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AGENDA ITEM
For Meeting of 07-01-10
SUBMITTED LATE

FEC Directive on Legal Guidance to the Office of Compliance

The Commission's Office of Compliance ("OC") (which includes the Reports Analysis Division ("RAD") and the Audit Division) may seek formal or informal legal guidance from the Office of General Counsel ("OGC") regarding questions of law that arise from the review of reports filed with the Commission or in the course of an audit of a political committee. This is an important intra-agency function, because neither RAD nor the Audit Division makes legal determinations. Moreover, such legal guidance often affects whether: (1) RAD seeks additional information from a person or entity on a particular reporting issue, (2) the Audit Division pursues an issue in a pending audit, or (3) a matter is referred to OGC for enforcement.

1. Requests by Office of Compliance for Legal Guidance from Office of General Counsel

OGC shall respond timely to any request by OC for legal guidance. Specifically, OGC shall respond to all such requests within: (a) 30 calendar days, in the case of requests for informal legal guidance from RAD and Audit; (b) 45 calendar days of the request, in the case of requests from the Audit Division for formal guidance at either the IAR or DFAR stage of a Title 2 audit; or (c) 60 calendar days of the request, in the case of requests from the Audit Division for formal guidance at either the PAR or DFAR stage of a Title 26 audit.

2. Status Reports Regarding Office of Compliance Requests for Legal Guidance

The OC and OGC will provide the Commission with joint monthly status reports on all pending internally-generated requests for formal legal guidance.¹

The status report shall include the following information:

- a. the name of the committee being audited or the name of the person or entity about whom the request is being made by OC;
- b. the date that the request was received by OGC;
- c. a brief summary of the issue; and

¹ The status report will only include those requests for guidance for which OGC is preparing a written analysis in response to a question from RAD or Audit, and does not create an obligation for OGC to prepare a written response where it would not otherwise do so.

- d. a reasonable estimate as to the date by which OGC is expected to render the requested guidance or present the issue to the Commission for its consideration.
3. Commission Consideration of Novel, Complex, or Significant Legal Questions

Certain legal issues may warrant Commission consideration early in the reports analysis or audit process. In such instances, OGC and OC may at their own discretion bring the issue before the Commission for consideration.

The types of legal issues that OGC and OC are encouraged to bring before the Commission under this process include:

- a. Relatively close questions of law and questions of law on which the Commission has discretion to decide;
- b. Questions of law which, depending on the answer, would determine whether a significant amount of Commission resources would or would not be required on the particular matter involved;
- c. Questions of law that have been expressly reserved by the Commission in a prior audit, enforcement matter, or advisory opinion for subsequent consideration;
- d. Novel or unsettled questions of law, or questions prompted by developments in the law since the Commission last considered the same issue (including legislation, court decisions, or rulemakings) or technology.

Any legal issue presented to the Commission by OGC and OC under this procedure shall be accompanied by a statement of the issue and a recommendation by OGC and OC, and shall be circulated for a vote on the OGC and OC recommendation in accordance with all applicable Commission directives. After the OGC and OC recommendation is circulated for a Commission vote, in the event of an objection, the matter shall be automatically placed on the next meeting agenda consistent with the Sunshine Act, 5 U.S.C. § 552b(g), and applicable Commission regulations, 11 C.F.R. part 2. However, if the Commission is unable to resolve the issue or to provide guidance on how to proceed with the matter by the affirmative vote of four or more Commissioners within 60 calendar days after the legal issue has been presented to the Commission for a vote, OC may proceed with the matter.