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November 6, 2015

MEMORANDUM

TO: The Commission

FROM: Daniel A. Petalas *DAP by AN*
Acting General Counsel

Adav Noti *AN*
Acting Associate General Counsel

Amy L. Rothstein *ALR*
Assistant General Counsel

Esther Gyory *EG for ALR*
Attorney

Subject: AO 2015-11 (FYP, LLC) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 5:00 pm (Eastern Time) on November 9, 2015.

Members of the public may also attend the Commission meeting at which the draft 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 2015-11

2

3 Ezra W. Reese, Esq.
4 Tyler J. Hagenbuch, Esq.
5 Perkins Coie LLP
6 700 13th Street, N.W.
7 Suite 600
8 Washington, D.C. 20005-3960

DRAFT A

9

10 Dear Messrs. Reese and Hagenbuch:

11 We are responding to your advisory opinion request on behalf of FYP, LLC concerning
12 the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and
13 Commission regulations to the requestor’s proposal for processing contributions to political
14 committees. The Commission concludes that the proposal is permissible and that any fees paid
15 to the requestor for processing contributions to political committees must be included in the total
16 amount of such contributions.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on
19 September 14, 2015, and your email received on September 22, 2015 (collectively, “AOR”).

20 The requestor is a limited liability company registered in New Mexico. For purposes of
21 this advisory opinion, the requestor has asked the Commission to assume that it has elected to be
22 treated as a corporation for federal tax purposes.

23 The requestor is developing an app called MyChange. As described in more detail
24 below, MyChange will “round up” a participating user’s credit card or debit card transactions to
25 the next whole dollar amount and provide the difference between the original transactions and
26 the resulting rounded-up amounts to political committees or other nonprofit organizations
27 designated by the user. For example, if a user uses an enrolled credit card to charge a cup of
28 coffee for \$2.30 and (separately) a newspaper for \$1.50, then at the end of the billing cycle

1 MyChange will charge \$1.20 (\$0.70 plus \$.50) to the user’s card and send that amount, minus
2 fees, to the user’s designated recipients. *See* Advisory Opinion Request at AOR001.

3 *Contribution Process*

4 Users will access the MyChange platform through the MyChange website or by
5 downloading the MyChange app. After entering information about the credit and debit cards that
6 the user wishes to enroll in the round-up program, the user will select recipients from a list on the
7 app or website. Each user will be able to designate up to three recipients for each credit or debit
8 card and to assign a percentage of future round-ups to each recipient. Users who designate a
9 political committee recipient will be required to verify their eligibility to make contributions
10 under federal law and to submit information about their occupations and employers.¹

11 The requestor will calculate and process user round-ups on a monthly basis. The
12 requestor will work with a vendor to calculate the total amount of the round-ups derived from
13 each user’s credit and debit card transactions in a given month. The requestor’s merchant service
14 provider will then use the MyChange software to charge each user’s credit or debit card for that
15 total amount. At any time until the user’s card is charged for that month, the user will be able to:
16 set a monthly cap on contributions and donations; instruct the requestor to charge the credit card
17 double or triple the monthly round-up; add additional credit or debit cards; cancel a round-up; or
18 withdraw from the program entirely.

¹ Users will be required to attest to the following statement:

“This contribution is made from my own funds, and funds are not being provided to me by another person or entity for the purpose of making this contribution. I am making this contribution with my own personal credit card and not with a corporate or business credit card or a card issued to another person. I am not a federal contractor. I am at least eighteen years old. I am a U.S. citizen or lawfully admitted permanent resident (*i.e.* green card holder).”

1 The merchant service provider will transmit the user’s monthly round-up funds to a
2 merchant account that the requestor plans to establish exclusively to accept deposit of those
3 funds and to keep them separate from the requestor’s own treasury funds. Within one business
4 day after the user’s credit or debit card is charged, the funds will be transferred from the
5 merchant account to the user’s designated recipient (less the service fee, which is discussed
6 further below). The requestor states that it “[will] not exercise any direction or control” over the
7 transfers, except that it “may limit the amount of the transfer to avoid exceeding the relevant
8 contribution limit.” AOR003. Shortly afterwards, the user will receive an email indicating the
9 total amount charged against his or her card.

10 When the merchant service provider charges a user’s credit or debit card, MyChange’s
11 software will produce a spreadsheet record of the user’s itemized contributions and donations for
12 the month and the year-to-date. MyChange will also keep a separate accounting of the
13 contributions or donations sent to each recipient and will send each recipient a monthly itemized
14 spreadsheet of all users’ contributions or donations to that recipient. The requestor represents
15 that this transmittal “will include all information that political committees will need to comply
16 with their reporting obligations” under the Act and Commission regulations, including each
17 user’s address, occupation and employer. AOR003. Recipients will also be able to access the
18 MyChange website at any time to download this information.

