

FEDERAL ELECTION
COMMISSION
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FEDERAL ELECTION COMMISSION
Washington, DC 20463

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September 20, 2007

AGENDA ITEM
For Meeting of: 9-24-07

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *TPD*
General Counsel

Rosemary C. Smith *RC5*
Associate General Counsel

Amy L. Rothstein *AR*
Assistant General Counsel

Richard Ewell *RE*
Attorney

Subject: Draft AO 2007-15

Attached are two alternative proposed drafts of the subject advisory opinion. We request that these drafts be placed on the agenda for September 24, 2007.

Attachment

1 ADVISORY OPINION 2007-15

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Jan Witold Baran, Esq.
Caleb P. Burns, Esq.
Wiley Rein, LLP
1776 K Street, N.W.
Washington, D.C. 20006

DRAFT A

Dear Messrs. Baran and Burns:

10 We are responding to your advisory opinion request on behalf of GMAC LLC
11 (“GMAC”), regarding whether, under the Federal Election Campaign Act of 1971, as
12 amended (the “Act”), and Commission regulations, GMAC may pay for the
13 administrative and solicitation costs of a separate segregated fund (“SSF”) to be
14 established by a GMAC subsidiary corporation, and whether the SSF may be named
15 “GMAC LLC PAC.”

16 The Commission concludes that GMAC may not function as a connected
17 organization for the SSF of its corporate subsidiary and pay the administrative and
18 solicitation costs for the SSF. Accordingly, use of the name “GMAC LLC PAC” by
19 itself as the name of the SSF is not permissible because it does not include the name of
20 the SSF’s connected organization.

21 ***Background***

22 The facts presented in this advisory opinion are based on your letter received on
23 July 31, 2007, and telephone conversations on September 4, 2007.

24 GMAC is a financial services company that primarily operates in the automotive
25 finance, mortgage, and insurance lines of business. GMAC has elected partnership status

1 in its filings with the Internal Revenue Service.¹ GMAC is majority owned and
2 controlled by FIM Holdings LLC, which is an investment consortium led by Cerberus
3 FIM Investors, LLC (“Cerberus”), its sole managing member. FIM Holdings LLC has
4 also filed an election with the IRS to be treated as a partnership. Information about the
5 IRS election of Cerberus is not available.

6 GMAC owns a number of subsidiaries, one of which is GMAC Insurance
7 Holdings, Inc. (“GMAC Insurance”), an incorporated insurance company. GMAC
8 Insurance intends to establish an SSF. GMAC would like to use its own personnel and
9 resources to administer the SSF, including paying the administrative and solicitation
10 expenses of the SSF, which you propose to name “GMAC LLC PAC” and abbreviate as
11 “GMAC PAC.”

12

13 ***Questions Presented***

- 14 1. *May GMAC use its own resources to pay the expenses associated with*
15 *administering the SSF of its corporate subsidiary?*
- 16 2. *May the SSF be named “GMAC LLC PAC” and use “GMAC PAC” as an*
17 *abbreviation?*

18

¹ Although the New York Stock Exchange listings include “GMAC LLC PINES,” you have confirmed that the stock of GMAC LLC is not itself publicly traded, and that GMAC LLC is not treated as a corporation under 26 U.S.C. 7704 (“certain publicly traded partnerships treated as corporations”).

1 ***Legal Analysis and Conclusions***

2 1. *May GMAC use its own resources to pay the expenses associated with*
3 *administering the SSF of its corporate subsidiary?*

4 Any resources that GMAC provides to GMAC Insurance’s SSF would be
5 contributions to the SSF. Therefore, GMAC may pay the expenses associated with
6 administering the SSF only to the extent that its payments do not exceed applicable
7 contribution limits.

