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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 13-51
AGENDA ITEM
For meeting of December 5, 2013

November 26, 2013

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson
Deputy General Counsel *LJS*

Adav Noti *AN*
Acting Associate General Counsel

Amy L. Rothstein *AR*
Assistant General Counsel

David C. Adkins *DA*
Attorney

Subject: AO 2013-19 (Yamaha Motor Corporation, U.S.A.) Drafts A and B

Attached are proposed drafts of the subject advisory opinion.

Members of the public may submit written comments on these draft advisory opinions. We are making these drafts available for comment until 12:00 pm (Eastern Time) on December 4, 2013.

Members of the public may also attend the Commission meeting at which these drafts 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 <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2013-19

2

3 Bryan P. Tyson, Esq.
4 Strickland Brockington Lewis LLP
5 1170 Peachtree Street, NE, Suite 2200
6 Atlanta, GA 30309

DRAFT A

7

8 Dear Mr. Tyson:

9

10 We are responding to your advisory opinion request on behalf of Yamaha Motor
11 Corporation, U.S.A. (“Yamaha”) concerning the application of the Federal Election
12 Campaign Act of 1971, as amended (the “Act”), and Commission regulations to
13 Yamaha’s proposed solicitation of contributions to its separate segregated fund (“SSF”)
14 from the executive and administrative personnel of the dealers and service centers that
15 sell and service Yamaha’s Marine Division products, and from such dealers and service
16 centers that are individuals or partnerships.¹ The Commission concludes that Yamaha’s
17 proposed solicitations are not consistent with the Act or Commission regulations because
18 Yamaha is not affiliated with its dealers and service centers.

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on
21 October 28, 2013.

22 Yamaha is a California corporation and a wholly owned subsidiary of Yamaha
23 Motor Co., Ltd. (“YMC”). Yamaha distributes in the United States various motorized
24 products manufactured by YMC, by Yamaha Motor Manufacturing Corporation of

¹ Yamaha previously asked about soliciting SSF contributions from dealers and service centers in Advisory Opinion Request 2012-37 (Yamaha Motor Corporation, U.S.A.). The Commission was unable to approve a response to that request by the required four affirmative votes. See 2 U.S.C. §§ 437c(c), 437d(a); see also 11 C.F.R. § 112.4(a). All public documents relating to Advisory Opinion Request 2012-37 (Yamaha Motor Corporation, U.S.A.) are available on the Commission’s website.

1 America, and by Tennessee Watercraft, Inc. Yamaha's Marine Division is responsible
2 for the sale and distribution of outboard engines under the Yamaha brand name.

3 Yamaha plans to establish an SSF, which would be "solely manage[d]" by the
4 president of the Marine Division. Yamaha would like to solicit contributions to the SSF
5 from dealers and service centers that sell and service its Marine Division's products.

6 *Yamaha Product Dealers*

7 Yamaha sells its Marine Division's products exclusively through a network of
8 dealers. These dealers provide retail sales and service of those products.

9 Each dealer is a separate business entity from Yamaha; Yamaha does not own any
10 of them. Most dealers are small- to mid-sized corporations. While some sell other
11 marine products, most deal exclusively in Yamaha products.

12 Yamaha selects its dealers through an application process. To be considered for a
13 dealership, dealers must disclose a significant amount of financial and credit information
14 to Yamaha. Yamaha also carefully studies the local market of the prospective dealer to
15 ensure there are not more Yamaha dealers than a particular market can bear.

16 Yamaha's relationship with its dealers is governed by a standardized Sales and
17 Service Agreement (the "Dealer Agreement"). After being selected, prospective dealers
18 must complete a number of training requirements, including operational training and
19 training on servicing Yamaha products. *See Dealer Agreement §§ 2.2, 3.2.* Some
20 training takes place online and other training takes place in one of two physical training
21 locations operated by Yamaha. Achieving higher levels of certification from Yamaha,
22 which can be cited in advertising, requires additional participation in online training

1 modules. Each dealer is assigned a District Marketing Manager, who visits each location
2 no less than quarterly to evaluate the displays, the setup of the store, and the dealer's
3 operations.

4 Although dealers may identify themselves as authorized dealers of Yamaha
5 Marine Division products, they are prohibited from using Yamaha's trademarks or
6 tradenames as part of their corporate names. *See Dealer Agreement § 5.4.* Yamaha does
7 not grant its dealers a license to use its marks. Instead, Yamaha retains control over its
8 marks through a Yamaha Visual Identity Manual and review of dealer advertisements.
9 Dealers must comply with the manual and are not required to obtain pre-approval of
10 advertisements that use Yamaha's marks as long as they follow the manual, but they have
11 to submit advertisements for approval if they wish to receive partial reimbursement for
12 the cost of the advertisement.

13 Under the Dealer Agreement, Yamaha has the right to evaluate periodically each
14 dealer's level of performance. *See Dealer Agreement §§ 2.4, 3.3.* Other provisions in the
15 Dealer Agreement include a requirement that each dealer must conduct its operations in
16 such a manner as to develop and maintain good customer relations;² not make any false,
17 misleading, or disparaging representations about Yamaha or Yamaha's products;³
18 conduct operations in the normal course of business during usual business hours,
19 consistent with the dealer's location;⁴ maintain a prominent display of the entire line of

² *See Dealer Agreement § 2.5.*

³ *See Dealer Agreement § 2.5.*

⁴ *See Dealer Agreement § 2.6.*

1 Yamaha products, consistent with Yamaha’s guidelines;⁵ report to Yamaha on retail sales
2 of Yamaha’s products;⁶ and provide financial reports to Yamaha.⁷ Under the terms of the
3 Dealer Agreement, dealers may not assign the agreement or change their ownership or
4 management without Yamaha’s prior written consent.⁸

5 *Yamaha Product Service Centers*

6 Yamaha selects entities to serve as service centers to service Yamaha Marine
7 Division products and sell boats powered by Yamaha outboard motors. Service centers
8 may also sell some Yamaha marine parts as part of their service but do not sell loose
9 Yamaha outboard motors.

10 After selecting a service center through the same process described above for
11 dealers, Yamaha and the service center enter into a standardized Outboard Motors
12 Service Center Agreement (the “Service Center Agreement”). Yamaha describes this
13 agreement as “provid[ing] less control over the operations of the service center than the
14 Dealer [A]greement.” The Service Center Agreement is nonetheless similar to the Dealer
15 Agreement in several respects, including with regard to hours of operation;⁹ customer
16 relations;¹⁰ representations about Yamaha and Yamaha’s products;¹¹ use of Yamaha’s
17 trademarks;¹² and limitations on assignment of the agreement.¹³

⁵ See Dealer Agreement § 2.7.

⁶ See Dealer Agreement § 2.8.

⁷ See Dealer Agreement § 5.5.

⁸ See Dealer Agreement §§ 7.1, 7.2.

⁹ See Service Center Agreement § 4.4.

¹⁰ See Service Center Agreement § 4.3.

1 ***Question Presented***

2 *May Yamaha's SSF solicit contributions from the executive and administrative*
3 *personnel of the dealers and service centers that sell and service Yamaha's Marine*
4 *Division products, and from such dealers and service centers that are individuals or*
5 *partnerships?*

6 ***Legal Analysis and Conclusion***

7 No, Yamaha's SSF may not solicit contributions from the executive and
8 administrative personnel of a Yamaha division's dealers and service centers, or from
9 dealers and service centers that are individuals or partnerships.

10 A corporation and its SSF may solicit contributions to the SSF from a restricted
11 class of persons. 2 U.S.C. § 441b(b)(4)(A)(i); 11 C.F.R. § 114.5(g)(1). A corporation's
12 restricted class consists of its executive and administrative personnel and stockholders,
13 and their families. 11 C.F.R. §§ 114.5(g)(1), 114.1(j).

14 An SSF may also solicit contributions from the executive and administrative
15 personnel of the corporation's "subsidiaries, branches, divisions, and affiliates and their
16 families." 11 C.F.R. § 114.5(g)(1). The Commission considers the factors at 11 C.F.R.
17 § 100.5(g)(4) to determine whether entities are affiliated. *Id.* As relevant to the instant
18 request, these factors include:

11 *See* Service Center Agreement § 4.3.

12 *See* Service Center Agreement § 4.2.

13 *See* Service Center Agreement § 6.1.

1 (1) whether one entity has the authority or ability to direct or participate in the
2 governance of the other entity through provisions of constitutions, bylaws, contracts, or
3 other rules, or through practices and procedures; (2) whether one entity has the authority
4 or ability to hire, appoint, demote, or otherwise control the officers, or other
5 decisionmaking employees or members of the other entity; and (3) whether one entity
6 had an active or significant role in the formation of the other entity. 11 C.F.R.
7 § 100.5(g)(4)(ii)(B), (C), (D).

8 In previous advisory opinions, the Commission has addressed affiliation in the
9 context of franchisees/licensees and franchisors/licensors. The Commission has found
10 affiliation where the franchisor/licensor exercised significant control over the business
11 policies, practices, and procedures of the franchisee/licensee, and the franchisee/licensee
12 had extensive contractual obligations to the franchisor/licensor. For example, in
13 Advisory Opinion 1992-07 (H&R Block), the Commission found affiliation between
14 H&R Block and its franchisees where each franchisee was required to operate its
15 business of preparing income tax returns and related services under H&R Block's
16 licensed marks only; each franchisee agreed not to compete with H&R Block or other
17 franchisees in tax return preparation or related services during the duration of the
18 franchise and for a period following termination or transfer of the agreement; certain
19 franchisees were subject to audit by H&R Block to assure compliance with the franchise
20 agreement and H&R Block's policies and procedures; and H&R Block furnished its
21 franchisees with guidelines in the selection and location of offices, information necessary

1 to establish an operating budget, forms to use in tax return preparation, and, if requested,
2 assistance in handling managerial or other problems.

3 More recently, in Advisory Opinion 2012-12 (Dunkin' Brands), the Commission
4 found affiliation where the franchisee agreed not to compete with Dunkin' Brands by
5 selling other products similar to those sold by the Dunkin' Brands franchise; Dunkin'
6 Brands maintained the right to establish standards for its franchisees with respect to the
7 location, physical characteristics, and quality of restaurants, products sold, and suppliers;
8 Dunkin' Brands established standards and specifications for a franchisee's design, layout,
9 construction, furnishings and equipment; and Dunkin' Brands controlled all advertising,
10 marketing, and promotional programs of each franchisee. The Commission concluded
11 that these facts "indicate[d] significant continuing control and direction by Dunkin'
12 Brands over its franchisees/licensees." Advisory Opinion 2012-12 (Dunkin' Brands).

13 In each of these advisory opinions, the Commission found affiliation because of
14 the extent to which the franchisor/licensor controlled its franchisee/licensee's business
15 policies, practices, and procedures and the nature and extent of the franchisee/licensees'
16 contractual obligation to the franchisor/licensor. *See also* Advisory Opinion 1979-38
17 (Hardee's) (finding affiliation between a licensor corporation and its licensees given the
18 "nature and extent of the licensees' contractual obligations to the Corporation").

19 By contrast, the Commission has found that there is no affiliation where the
20 relationship more closely reflects a typical business contract between two independent
21 and separate entities, as distinguished from a relationship in which one entity closely
22 supervises and directs the operations and policies of the other. In Advisory Opinion

1 1985-07 (Anheuser-Busch), the Commission concluded that Anheuser-Busch was not
2 affiliated with its wholesalers despite the existence of an agreement that spelled out the
3 operating, sales, and merchandising methods and standards to which each wholesaler had
4 to adhere; gave Anheuser-Busch a right to participate in each wholesaler's business and
5 financial planning; and required each wholesaler to provide financial information to
6 Anheuser-Busch. The Commission determined that the degree of influence exercised by
7 Anheuser-Busch over the wholesalers was insufficient to meet the affiliation standards
8 set forth in the Commission's previous advisory opinions for two reasons. First, under
9 the agreement, each wholesaler maintained its status as an independent business, and its
10 independence was not significantly impaired by the contractual relationship with
11 Anheuser-Busch. Even though Anheuser-Busch had a limited right to approve each
12 wholesaler's designation of a successor-manager, the agreement stated that each
13 wholesaler retained responsibility for the management of its own business and that
14 Anheuser-Busch would not attempt to take over the right of the wholesaler to choose its
15 own manager. Second, each wholesaler could market the products of other brewers along
16 with those of Anheuser-Busch. The Commission concluded that "because the
17 [agreements] merely set forth certain standards for the wholesalers' activities, the
18 wholesalers would not be considered 'affiliates' of Anheuser-Busch." Advisory Opinion
19 1985-07 (Anheuser-Busch).