19 At the end of each month, the requestor will reconcile the actual funds processed through
20 the merchant service account with its internal records to “ensure that the proper [amounts] have
21 been forwarded to the proper recipient, as designated by the user.” *Id.* As part of the
22 reconciliation, the requestor will (1) compare the total amount received in the merchant account
23 with MyChange’s internal record of funds received; (2) compare the amount paid out of the

1 merchant account with MyChange’s internal record of the total amount paid to each recipient;
2 and (3) perform an overall account reconciliation to ensure that the amount received equals the
3 total amount distributed to all recipients and the fees distributed to the requestor.

4 In addition to processing funds from permissible sources under the Act, the requestor
5 expects the merchant account sometimes to “process funds from users who are prohibited
6 sources under the Act, such as federal contractors or corporations, who are making [donations] to
7 organizations other than political committees.” AOR007. The requestor will use the
8 recordkeeping system described above to “ensure that only funds from permissible sources flow
9 to political committees” and that the merchant account “will never be in a position where it does
10 not have sufficient permissible funds to transfer to political committees.” *Id.*

11 *Eligible Political Committees*

12 Once each month, the requestor will add political committees and nonprofit organizations
13 to the list of eligible recipients under the MyChange program.² Although political committees
14 will be able to “request to do business with” MyChange, and users can ask MyChange to add
15 committees to the list of recipients, the requestor “does not intend to work with any and all
16 political committees that request to do business with it.” AOR002. Instead, it will only “work[]
17 with” candidates and political committees that meet its eligibility requirements. AOR006. The
18 requestor states that it will make this eligibility determination by applying a “standard set of
19 commercially-based factors,” including whether the political committee is in good standing with
20 the Commission or relevant state and local regulators. AOR002. According to the request, “[i]t
21 is also vital to MyChange’s business that MyChange enter into terms of service only with

² The requestor states that it will include on its list of eligible recipients “authorized committees and committees that make contributions to authorized committees,” as well as nonfederal candidates and committees. AOR002 & n.1.

1 political committees that share MyChange users' ideology and values." AOR006; *see also*
2 AOR002, AOR008. The requestor states that "applying an ideological criterion to potential
3 [political] committee partners [will] preserve[] the commercial viability of MyChange's
4 program" because "working with committees with competing values" would harm the
5 requestor's "business relationships with the individuals who use MyChange to make donations
6 and contributions." AOR006, AOR010.

7 The requestor states that the only business relationships it will have with the political
8 committees that it approves to receive contributions through MyChange will be entering into
9 terms of service with them "for the limited purpose of facilitating the transfer of users' funds to
10 the committees' accounts." AOR002, AOR010. The requestor plans to advertise its program to
11 the public and does not plan to work with political committees to market the program directly to
12 the committees' contributors.

13 *User Fees*

14 The requestor will assess each user a fee for using the MyChange program. The fee will
15 be calculated as a percentage of the total funds charged to the user's credit or debit card in a
16 given transaction. The requestor expects the fee to cover all of its costs in providing the services
17 described above, including "its vendor and operational costs associated with transferring users'
18 funds," AOR003, "transaction processing fees and other bank fees," AOR004, and the cost of
19 "collecting the users' information and transmitting such information to the recipient," AOR010.
20 The fee will also provide the requestor with "a reasonable profit." AOR003, AOR004. The
21 requestor states that the fee will "represent[] the normal and usual charge" for its services.
22 AOR004 (internal citations omitted). The fee will be drawn from the funds charged to the user's
23 credit or debit card before the remainder of those funds is provided to the designated recipients.

1 The fee “will be the same regardless of whether the recipient of the funds is a political committee
2 or [another] nonprofit organization.” AOR010.

3 ***Questions Presented***

4 (1) *May the requestor implement its proposed system without making a prohibited corporate*
5 *contribution?*

6 (2) *Will the fees paid by a contributor to the requestor have to be included in the total*
7 *amount of contribution to recipient political committees?*

8 ***Legal Analysis and Conclusions***

9 (1) *May the requestor implement its proposed system without making a prohibited corporate*
10 *contribution?*

11 Yes, the requestor may implement its proposal without making a prohibited corporate
12 contribution.

13 A. *Contribution Processors and Commercial Vendors*

14 The Act and Commission regulations prohibit corporations from making a contribution in
15 connection with a Federal election. *See* 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b)(1). A
16 “contribution” includes any “direct or indirect payment, distribution, loan, advance, deposit, or
17 gift of money, or any services, or anything of value . . . to any candidate, campaign committee,
18 or political party or organization, in connection with any [federal] election.” 52 U.S.C.
19 § 30118(b)(2); 11 C.F.R. § 114.2(b)(1); *see also* 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R.
20 § 100.52(a). “Anything of value” includes in-kind contributions, such as the provision of goods
21 or services without charge or at a charge that is less than the usual and normal charge. *See* 11
22 C.F.R. § 100.52(d)(1). Commission regulations define “usual and normal charge” as “the price
23 of those goods in the market from which they ordinarily would have been purchased at the time

1 of the contribution,” or “[the] commercially reasonable rate prevailing at the time the services
2 were rendered.” 11 C.F.R. § 100.52(d)(2).

