 U.S.C. § 30101(17); *see also* 11 C.F.R. 100.16 (further defining independent expenditure).

³⁶ 52 U.S.C. § 30104(f)(3)(A)(i); *see also* 11 C.F.R. § 100.29 (further defining electioneering communication).

³⁷ AOR002.

1 requirements for persons making independent expenditures.³⁸ Moreover, given that PACMS's
2 proposal is limited to providing services over the internet and does not include any broadcast,
3 cable, or satellite communications referring to clearly identified federal candidates,³⁹ PACMS's
4 proposal does not implicate the reporting requirements for persons making electioneering
5 communications.⁴⁰

6 Further, the Act and Commission regulations impose reporting requirements on, and
7 prohibit corporations from acting as, intermediaries or conduits of contributions earmarked to
8 candidates or their authorized committees.⁴¹ Such intermediaries and conduits must report the
9 original source of the earmarked contributions, as well as the recipient candidates or authorized
10 committees.⁴² The Commission has concluded, however, that commercial entities providing
11 certain electronic transactional services to assist contributors in making contributions do not run
12 afoul of the corporate conduit prohibition because their services are "akin to 'delivery services,
13 bill-paying services, or check writing services.'"⁴³ For that reason, the Commission has not
14 treated contributions made through such platforms as contributions through an intermediary or
15 conduit, but rather as direct contributions to the candidate or committee made through a

³⁸ See Advisory Opinion 2012-22 (skimmerhat) at 9 (reaching same conclusion about commercial service provider); Advisory Opinion 2011-19 (GivingSphere) at 10 (same).

³⁹ AOR008. The request does not propose advertising through broadcast, cable, or satellite communications. AOR004 (stating only that PACMS "reserves the right to advertise its services on the Internet").

⁴⁰ See Advisory Opinion 2012-22 (skimmerhat) at 9 (reaching same conclusion regarding commercial service provider); Advisory Opinion 2011-19 (GivingSphere) at 10 (same).

⁴¹ See 52 U.S.C. § 30118(a) (generally prohibiting contributions by corporations); 11 C.F.R. § 110.6(b)(2)(ii) (prohibiting entities that are prohibited from making contributions from acting as a conduit or intermediary for contributions earmarked to candidates or their authorized committees).

⁴² 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(c).

⁴³ Advisory Opinion 2012-22 (skimmerhat) at 10 (quoting Advisory Opinion 2011-06 (Democracy Engine) at 5)).

1 commercial contribution-processing service.⁴⁴ Accordingly, commercial entities that process
2 contributions on behalf of contributors are not required to file reports as, and are not considered
3 to be, intermediaries or conduits of earmarked contributions.

4 Here, PACMS is a commercial entity that proposes to provide a service to contributors by
5 providing them access to a secure online interface that will enable them to deposit funds and
6 receive communications from designated solicitors, while the contributors maintain exclusive
7 control over the disposition of their funds. Further, PACMS will charge its clients a fee to cover
8 its costs and provide a reasonable profit. Finally, PACMS will transmit its clients' contributions
9 to political committees in the ordinary course of business and only as directed by the
10 contributors. As in previous advisory opinions in which requestors proposed to charge and serve
11 clients similarly, PACMS's services will be "akin to delivery services, bill-paying services, or
12 check writing services,"⁴⁵ and contributions made through PACMS's platform will be direct
13 contributions to candidates made through a commercial contribution-processing service, rather
14 than contributions to a conduit or intermediary earmarked for a candidate or authorized
15 committee. Accordingly, PACMS will not be subject to the prohibitions or reporting
16 requirements of conduits and intermediaries.

17 For these reasons, PACMS's proposed activities as described in the advisory opinion
18 request will not subject it to reporting requirements under the Act or Commission regulations,

⁴⁴ E.g., Advisory Opinion 2017-06 (Stein and Gottlieb) at 6-8; Advisory Opinion 2015-08 (Repledge) at 8; Advisory Opinion 2012-22 (skimmerhat) at 10;

⁴⁵ Advisory Opinion 2017-06 (Stein and Gottlieb) at 6-8 (concluding that commercial contribution-processing service acting in ordinary course of business and charging reasonable fee was not making contributions); Advisory Opinion 2015-08 (Repledge) at 7 (same); Advisory Opinion 2012-22 (skimmerhat) at 10 (same).

1 whether as a political committee or otherwise, nor will PACMS qualify as an impermissible
2 conduit of contributions.

