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2007 DEC 14 A 11:44

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AGENDA ITEM

For Meeting of: 12-14-07

MEMORANDUM

TO: The Commission

FROM: Chairman Robert D. Lenhard *RL by A.T.* **SUBMITTED LATE**

DATE: December 14, 2007

RE: Draft Final Rule and Explanation and Justification on Electioneering Communications

Below is an amendment to Agenda Document No. 07-92 I plan to introduce at today's meeting. The amendment would edit pages 49-50 to clarify the reporting requirements for qualified nonprofit organizations.

1 permissible under section 114.15. Thus, like all persons making ECs that cost, in
2 aggregate, more than \$10,000, corporations and labor organizations must also disclose
3 their identities as the persons making the ECs, the costs of the ECs, the clearly identified
4 candidates appearing in the communications and the elections in which the candidates are
5 participating, and the disclosure dates.

6 1. Revised 104.20(c)(8) and New 11 CFR 104.20(c)(9) - Reporting the Use
7 of Corporate and Labor Organization Funds to Pay for Permissible Electioneering
8 Communications

9 A for-profit corporation's general treasury funds are often largely comprised of
10 funds received from investors such as shareholders who have acquired stock in the
11 corporation and customers who have purchased the corporation's products or services, or
12 in the case of a non-profit corporation, donations from persons who support the
13 corporation's mission. These investors, ~~and~~ customers, and donors do not necessarily
14 support the corporation's electioneering communications ~~issue advocacy~~. Likewise, the
15 general treasury funds of labor organizations and incorporated membership organizations
16 are composed of member dues obtained from individuals and other members who may
17 not necessarily support the organization's electioneering communications ~~issue advocacy~~.

18 ~~Corporations and labor organizations thus differ materially from those entities,~~
19 ~~such as QNCs, that are required to disclose the identities of donors, including individuals,~~
20 ~~whose funds are used for ECs. First, individuals and organizations typically donate funds~~
21 ~~to a QNC because they support the QNC's goals. Thus, any funds the QNC spends on~~
22 ~~issue advocacy advertisements will generally be funds it has received from those who are~~
23 ~~sympathetic to the positions it advocates on those issues.~~

1 Furthermore, witnesses at the Commission’s hearing testified that the effort
2 necessary to identify those persons who provided funds totaling \$1,000 or more to a
3 corporation or labor organization would be very costly and require an inordinate amount
4 of effort. Indeed, one witness noted that labor organizations would have to disclose more
5 persons to the Commission under the ECs rules than they would disclose to the
6 Department of Labor under the Labor Management Report and Disclosure Act.

7 For these reasons, the Commission has determined that the policy underlying the
8 disclosure provisions of BCRA is properly met by requiring corporations and labor
9 organizations to disclose and report only those persons whose made donations for the
10 purpose of funding ~~are intended to fund~~ ECs. Thus, new section 104.20(c)(9) does not
11 require corporations and labor organizations, ~~with the exception of QNCs,~~ making
12 electioneering communications permissible under 11CFR 114.15 to report the identities
13 of everyone who provides them with funds for any reason.²¹ Instead, new section
14 104.20(c)(9) requires a labor organization or a corporation ~~that is not a QNC~~ to disclose
15 the identities only of those persons who made a donation aggregating \$1,000 or more
16 specifically for the purpose of furthering ECs pursuant to 11 CFR 114.15, during the
17 reporting period. This period begins on the first day of the preceding calendar year and
18 runs through the disclosure date. Donations made for the purpose of furthering an EC
19 include funds received in response to solicitations specifically requesting funds to pay for
20 ECs as well as funds specifically designated for ECs by the donor.²²

²¹ A QNC making an electioneering communication pursuant to 11 CFR 114.10, rather than pursuant to 11 CFR 114.15, would be required to report under 11 CFR 104.20(c)(7) or (8).

²² The “for the purpose of furthering” standard in 11 CFR 104.20(c)(9) is drawn from the reporting requirements that apply to independent expenditures made by persons other than political committees. See 2 U.S.C. 434(c)(2)(C), 11 CFR 109.10(e)(1)(vi).