



AGENDA DOCUMENT NO. 13-01

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, DECEMBER 20, 2012**

PRESENT:

Caroline C. Hunter, Chair, presiding

Ellen L. Weintraub, Vice Chair

Cynthia L. Bauerly, Commissioner

Donald F. McGahn II, Commissioner

Matthew S. Petersen, Commissioner

Steven T. Walther, Commissioner

Alec Palmer, Staff Director

Anthony Herman, General Counsel

Shawn Woodhead Werth, Secretary and Clerk

Chair Caroline C. Hunter called the Federal Election Commission to order in an open meeting at 10:10 A.M. on Thursday, December 20, 2012 with a quorum present.

Chair Hunter recognized the following people attending today's meeting: Mr. Dick Critchfield, her father; Mr. Tom Hicks from the Committee on House Administration; Mr. Bob Biersack; and Mr. Ken Doyle.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for December 6, 2012
Agenda Document No. 12-87**

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve the minutes for the open meeting of December 6, 2012 as set forth in Agenda Document No. 12-87.

The motion carried on a vote of 6-0 with Commissioners Bauerly, Hunter, McGahn, Petersen, Walther, and Weintraub voting affirmatively for the decision.

Chair Hunter recognized Vice Chair Weintraub who

MOVED to waive the rules on the timely submission of agenda documents so that the Commission may consider Agenda Document Nos. 12-83-B, 12-83-C, 12-86, 12-89, and 12-88.

The motion carried on a vote of 6-0 with Commissioners Bauerly, Hunter, McGahn, Petersen, Walther, and Weintraub voting affirmatively for the decision.

II. DRAFT ADVISORY OPINION 2012-35

**Global Transaction Services Group, Inc.
by Michael R. Wofford, President and CEO**

(Held over from the meeting of December 6, 2012)

Agenda Document No. 12-83 (Draft A)

Agenda Document No. 12-83-A (Draft B)

**Agenda Document No. 12-83-B (Draft C)
(Submitted Late)**

**Agenda Document No. 12-83-C (Draft D)
(Submitted Late)**

Chair Hunter stated that Mr. Michael Wofford, the requestor's representative, was available by telephone to answer Commissioners' questions.

Chair Hunter recognized Ms. Esther Heiden of the General Counsel's Office who presented the draft advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended, and Commission regulations to the requestor's proposal. Global Transaction

Services Group, Inc. (GTSG) developed a process to allow wireless users to make contributions of \$50 or less using text messages and the wireless user's credit or debit card. A contributor will initiate a contribution by sending a text message and complete the transaction by entering certain information into a web form accessed on his/her mobile phone. GTSG will use the mobile phone number used to initiate the contribution to derive the wireless user's name and address, then provide that information to the recipient political committees. After receiving the funds from the credit or debit card company, GTSG will track the funds by unique key word and place the funds into separate bank accounts for each recipient political committee. GTSG asks whether it may process the proposed contributions using the wireless user's credit or debit card and forward the contributions to recipient political committees. Ms. Heiden summarized the conclusions reached in each of the four drafts.

Mr. Wofford participated in the discussion that followed.

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve Agenda Document No. 12-83-C, Draft D, a draft answer to Global Transaction Services Group, Inc. in Advisory Opinion 2012-35, and authorize the Office of the General Counsel to make any technical and conforming changes.

The motion carried on a vote of 6-0 with Commissioners Bauerly, Hunter, McGahn, Petersen, Walther, and Weintraub voting affirmatively for the decision.

III. DRAFT ADVISORY OPINION 2012-37

**Yamaha Motor Corporation, U.S.A.
by Bryan P. Tyson, Esq.**

(Held over from the meeting of December 6, 2012)

Agenda Document No. 12-84 (Drafts A and B)

Chair Hunter stated that Mr. Bryan P. Tyson, the requestor's counsel, was available via telephone to answer Commissioners' questions.

Chair Hunter recognized Mr. Anthony Buckley of the General Counsel's Office who presented the draft advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended, and Commission regulations to the requestor's proposal. Yamaha Motor Corporation, U.S.A. asks whether it may establish a separate segregated fund (SSF) and whether it may solicit contributions to that SSF from certain of its dealers and service centers. Mr. Buckley summarized the conclusions reached in both drafts.

Mr. Tyson participated in the discussion that followed.

Chair Hunter recognized Commissioner McGahn who

MOVED to approve Draft B.

The motion failed on a vote of 3-3 with Commissioners Hunter, McGahn, and Petersen voting affirmatively for the motion. Commissioners Bauerly, Walther, and Weintraub dissented.

Discussion resumed.

Chair Hunter noted that because there were not the requisite four votes needed to approve this advisory opinion, the Office of the General Counsel will send the appropriate letter to the requestor.