8 Under the Act and Commission regulations, a corporation’s payment for the
9 establishment, administration, and solicitation of contributions to its SSF is excluded
10 from the definition of “contribution” and “expenditure.” 2 U.S.C. 441b(b)(2)(C), 11 CFR
11 114.1(a)(2)(iii). A corporation that directly or indirectly establishes, administers, or
12 financially supports a political committee is the “connected organization” of that
13 committee. 2 U.S.C. 431(7) and 11 CFR 100.6(a).

14 Because GMAC is an LLC electing partnership status with the IRS, its funds are
15 treated as partnership funds. *See* 11 CFR 110.1(g)(2) (“A contribution by an LLC that
16 elects to be treated as a partnership by the Internal Revenue Service . . . shall be
17 considered a contribution from a partnership pursuant to 11 CFR 110.1(e).”) The
18 Commission has previously stated that “[t]he Act does not extend to a partnership, or an
19 LLC that is treated as a partnership under Commission regulations, the ability granted to
20 a corporation to conduct itself as a connected organization and avail itself of the

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1 contribution and expenditure exemptions.”² Partnerships and other unincorporated
2 entities may make contributions to Federal candidates and political committees directly
3 without establishing SSFs, unlike corporations, which are generally prohibited from
4 making contributions to Federal candidates and political committees but may use
5 corporate treasury funds to establish and administer SSFs.

6 Nevertheless, the Commission has determined that partnerships owned entirely by
7 corporations warrant special consideration. Where a partnership is owned entirely by
8 corporations, the partnership funds are treated as if they were corporate funds subject to
9 the prohibitions and limitations of the Act. *See, e.g.*, Advisory Opinion 2001-07 (NMC
10 PAC) (LLC electing partnership status, all of whose members are corporations, may not
11 make contributions to, or otherwise support, a non-connected political committee).

12 To avoid prohibiting these types of partnerships from making contributions and
13 from establishing and administering an SSF, the Commission has interpreted the Act and
14 Commission regulations to permit a partnership (or an LLC electing partnership status) to
15 pay the administrative and solicitation costs of an SSF established by the partnership’s
16 affiliated corporate owner, but only when the partnership is wholly owned by

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² Advisory Opinion 2004-42 (Pharmavite); *see also* 11 CFR 100.6(a) (definition of “connected organization” does not include partnerships or LLCs); Advisory Opinions 2001-07 (NMC PAC), 1997-13 (USA PAC), 1994-11 (FMC), 1991-01 (Deloitte & Touche PAC), and 1990-20 (Bradbury Bliss); *California Med. Ass’n v. FEC*, 453 U.S. 182, 201 (1981) (The different treatment of corporations from partnerships and other unincorporated entities “reflect[s] a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.”)

1 corporations and affiliated with at least one of the corporations.³ Under the dual
2 attribution principle for partnership contributions at 11 CFR 110.1(e), contributions by
3 partnerships are attributed not only to the partnership as a whole but also to its partners.
4 Thus, the administrative and solicitation support provided by a partnership wholly owned
5 by affiliated corporations “may be construed as coming from the affiliated corporations.”
6 Advisory Opinion 1992-17 (Du Pont Merck PAC).

7 GMAC is not wholly owned by corporations. The situation here thus differs from
8 the previous advisory opinions in which the Commission has permitted a partnership to
9 pay the administrative and solicitation costs of an SSF connected to a corporate affiliate.
10 As such, GMAC does not qualify for the special treatment afforded partnerships, or LLCs
11 electing partnership status, that are wholly owned by affiliated corporations.
12 Accordingly, GMAC may not pay the establishment, administration or solicitation costs
13 of GMAC Insurance’s SSF without making a contribution to that SSF. Such
14 contributions would be attributed to each member of the partnership, as well as to the
15 partnership itself. 11 CFR 110.1(g)(2), 110.1(e)(1) and (2). They would be subject to the
16 limits and prohibitions of the Act. *See, e.g.*, 2 U.S.C. 441a, 441b, 441c, and 441e.