3 6. *Does the annual fee or debit/credit card service fee that a client pays to PACMS*
4 *for its services qualify as a contribution to any of the candidates, political committees, or*
5 *political party committees to which the client makes contributions using PACMS’s services?*
6

7 No, neither the annual fee nor debit/credit card service fee that a client pays to PACMS
8 for its services would qualify as a contribution to any of the political committees to which the
9 client makes contributions using PACMS’s services.

10 In determining whether fees paid by clients of contribution-processing services constitute
11 contributions to the recipient political committees, the Commission has considered whether the
12 fees would relieve the recipient political committees of a financial burden they would otherwise
13 have had to pay for themselves.⁴⁶ Here, because the fees that PACMS will receive from its
14 clients “are to pay for services rendered for the benefit of the contributors, not of the recipient
15 political committees,” such fees do not relieve the recipient political committees of a financial
16 burden they would otherwise have had to pay for themselves.”⁴⁷ Thus, fees paid by PACMS’s
17 clients to PACMS for its services would not be contributions to any of the candidates, political
18 committees, or political party committees to which the client makes contributions using
19 PACMS’s services.

20 7. *May PACMS permit a person who works for a corporation or trade association to be*
21 *designated as a “solicitor” to make solicitations through the interface?*
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⁴⁶ E.g., Advisory Opinion 2017-06 (Stein and Gottlieb) at 5; Advisory Opinion 2015-15 (WeSupportThat.com) at 5; Advisory Opinion 2015-08 (Repledge) at 9.

⁴⁷ Advisory Opinion 2014-07 (Crowdpac) at 6 (internal quotation marks and alterations omitted) (concluding that fees charged by commercial contribution-processing entity were not contributions to recipient political committees); see also Advisory Opinion 2015-08 (Repledge) at 8-9 (same); Advisory Opinion 2012-22 (skimmerhat) at 6 (same); Advisory Opinion 2011-06 (Democracy Engine) at 6 (same).

1 Yes, PACMS may permit a person who works for a corporation or trade association to
2 be designated as a “solicitor” to make solicitations through PACMS’s internet interface.

3 PACMS indicates that corporate and trade association officers and employees in their
4 personal capacities could be designated by its clients to make solicitations through the PACMS
5 interface.⁴⁸ The Commission concludes that nothing in the Act or Commission regulations
6 prohibits such an individual from soliciting otherwise permissible contributions to federal
7 political committees.⁴⁹ Thus, PACMS may permit individuals who work for corporations and
8 trade associations, acting in their personal capacities, to use the PACMS platform to solicit
9 contributions.⁵⁰

10 This response constitutes an advisory opinion concerning the application of the Act and
11 Commission regulations to the specific transactions or activities set forth in PACMS’s request.⁵¹
12 The Commission emphasizes that, if there is a change in any of the facts or assumptions
13 presented, and such facts or assumptions are material to a conclusion presented in this advisory
14 opinion, then the requestor may not rely on that conclusion as support for its proposed
15 transactions or activity. Any person involved in any specific transaction or activity which is
16 indistinguishable in all its material aspects from the transaction or activity with respect to which

⁴⁸ AOR009 (“An officer or employee of a corporation or trade association may, in their personal capacity, use the PACMS platform to solicit contributions.”).

⁴⁹ PACMS states that it will require any individual designated as a solicitor to attest that they are not a foreign national. AOR012.

⁵⁰ *C.f.*, Advisory Opinion 2015-09 (Senate Majority PAC) at 7 (concluding that agent of candidate may solicit funds for other organizations, without violating rules applicable to agents of candidates, if it acts exclusively on behalf of other organization and at different times from when acting on behalf of campaign); Advisory Opinion 2000-20 (Committee for Quality Cancer Care) (permitting employees and officers of corporations acting in personal capacities to establish nonconnected political committee); *see also* 11 C.F.R. §§ 100.94(a) (exempting value of individual’s personal services and use of equipment or services to engage in uncompensated internet activity—including “[s]ending or forwarding electronic messages” —from definition of “contribution,” “regardless of who owns the equipment and services”), 100.155(a) (exempting same activity from definition of “expenditure”).

⁵¹ *See* 52 U.S.C. § 30108.

1 this advisory opinion is rendered may rely on this advisory opinion.⁵² Please note that the
2 analysis or conclusions in this advisory opinion may be affected by subsequent developments in
3 the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any
4 advisory opinions cited herein are available on the Commission's website.

5 On behalf of the Commission,

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Shana M. Broussard
Chair

⁵² See *id.* § 30108(c)(1)(B).