IV. ITEMIZATION OF ULTIMATE PAYEE OF COMMITTEE DISBURSEMENTS

Memorandum from the Office of Compliance and the General Counsel's Office dated December 14, 2012

**Agenda Document No. 12-86
(Submitted Late)**

Chair Hunter recognized Mr. Greg Mueller of the General Counsel's Office who summarized the Request for Guidance from the Offices of Compliance and the General Counsel pursuant to Directive 69. The Request presents three scenarios regarding the disclosure of the ultimate payee of disbursements reported as memo entries on disclosure reports when the disbursement to a vendor aggregates more than \$200. The Request recommends that the Commission clarify that disclosure of the ultimate payee is required when 1) a committee makes a reimbursement to its staff

or candidate; 2) the candidate makes an in-kind contribution; and 3) the committee makes a credit card payment and the itemization thresholds are otherwise exceeded.

Chair Hunter explained that Directive 69, adopted in July 2010, permits staff to ask the Commission for guidance in questions of law. She noted that this Request is the result of the Reports Analysis Division's review of different committees' reports and not based on facts specific to a particular committee. The Commission, therefore, believes it is appropriate to discuss this in an open meeting and asks that the Office of General Counsel prepare a guidance document for public comment. The Commission anticipates placing the document on an open meeting agenda early next year.

V. REQUEST FOR COMMENT ON THE ENFORCEMENT PROCESS

**Notice of Request for Comment on Agency
Enforcement Process dated December 19, 2012**

**Agenda Document No. 12-89
(Submitted Late)**

Chair Hunter provided background information on the document and noted that some discussion about the enforcement process began in November 2011 during the House Administration Committee's oversight hearing. Some of these issues were also discussed during several public

forums held earlier this year. Comments from the public on the entire enforcement process are encouraged, although the Notice focuses on comments in two particular areas: 1) whether the Office of General Counsel can consider other material outside the context of the complaint before making a reason-to-believe recommendation to the Commission; and 2) civil penalty formulas. She noted that comments should be submitted by Friday, March 15, 2013. Chair Hunter thanked Commissioner Walther for his assistance on this Notice as well as the Office of General Counsel for its help.

Discussion followed.

Chair Hunter recognized Commissioner McGahn who

MOVED to approve Agenda Document 12-89.

The motion carried on a vote of 4-2 with Commissioners Hunter, McGahn, Petersen, and Walther voting affirmatively for the decision. Commissioners Bauerly and Weintraub dissented.

VI. ELECTION OF OFFICERS

A. Election of Chair

Chair Hunter recognized Commissioner Petersen who

MOVED to elect Vice Chair Ellen L. Weintraub to serve as Chair of the Federal Election Commission for 2013.

The motion carried on a vote of 5-0 with Commissioners Bauerly, Hunter, McGahn, Petersen, and Walther voting affirmatively for the decision. Commissioner Weintraub did not vote.

B. Election of Vice Chair

Chair Hunter recognized Commissioner Walther who

MOVED to elect Commissioner Donald F. McGahn II to serve as Vice Chair of the Federal Election Commission for 2013.

The motion carried on a vote of 5-0 with Commissioners Bauerly, Hunter, Petersen, Walther, and Weintraub voting affirmatively for the decision. Commissioner McGahn did not vote.

VII. FUTURE MEETING DATES

Memorandum from Vice Chair Ellen L. Weintraub dated December 18, 2012

**Agenda Document No. 12-88
(Submitted Late)**

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve Agenda Document No. 12-88.

The motion carried on a vote of 6-0 with Commissioners Bauerly, Hunter, McGahn, Petersen, Walther, and Weintraub voting affirmatively for the decision.

Chair Hunter stated that 2012 was an eventful year for the FEC and for campaign finance law. Record amounts of money were raised and spent, and there were a significant number of decisions in an ever-changing campaign finance environment. According to the Information Technology staff, more than 8.3 million pages of documents were received, and more than 70,000 documents were processed by the Commission. The Enforcement Division received more complaints in 2012 than in any year in the last decade; Litigation staff participated in a number of significant cases involving the Act and Commission regulations; and the Policy Division considered 39 advisory opinion requests involving such novel issues as text messaging and contributions. A new disclosure portal and candidate/committee viewer was launched on the Commission's website to provide the public with better access to data and more flexibility in searching and viewing that information. The Commission held a variety of conferences and seminars to promote voluntary compliance with the law.

Chair Hunter recognized the Commission Secretary's Office for its assistance and thanked her current and former staff for their work including Eric Brown, Rebekah Miller, David Adkins, Eric Wang, and Troy McCurry.

She expressed her appreciation for the professionalism, advice, and counsel provided by Anthony Herman, General Counsel, and Alec Palmer, Staff Director, and thanked her colleagues for a lot of fun, spirited debates, and the gift of her new gavel.

VIII. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 10:51 A.M.

Signed:

**Caroline C. Hunter
Chair of the Commission**

Attest:

**Shawn Woodhead Werth
Secretary and Clerk of the Commission**