20 Although Yamaha has the right to approve transfers and changes in the location,

1 management, and ownership of the dealers and service centers,¹⁴ the level of control and
2 contractual obligation between Yamaha and the dealers and service centers is insufficient
3 to create an affiliate relationship for purposes of the Act and Commission regulations.
4 Most significantly, there is no requirement of exclusivity in the agreements between
5 Yamaha and the dealers and service centers, unlike the exclusive arrangements that the
6 Commission has previously found central to affiliate relationships. *See* Advisory
7 Opinion 2012-12 (Dunkin’ Brands); Advisory Opinion 1992-07 (H&R Block); Advisory
8 Opinion 1988-46 (Collins Foods). Indeed, the Dealer Agreement and Service Center
9 Agreement explicitly provide that they are *not* exclusive and that dealers are free to sell
10 competing products.¹⁵ Any dealer that sells competing products must give Yamaha’s
11 products only “at least as much effort as Dealer gives to competitive products handled by
12 Dealer in terms of promotion and sale, floor space, inventory and service.” Dealer
13 Agreement § 2.3. In this respect, the Dealer Agreement demonstrates independence of
14 the dealers that is similar to the independence of the wholesalers who could market other
15 brewers’ products alongside those of Anheuser-Busch in Advisory Opinion 1985-07
16 (Anheuser-Busch).

¹⁴ *See* Dealer Agreement § 1.3, Service Center Agreement § 1.2 (permitting Yamaha to terminate its agreement with any dealer or service center that fails to obtain Yamaha’s written consent prior to changing location or establishing a branch location for the sale or service of Yamaha products); Dealer Agreement § 7.1, Service Center Agreement § 6.1 (requiring Yamaha’s prior written consent for assignments, transfers, or changes in ownership or management of the dealers and service centers).

¹⁵ *See* Dealer Agreement § 2.3 (“Yamaha recognizes that Dealer may handle brands which are competitive with the Products sold to Dealer pursuant to this Agreement.”); *id.* at § 1.4 (“The rights granted herein are nonexclusive.”); Service Center Agreement § 1.3 (“The rights granted herein are nonexclusive.”).

1 Other provisions in the Dealer Agreement and Service Center Agreement
2 demonstrate that the obligations Yamaha imposes on its dealers and service centers are
3 largely equivalent to “a typical business contract” between two functionally “independent
4 and separate organizations.” Advisory Opinion 1985-07 (Anheuser-Busch). Those
5 provisions include general guidance regarding customer relations (the dealer/service
6 center must conduct its operations “in such a manner as to develop and maintain good
7 customer relations”),¹⁶ hours of business (must be “not less than the usual number of
8 days of the week and hours of the day which are customary for the same type of business
9 in the [dealer’s and service center’s] market area”),¹⁷ and display and inventory (dealer
10 must maintain a prominent display of Yamaha’s products and maintain a reasonable
11 inventory of the products adequate to meet demand).¹⁸ Indeed, if the Commission were
12 to conclude that Yamaha and its dealers and service centers were affiliated, a large
13 number of other product manufacturers may find themselves similarly affiliated with the
14 companies that sell or service their products under standard contractual arrangements.
15 These manufacturers and their retail partners would then be subject to a single combined
16 limit on all contributions made to and by their respective separate segregated funds, *see*
17 11 C.F.R. § 110.3(a), even though their relationships demonstrate little of the control that
18 has led to the imposition of such combined limits in the context of more stringent
19 franchisor/franchisee arrangements.

¹⁶ Dealer Agreement § 2.5; Service Center Agreement § 4.3.

¹⁷ Dealer Agreement § 2.6; Service Center Agreement § 4.4.

¹⁸ Dealer Agreement § 2.7.

1 In sum, because Yamaha does not exercise sufficient control over its dealers and
2 service centers for the Commission to find that these entities are affiliated, Yamaha may
3 not solicit contributions from the executive and administrative personnel of the Marine
4 Division's corporate dealers and service centers, or from dealers and service centers that
5 are individuals or partnerships.

6 This response constitutes an advisory opinion concerning the application of the
7 Act and Commission regulations to the specific transaction or activity set forth in your
8 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in
9 any of the facts or assumptions presented, and such facts or assumptions are material to a
10 conclusion presented in this advisory opinion, then the requestor may not rely on that
11 conclusion as support for its proposed activity. Any person involved in any specific
12 transaction or activity which is indistinguishable in all its material aspects from the
13 transaction or activity with respect to which this advisory opinion is rendered may rely on
14 this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or
15 conclusions in this advisory opinion may be affected by subsequent developments in the
16 law, including, but not limited to, statutes, regulations, advisory opinions, and case law.
17 The advisory opinions cited herein are available on the Commission's website.

18

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On behalf of the Commission,

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23

24

Ellen L. Weintraub
Chair

1 ADVISORY OPINION 2013-19

2

3 Bryan P. Tyson, Esq.
4 Strickland Brockington Lewis LLP
5 1170 Peachtree Street, NE, Suite 2200
6 Atlanta, GA 30309

DRAFT B

7

8 Dear Mr. Tyson:

9

10 We are responding to your advisory opinion request on behalf of Yamaha Motor
11 Corporation U.S.A. (“Yamaha”) concerning the application of the Federal Election
12 Campaign Act of 1971, as amended (the “Act”), and Commission regulations to
13 Yamaha’s proposed solicitation of contributions to its separate segregated fund (“SSF”)
14 from the executive and administrative personnel of the dealers and service centers that
15 sell and service Yamaha’s Marine Division products, and from such dealers and service
16 centers that are individuals or partnerships.¹ The Commission concludes that Yamaha’s
17 proposed solicitations are consistent with the Act and Commission regulations because
18 Yamaha is affiliated with its dealers and service centers.

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on
21 October 28, 2013.

22 Yamaha is a California corporation and a wholly owned subsidiary of Yamaha
23 Motor Co., Ltd. (“YMC”). Yamaha distributes in the United States various motorized
24 products manufactured by YMC, by Yamaha Motor Manufacturing Corporation of

¹ Yamaha previously asked about soliciting SSF contributions from dealers and service centers in Advisory Opinion Request 2012-37 (Yamaha Motor Corporation, U.S.A.). The Commission was unable to approve a response to that request by the required four affirmative votes. *See* 2 U.S.C. §§ 437c(c), 437d(a); *see also* 11 C.F.R. § 112.4(a). All public documents relating to Advisory Opinion Request 2012-37 (Yamaha Motor Corporation, U.S.A.) are available on the Commission’s website.

1 America, and by Tennessee Watercraft, Inc. Yamaha's Marine Division is responsible
2 for the sale and distribution of outboard engines under the Yamaha brand name.

3 Yamaha plans to establish an SSF, which would be "solely manage[d]" by the
4 president of the Marine Division. Yamaha would like to solicit contributions to the SSF
5 from dealers and service centers that sell and service its Marine Division's products.

6 *Yamaha Product Dealers*

7 Yamaha sells its Marine Division's products exclusively through a network of
8 dealers. These dealers provide retail sales and service of those products.

9 Each dealer is a separate business entity from Yamaha; Yamaha does not own any
10 of them. Most dealers are small- to mid-sized corporations. While some sell other
11 marine products, most deal exclusively in Yamaha products.

12 Yamaha selects its dealers through an application process. To be considered for a
13 dealership, dealers must disclose a significant amount of financial and credit information
14 to Yamaha. Yamaha also carefully studies the local market of the prospective dealer to
15 ensure there are not more Yamaha dealers than a particular market can bear.

16 Yamaha's relationship with its dealers is governed by a standardized Sales and
17 Service Agreement (the "Dealer Agreement"). After being selected, prospective dealers
18 must complete a number of training requirements, including operational training and
19 training on servicing Yamaha products. *See Dealer Agreement, §§ 2.2, 3.2.* Some
20 training takes place online and other training takes place in one of two physical training
21 locations operated by Yamaha. Achieving higher levels of certification from Yamaha,
22 which can be cited in advertising, requires additional participation in online training
23 modules. Each dealer is assigned a District Marketing Manager, who visits each location

1 no less than quarterly to evaluate the displays, the setup of the store, and the dealer's
2 operations.

3 Although dealers may identify themselves as authorized dealers of Yamaha
4 Marine Division products, they are prohibited from using Yamaha's trademarks or
5 tradenames as part of their corporate names. *See Dealer Agreement, § 5.4.* Yamaha does
6 not grant its dealers a license to use its marks. Instead, Yamaha retains control over its
7 marks through a Yamaha Visual Identity Manual and review of dealer advertisements.
8 Dealers must comply with the manual and are not required to obtain pre-approval of
9 advertisements that use Yamaha's marks as long as they follow the manual. Yamaha
10 finances indirectly a significant portion of costs incurred by dealers to run
11 advertisements, but the dealers must submit the advertisements for approval if they wish
12 to receive partial reimbursement for the cost of the advertisement.

13 Under the Dealer Agreement, Yamaha has the right to evaluate periodically each
14 dealer's level of performance. *See Dealer Agreement, §§ 2.4, 3.3.* Other provisions in
15 the Dealer Agreement include a requirement that each dealer must conduct its operations
16 in such a manner as to develop and maintain good customer relations;² not make any
17 false, misleading, or disparaging representations about Yamaha or Yamaha's products;³
18 conduct operations in the normal course of business during usual business hours,
19 consistent with the dealer's location;⁴ maintain a prominent display of the entire line of

² *See Dealer Agreement, § 2.5.*

³ *See Dealer Agreement, § 2.5.*

⁴ *See Dealer Agreement, § 2.6.*

1 Yamaha products, consistent with Yamaha’s guidelines;⁵ report to Yamaha on retail sales
2 of Yamaha’s products;⁶ and provide financial reports to Yamaha.⁷ Under the terms of the
3 Dealer Agreement, dealers may not assign the agreement or change their ownership or
4 management without Yamaha’s prior written consent.⁸

5 *Yamaha Product Service Centers*

6 Yamaha selects entities to serve as service centers to service Yamaha Marine
7 Division products and sell boats powered by Yamaha outboard motors. Service centers
8 may also sell some Yamaha marine parts as part of their service but do not sell loose
9 Yamaha outboard motors.

10 After selecting a service center through the same process described above for
11 dealers, Yamaha and the service center enter into a standardized Outboard Motors
12 Service Center Agreement (the “Service Center Agreement”). Yamaha describes this
13 agreement as “provid[ing] less control over the operations of the service center than the
14 Dealer [A]greement.” The Service Center Agreement is nonetheless similar to the Dealer
15 Agreement in several respects, including with regard to hours of operation;⁹ customer
16 relations;¹⁰ representations about Yamaha and Yamaha’s products;¹¹ use of Yamaha’s
17 trademarks;¹² and limitations on assignment of the agreement.¹³

⁵ See Dealer Agreement, § 2.7.

⁶ See Dealer Agreement, § 2.8.

⁷ See Dealer Agreement, § 5.5.

⁸ See Dealer Agreement, §§ 7.1, 7.2.

⁹ See Service Center Agreement, § 4.4.

¹⁰ See Service Center Agreement, § 4.3.

1 ***Question Presented***

2 *May Yamaha's SSF solicit contributions from the executive and administrative*
3 *personnel of the dealers and service centers that sell and service Yamaha's Marine*
4 *Division products, and from such dealers and service centers that are individuals or*
5 *partnerships?*

6 ***Legal Analysis and Conclusion***

7 Yes, Yamaha's SSF may solicit contributions from the executive and
8 administrative personnel of a Yamaha division's dealers and service centers, and from
9 such dealers and service centers that are individuals or partnerships.

10 A corporation and its SSF may solicit contributions to the SSF from a restricted
11 class of persons. 2 U.S.C. § 441b(b)(4)(A)(i); 11 C.F.R. § 114.5(g)(1). A corporation's
12 restricted class consists of its executive and administrative personnel and stockholders,
13 and their families. 11 C.F.R. § 114.5(g)(1), 114.1(j).

14 A corporation may also solicit contributions from the executive and
15 administrative personnel of the corporation's "subsidiaries, branches, divisions, and
16 affiliates and their families." 11 C.F.R. § 114.5(g)(1). The Commission uses the factors
17 at 11 C.F.R. § 100.5(g)(4) to determine whether a corporation is affiliated with another
18 organization. *Id.* As relevant to the instant request, these factors include: (1) whether
19 one entity has the authority or ability to direct or participate in the governance of the
20 other entity through bylaws, contracts, or other rules, or through practices and

¹¹ See Service Center Agreement, § 4.3.

¹² See Service Center Agreement, § 4.2.

¹³ See Service Center Agreement, § 6.1.

1 procedures; (2) whether one entity has the authority or ability to hire, demote, or
2 otherwise control the other entity's decisionmaking employees; and (3) whether one
3 entity provides funds on an ongoing basis for administrative or other costs. 11 C.F.R.
4 § 100.5(g)(4)(ii)(B), (C), (G).

5 In Advisory Opinion 2012-12 (Dunkin' Brands), the Commission found
6 affiliation between a franchisor corporation and its franchisees where the franchisor
7 maintained the right to establish standards for its franchisees with respect to the location,
8 physical characteristics, and quality of restaurants, products sold, and suppliers;
9 established standards and specifications for a franchisee's design, layout, construction,
10 furnishings and equipment; and controlled all advertising, marketing, and promotional
11 programs of each franchisee. The Commission concluded that these facts "indicate[d]
12 significant continuing control and direction by Dunkin' Brands over its
13 franchisees/licensees." Advisory Opinion 2012-12 (Dunkin' Brands); *see also* Advisory
14 Opinion (1979-38) (Hardee's) (finding affiliation between a licensor corporation and its
15 licensees given the "nature and extent of the licensees' contractual obligations to the
16 Corporation").

17 By contrast, the Commission has determined that two entities are not affiliated
18 when one merely sets forth for the other "certain standards" that do not rise to the level of
19 "pervasive supervision and direction." Advisory Opinion 1985-07 (Anheuser-Busch).
20 For example, in Advisory Opinion 1985-07 (Anheuser-Busch), the Commission found a
21 product manufacturer and its wholesalers were not affiliated where the wholesalers had
22 the "responsibility and prerogative" to choose their own managers and where the
23 manufacturer had only limited rights to approve the wholesalers' designation of successor

1 managers. On those facts, the Commission determined that the relationship was more of
2 “a typical business contract” between two functionally “independent and separate
3 organizations.” *Id.*

4 Although the Commission has previously explained that the lack of exclusivity in
5 a business relationship can be “further evidence” that two entities are not affiliated, it has
6 never described exclusivity as a prerequisite to affiliation.¹⁴ Indeed, the Commission has
7 on multiple occasions concluded that business entities were affiliated without
8 commenting on, or even noting the existence of, exclusivity in the relationship between
9 those entities. *See, e.g.*, Advisory Opinion 1988-46 (Collin’s Foods) (affiliation between
10 licensee and licensor); Advisory Opinion 1979-38 (Hardee’s) (same); Advisory Opinion
11 1978-61 (Jerrico, Inc.) (affiliation between franchisee and franchisor). Instead, the
12 Commission considers the “context of the overall [business] relationship” between two
13 entities when evaluating whether one entity has sufficient authority to direct or control
14 the other to lead to a finding of affiliation. 11 C.F.R. § 100.5(g)(4)(ii).

15 Here, although Yamaha’s dealer and service center agreements do not formally
16 prohibit the dealers and service centers from selling and servicing competing products,
17 this absence of formal exclusivity does not necessarily mean that Yamaha lacks control
18 over its retailers. As a practical matter, Yamaha states that “most [dealers and service
19 centers] exclusively deal in Yamaha products” or, at least, “self identify primarily with
20 one manufacturer.” Advisory Opinion Request at 2, 9. Yamaha also distinguishes its
21 relationship with its dealers and service centers from those between manufacturers and

¹⁴ Advisory Opinion 1985-07 (Anheuser-Busch) at 2; *see also* Advisory Opinion 1999-39 (WellPAC) at 7 (considering existence of competition between two formerly affiliated companies as evidence of possible disaffiliation following corporate restructuring).

1 retailers generally. Because Yamaha's marine products are primarily sold through small-
2 to medium-sized businesses, Yamaha, as a major manufacturer, has a high degree of
3 direction and control over its dealers and service centers that "would not be possible" if
4 its products were marketed through large corporate entities such as "big box" stores. *Id.*
5 at 9. Indeed, the agreements between Yamaha and its dealers and service centers appear
6 to give Yamaha veto authority over changes in the dealers' or service centers' ownership,
7 active management, and legal form of business. *See* 11 C.F.R. § 100.5(g)(4)(ii)(C). In
8 the absence of Yamaha's prior approval, any such changes by dealers and service centers
9 are "void" and enable Yamaha to terminate the agreements.¹⁵ Similarly, Yamaha may
10 terminate its agreement with any dealer or service center that fails to obtain Yamaha's
11 written approval before changing location, or with any dealer that fails to obtain written
12 consent before changing key personnel.¹⁶

13 Yamaha also exercises significant direction and control over the day-to-day
14 operations of the dealers and service centers. This direction and control encompasses the
15 manner in which dealers and service centers train their personnel;¹⁷ display their
16 products;¹⁸ maintain their inventory;¹⁹ and deal with their customers;²⁰ as well as their

¹⁵ Dealer Agreement, § 7.1; Service Center Agreement, § 6.1.

¹⁶ Dealer Agreement, §§ 1.3, 6.1(c), 7.2; Service Center Agreement, §§ 1.2, 5.2(c).

¹⁷ Dealer Agreement, §§ 2.2, 3.2; Service Center Agreement, § 2.2.

¹⁸ Dealer Agreement, § 2.7.

¹⁹ Dealer Agreement, § 2.7.

²⁰ Dealer Agreement, § 2.5; Service Center Agreement, § 4.3.

1 hours of operation²¹ and the location, size, and layout of their buildings, showrooms,
2 offices, parts departments, and service operations.²² *See* 11 C.F.R. § 100.5(g)(4)(ii)(B).
3 Dealers and service centers also are required to provide service to any person who has
4 purchased a Yamaha product, regardless of where that product was purchased,²³ and to
5 purchase tools and equipment prescribed by Yamaha to service Yamaha products.²⁴ *Id.*

6 In terms of providing financial support, Yamaha finances indirectly a significant
7 portion of costs incurred by dealers to run advertisements that are pre-approved by
8 Yamaha. *See* 11 C.F.R. § 100.5(g)(4)(ii)(G). Moreover, the dealers and service centers
9 are contractually obligated to submit to Yamaha complete, audited financial statements
10 regarding the sale and service of all products, not just Yamaha's.²⁵ Dealers and service
11 centers must periodically provide to Yamaha for inspection and audit their records
12 regarding sales, service, and inventory.²⁶

13 The foregoing facts demonstrate that Yamaha exercises significant control over
14 the business policies, practices, and procedures of its Marine Division's dealers and
15 service centers, and that the dealers and service centers have contractual obligations to
16 Yamaha equivalent to the obligations found to support affiliation in prior matters. *See*
17 Advisory Opinion 1988-46 (Collins Foods); Advisory Opinion 1979-38 (Hardee's). The
18 Commission therefore concludes that Yamaha is affiliated with the dealers and service

²¹ Dealer Agreement, § 2.6; Service Center Agreement, § 4.4.

²² Dealer Agreement, § 2.10.

²³ Dealer Agreement, § 3.1; Service Center Agreement, § 2.1.

²⁴ Dealer Agreement, § 3.2; Service Center Agreement, § 2.2.

²⁵ Dealer Agreement, § 5.5.

²⁶ Dealer Agreement, § 2.8; Service Center Agreement, § 4.5.

1 centers of its marine products. Accordingly, Yamaha may solicit contributions from the
2 executive and administrative personnel of the Marine Division's corporate dealers and
3 service centers, and from such dealers and service centers that are individuals or
4 partnerships.

5 This response constitutes an advisory opinion concerning the application of the
6 Act and Commission regulations to the specific transaction or activity set forth in your
7 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in
8 any of the facts or assumptions presented, and such facts or assumptions are material to a
9 conclusion presented in this advisory opinion, then the requestor may not rely on that
10 conclusion as support for its proposed activity. Any person involved in any specific
11 transaction or activity which is indistinguishable in all its material aspects from the
12 transaction or activity with respect to which this advisory opinion is rendered may rely on
13 this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or
14 conclusions in this advisory opinion may be affected by subsequent developments in the
15 law, including, but not limited to, statutes, regulations, advisory opinions, and case law.
16 The cited advisory opinions are available on the Commission's website.

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On behalf of the Commission,

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Ellen L. Weintraub
Chair