3 The Commission has previously concluded that entities that process contributions as a
4 service to contributors without entering into agreements with — or receiving compensation from
5 — the recipient political committees are not making contributions because the entities are not
6 providing any services to the recipient political committees. *See, e.g.*, Advisory Opinion 2014-
7 07 (Crowdpac) at 6 (distinguishing between companies that process contributions as service to
8 contributors and companies that process contributions as service to recipient political
9 committees); Advisory Opinion 2012-22 (skimmerhat) at 4-6 (same); Advisory Opinion 2011-19
10 (GivingSphere) at 7 (same); Advisory Opinion 2011-06 (Democracy Engine *et al.*) at 5 (same).
11 In these situations, the Commission has analogized the services that the companies provide to
12 their individual subscribers to “delivery services, bill-paying services or check-writing services”
13 provided by companies such as “United Parcel Service, which a contributor may use to deliver a
14 contribution, or an electronic bill-pay service . . . provided by banks.” Advisory Opinion 2012-
15 22 (skimmerhat) at 5-6, 10 (citing Advisory Opinion 2011-06 (Democracy Engine) at 5 (internal
16 quotation marks omitted)); Advisory Opinion 2006-08 (Brooks) at 4.

17 In certain respects, the services that the requestor proposes to provide resemble those
18 approved by the Commission in these prior advisory opinions. As in those opinions, the
19 requestor here is a commercial entity that proposes to establish a web-based platform to enable
20 individuals to make contributions to political committees that the individuals designate. Also as
21 in those opinions, the requestor here proposes to enter into business relationships with its users
22 and to help them to identify “like-minded” political committees. AOR010; *see* Advisory
23 Opinion 2014-07 (Crowdpac) at 5-6 (approving use of search and matching functions to assist

1 users in identifying candidates); *see also* Advisory Opinion 2012-22 (skimmerhat) at 6-7 (same);
2 Advisory Opinion 2011-19 (GivingSphere) at 9-10 (concluding that provision to users of factual
3 information about candidates did not constitute contributions to candidates).

4 But the current proposal also differs materially from those previously approved by the
5 Commission because the requestor here does not propose to provide services *exclusively* to its
6 users. The Commission has determined that a commercial contribution processor provides
7 services only to its users where such services are provided “at the request and for the benefit of
8 the contributors, not of the recipient political committee.” Advisory Opinion 2011-06
9 (Democracy Engine) at 5 (quoting Advisory Opinion 2008-06 (Brooks)); *see also* Advisory
10 Opinion 2012-22 (skimmerhat) at 6. Here, by contrast, the requestor proposes that political
11 committees may “request to do business with MyChange,” and the requestor will evaluate such
12 requests by applying a “standard set of commercially-based factors,” AOR002 — including the
13 “ideology and values” of “potential [political] committee partners,” AOR006 — ultimately
14 “choos[ing] not to work with all political committees that request access to MyChange’s app,”
15 *id.* Indeed, the requestor affirmatively states that it will “exclude[] certain committees based on
16 ideological factors,” even if its users wish to make contributions to them, because it is “vital to
17 MyChange’s business that MyChange enter into terms of service *only* with political committees
18 that share MyChange’s users’ ideology and values.” *Id.* (emphasis added), AOR010 (“If a user
19 wishes to make a contribution to a political committee . . . not currently among those offered by
20 the MyChange program, MyChange will consider that request and will apply the same set of
21 standards to determine whether the political committee . . . shares MyChange’s users’ ideology
22 and values.”). Therefore, unlike “United Parcel Service . . . or an electronic bill-pay service . . .
23 provided by banks,” which deliver their customers’ funds to any recipient designated by the

1 customer, the requestor will grant certain committees' requests to participate in the program
2 while refusing to transmit users' funds to other committees, even if the users request such
3 transmission. This indicates that the requestor will not provide a service solely at the request of
4 and for the benefit of its users. *Compare* AOR010 (noting requestor's intended rejection of
5 committee recipients requested by users), *with* