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March 16, 2006

AGENDA ITEM
For Meeting of: 3-23-06

MEMORANDUM

TO: The Commission

THROUGH: Robert J. Costa *AK*
Acting Staff Director

FROM: Lawrence H. Norton *LHN (by wire)*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Mai T. Dinh *MD*
Assistant General Counsel

Albert J. Kiss *ATK*
Attorney

Subject: Draft AO 2006-03

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for March 23, 2006.

Attachment

1 ADVISORY OPINION 2006-03

2

3 Mr. Sean C. Mackay

DRAFT

4 Treasurer

5 Whirlpool Corporation Political Action Committee

6 1200 G Street, N.W., Suite 828

7 Washington, DC 20005-3820

8

9 Dear Mr. Mackay:

10 We are responding to your advisory opinion request concerning the application of
11 the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission
12 regulations to Whirlpool Corporation (“Whirlpool”) Political Action Committee’s
13 (“WCPAC”) proposal to create a password-restricted website containing information on
14 WCPAC and its activities. This website would be accessible by all current employees in
15 Whirlpool’s solicitable class using one common username and password. The
16 Commission concludes that under the facts and circumstances presented, WCPAC may
17 create a password-restricted website for these current employees that is accessible using
18 one common username and password.

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on
21 January 26, 2006, and a phone conversation that occurred on February 7, 2006.

22 Whirlpool is a Delaware corporation and is the connected organization of
23 WCPAC, a separate segregated fund (“SSF”). Whirlpool maintains an intranet
24 government relations website that is only accessible by its current employees. Whirlpool
25 proposes to add a link on its government relations website to access the WCPAC website.

1 If an employee clicks this link, the employee will be directed to a separate web page
2 introducing the WCPAC website with the following authorization screen:

3 Federal law prohibits the Whirlpool Corporation Political Action
4 Committee (WCPAC) from soliciting donations from anyone other than
5 stockholders, executive and administrative personnel and the families of
6 such individuals. Contributions received from any other person will be
7 returned to the donor. It is a violation of Whirlpool Corporation employee
8 rules to enter this site unless you are a member of the restricted class.
9 Employees desiring additional information on their eligibility to
10 participate or about the activities of the WCPAC may contact WCPAC,
11 1200 G ST NW, Suite 821, Washington, DC 20005, Attention: [name,
12 phone number, and email address of WCPAC Treasurer].
13

14 Members of the WCPAC restricted class may enter the site by entering
15 their username and password below.
16

17 Once the server authenticates an employee's username and password, the employee will
18 have access to the WCPAC website. The website will contain information about
19 WCPAC, including, but not limited to, a list of board members, goals, PAC contribution
20 criteria, and a payroll deduction authorization form.

21 ***Questions Presented***

- 22 1. *May WCPAC create a password-restricted website containing information on*
23 *WCPAC and its activities that is accessible by current employees in Whirlpool's*
24 *solicitable class using one common username and password?*
25 2. *May WCPAC provide employees in its solicitable class access to this website from*
26 *Whirlpool's government relations website?*

27 ***Legal Analysis and Conclusions***

28 Yes, WCPAC may create a password-restricted website that is accessible by
29 current employees in Whirlpool's solicitable class using one common username and

1 password. WCPAC may provide access to this website from Whirlpool's government
2 relations website.

3 The Act and Commission regulations prohibit a corporation from making a
4 contribution or expenditure in connection with a Federal election. 2 U.S.C. 441b(a);
5 11 CFR 114.2(b)(1) and (b)(2). The term "contribution or expenditure" in section 441b
6 includes any gift of money or anything of value in connection with any election to
7 Federal office, and is subject to exceptions. 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1).
8 One of these exceptions to the prohibition on corporate contributions and expenditures
9 permits a corporation, or its SSF, to solicit voluntary contributions to the SSF at any time
10 from its solicitable class, *i.e.*, the corporation's executive and administrative personnel,
11 its stockholders, and the families of such persons. 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR
12 114.5(g)(1).

13 In Advisory Opinion 2000-7 (Alcatel USA, Inc.), the Commission determined
14 that providing each member of the solicitable class a separate and unique password for
15 accessing the SSF's website was sufficient to satisfy the requirement that only the SSF's
16 solicitable class may receive solicitations for the SSF. *See* 2 U.S.C. 441b(b)(4)(A)(i) and
17 11 CFR 114.5(g)(1). Although Whirlpool will provide all current employees who are
18 members of its solicitable class with the same username and password, the underlying
19 rationale set forth in Advisory Opinion 2000-7 (Alcatel USA, Inc.) is applicable to
20 WCPAC's website. The common username and password will limit access to the website
21 to those who know the common username and password, *i.e.*, Whirlpool's solicitable
22 class. Whirlpool should take steps to ensure that the common username and password

1 will not be disseminated beyond the solicitable class. *See* 11 CFR 114.5(h) (accidental or
2 inadvertent solicitations beyond the solicitable class are not violations provided that the
3 corporation used best efforts to comply with the limitations regarding who it may solicit).

4 Except for the twice-yearly solicitations in 11 CFR 114.6, communications
5 beyond the solicitable class that are solicitations are impermissible. The Commission has
6 previously determined that language similar to the language in the authorization screen as
7 described above did not constitute a solicitation. *See* Advisory Opinion 2000-7 (Alcatel
8 USA, Inc.). Thus, the link to access the WCPAC website on Whirlpool's intranet site
9 with the authorization screen will not constitute a solicitation for contributions to
10 WCPAC and is permissible.

11 This response constitutes an advisory opinion concerning the application of the
12 Act and Commission regulations to the specific transaction or activity set forth in your
13 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
14 of the facts or assumptions presented, and such facts or assumptions are material to a
15 conclusion presented in this advisory opinion, then the requestor may not rely on that
16 conclusion as support for its proposed activity.

17 Sincerely,
18
19
20

21 Michael E. Toner
22 Chairman
23

24 Enclosure (Advisory Opinion 2000-07)