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³ *See* Advisory Opinions 2004-42 (Pharmavite) (LLC treated as partnership was wholly owned by a corporation), 2003-28 (Horizon Lines) (LLC treated as a partnership was “owned entirely by corporations” where it was owned by two corporations and another LLC treated as a partnership, which was itself owned by a corporation), 2001-18 (BellSouth) (joint venture LLC treated as partnership was owned entirely by corporations), 1997-13 (USA PAC) (joint venture LLC treated as partnership was “entirely owned by corporations, whose control over [the LLC] is essentially the same as corporate joint venture partners”), 1996-49 (PrimeCo) (joint venture partnership owned entirely by corporations), 1994-11 (FMC) (limited partnership owned by corporations), 1992-17 (Du Pont Merck PAC) (partnership owned by two corporations), and 1987-34 (Telenet) (two corporations formed a joint venture partnership and temporarily conveyed to it ownership of a subsidiary corporation).

1 2. *May the SSF be named "GMAC LLC PAC" and use "GMAC PAC" as an*
2 *abbreviation?*

3 The SSF may not be named GMAC LLC PAC or use GMAC PAC as an
4 abbreviation, because the name of an SSF must include the full name of its connected
5 organization. *See* 2 U.S.C. 432(c)(5) and 11 CFR 102.14(c). Where an LLC treated as a
6 partnership is permitted to assume the functions of a connected organization, the
7 Commission has permitted the SSF to include the name of the LLC rather than the name
8 of the corporation that actually serves as the SSF's connected organization. *See, e.g.,*
9 *Advisory Opinion 2004-42 (Pharmavite)*. GMAC, however, is not permitted to perform
10 the functions of a connected organization with respect to the SSF of its subsidiary
11 corporation, and therefore the use of GMAC LLC PAC by itself as the name of the SSF
12 would not satisfy the requirements of 2 U.S.C. 432(e)(5) and 11 CFR 102.14(c).

13 The Act and Commission regulations do not, however, preclude the inclusion of
14 "GMAC LLC," the name of the connected organization's parent, in the name of the SSF
15 *in addition to* the name of the connected organization. *See* 11 CFR 102.14 (The name of
16 the SSF "shall include" the full name of its connected organization, but an SSF
17 established by a subsidiary "need not" include the name of its parent or another
18 subsidiary.) For example, in *Advisory Opinion 1989-08 (Wagner & Brown)*, the
19 Commission permitted an SSF to include the name of a partnership affiliated with the
20 SSF's connected organization, even though the partnership did not qualify as a connected
21 organization for the SSF and the inclusion of the partnership's name was not required. In
22 that advisory opinion, the Commission approved use of the name "Insilco
23 Corporation/Wagner & Brown Political Action Committee" for the SSF. *See* *Advisory*

1 Opinion 1989-08. Similarly, here, the SSF may be named, for example, the “GMAC
2 Insurance Holdings, Inc. / GMAC LLC Political Action Committee.”

3 This response constitutes an advisory opinion concerning the application of the
4 Act and Commission regulations to the specific transaction or activity set forth in your
5 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
6 of the facts or assumptions presented, and such facts or assumptions are material to a
7 conclusion presented in this advisory opinion, then the requestor may not rely on that
8 conclusion as support for its proposed activity. All cited advisory opinions are available
9 on the Commission’s website at www.fec.gov.

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Sincerely,

Robert D. Lenhard
Chairman

1 ADVISORY OPINION 2007-15

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3 Jan Witold Baran, Esq.

DRAFT B

4 Caleb P. Burns, Esq.

5 Wiley Rein, LLP

6 1776 K Street, N.W.

7 Washington, D.C. 20006

8

9 Dear Messrs. Baran and Burns:

10 We are responding to your advisory opinion request on behalf of GMAC LLC
11 (“GMAC”), regarding whether, under the Federal Election Campaign Act of 1971, as
12 amended (the “Act”), and Commission regulations, GMAC may pay for the
13 administrative and solicitation costs of a separate segregated fund (“SSF”) to be
14 established by a GMAC subsidiary corporation, and whether the SSF may be named
15 “GMAC LLC PAC.”

16 The Commission concludes that GMAC may function as a connected organization
17 for the SSF of its corporate subsidiary and pay the administrative and solicitation costs
18 for the SSF. Furthermore, the SSF may use the name “GMAC LLC PAC.”

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on
21 July 31, 2007, and telephone conversations on September 4, 2007.

22 GMAC is a financial services company that primarily operates in the automotive
23 finance, mortgage, and insurance lines of business. GMAC has elected partnership status
24 in its filings with the Internal Revenue Service.¹ GMAC is owned 49% by General

¹ Although the New York Stock Exchange listings include “GMAC LLC PINES,” you have confirmed that the stock of GMAC LLC is not itself publicly traded, and that GMAC LLC is not treated as a corporation under 26 U.S.C. 7704 (“certain publicly traded partnerships treated as corporations”).

1 Motors, Inc., and 51% by FIM Holdings LLC.² FIM Holdings LLC is an investment
2 consortium led by Cerberus FIM Investors, LLC (“Cerberus”), its sole managing
3 member, and several corporate principals including Citigroup Inc., Aozora Bank Ltd.,
4 and a subsidiary of the PNC Financial Services Group, Inc.³ FIM Holdings LLC has
5 filed an election with the IRS to be treated as a partnership. Information about the IRS
6 election of Cerberus is not available.

7 GMAC owns a number of subsidiaries, one of which is GMAC Insurance
8 Holdings, Inc. (“GMAC Insurance”), an incorporated insurance company. GMAC
9 Insurance intends to establish an SSF. GMAC would like to use its own personnel and
10 resources to administer the SSF, including paying the administrative and solicitation
11 expenses of the SSF, which you propose to name “GMAC LLC PAC” and abbreviate as
12 “GMAC PAC.”

13

14 ***Questions Presented***

15 1. *May GMAC use its own resources to pay the expenses associated with*
16 *administering the SSF of its corporate subsidiary?*

17 2. *May the SSF be named “GMAC LLC PAC” and use “GMAC PAC” as an*
18 *abbreviation?*

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² See GMAC LLC Form 10-Q Quarterly Report to the SEC for the period ending June 30, 2007, p. 6, available online at

<http://www.sec.gov/Archives/edgar/data/40729/000095013407017059/k17109e10vq.htm>.

³ *Id.*

1 ***Legal Analysis and Conclusions***

2 1. *May GMAC use its own resources to pay the expenses associated with*
3 *administering the SSF of its corporate subsidiary?*

4 Yes, GMAC may pay the expenses associated with administering the SSF without
5 making a contribution.

6 Under the Act and Commission regulations, a corporation's payment for the
7 establishment, administration, and solicitation of contributions to its SSF is excluded
8 from the definition of "contribution" and "expenditure." 2 U.S.C. 441b(b)(2)(C), 11 CFR
9 114.1(a)(2)(iii). A corporation that directly or indirectly establishes, administers, or
10 financially supports a political committee is the "connected organization" of that
11 committee. 2 U.S.C. 431(7) and 11 CFR 100.6(a).

12 Because GMAC is an LLC electing partnership status with the IRS, its funds are
13 treated as partnership funds. *See* 11 CFR 110.1(g)(2) ("A contribution by an LLC that
14 elects to be treated as a partnership by the Internal Revenue Service . . . shall be
15 considered a contribution from a partnership pursuant to 11 CFR 110.1(e).") Although
16 the Act does not specifically authorize an LLC treated as a partnership to conduct itself as
17 a connected organization for an SSF, the Commission has permitted partnerships and
18 LLCs treated as partnerships to pay the administration and solicitation costs of an SSF if
19 they are affiliated with the corporation serving as the actual connected organization for
20 that SSF. *See* Advisory Opinion 2004-42 (Pharmavite); *see also* Advisory Opinions
21 2003-28 (Horizon Lines) (LLC treated as a partnership), 2001-18 (BellSouth) (joint
22 venture LLC treated as partnership), 1997-13 (USA PAC) (joint venture LLC treated as
23 partnership), 1996-49 (PrimeCo) (joint venture partnership), 1994-11 (FMC) (limited

1 partnership), 1992-17 (Du Pont Merck PAC) (partnership), and 1987-34 (Telenet)
2 (corporation owned by joint venture partnership). GMAC is *per se* affiliated with its
3 corporate subsidiary, GMAC Insurance, and therefore qualifies as the type of LLC
4 eligible to pay for the administration and solicitation costs of an SSF connected to
5 GMAC Insurance.⁴

6 In each of the advisory opinions cited above, the Commission had noted that the
7 partnership, or LLC treated as a partnership, was owned entirely by corporations. Thus,
8 the administrative and solicitation support provided by a partnership owned by affiliated
9 corporations “may be construed as coming from the affiliated corporations.” Advisory
10 Opinion 1992-17 (Du Pont Merck PAC). While GMAC’s ownership structure is not
11 entirely apparent because the principals and tax status of Cerberus FIM Investors, LLC,
12 are not disclosed, it is clear that at least a majority, if not all, of GMAC’s owners are
13 corporations (General Motors, Inc., Citigroup Inc., Aozora Bank Ltd., and the PNC
14 Financial Services Group, Inc.). Therefore, in light of this ownership structure and
15 GMAC’s affiliation with its corporate subsidiary that will serve as the connected
16 organization for the SSF, GMAC may assume the duties of a connected organization by
17 paying the costs of establishing and administering the GMAC Insurance SSF.

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⁴ See 11 CFR 100.5(g)(3)(i) (“including any . . . subsidiary”) and 110.3(a)(2)(i). Additionally, the Commission has long held that affiliates may include entities other than corporations, such as partnerships and LLCs. See Advisory Opinions 2004-42 (Pharmavite), 2004-32 (Spirit), 2001-18 (BellSouth), and 1992-17 (Du Pont Merck PAC).

1 2. *May the SSF be named “GMAC LLC PAC” and use “GMAC PAC” as an*
2 *abbreviation?*

3 Yes, the SSF may be named GMAC LLC PAC and may use GMAC PAC as an
4 abbreviation.

5 The Act and Commission’s regulations require the name of an SSF to include the
6 name of its connected organization. *See* 2 U.S.C. 432(e)(5) and 11 CFR 102.14(c).
7 However, where an LLC treated as a partnership is permitted to assume the functions of a
8 connected organization, the Commission has permitted the SSF to include the name of
9 the LLC rather than the name of the corporation that actually serves as the SSF’s
10 connected organization. *See, e.g.*, Advisory Opinion 2004-42 (Pharmavite). GMAC is
11 permitted to perform the functions of a connected organization with respect to the SSF of
12 its subsidiary corporation, and therefore the name GMAC LLC PAC is appropriate.

13 Commission regulations also permit an SSF to use a “clearly recognized
14 abbreviation or acronym by which the connected organization is commonly known,”
15 provided that the SSF uses both the abbreviation or acronym and the SSF’s full name in
16 its Statement of Organization, in all reports filed with the Commission, and in all
17 disclaimer notices. 11 CFR 102.14(c); *see also* 11 CFR 109.11 and 110.11. The SSF
18 may make contributions using the abbreviation or acronym. *Id.*; Explanation and
19 Justification at 45 Fed. Reg. 15080, 15085 (Mar. 7, 1980); *see also* Advisory
20 Opinions 2004-42 (Pharmavite), 2004-04 (AirPAC), 2000-34 (SAPPI Paper), and 1987-
21 26 (Principal Mutual).

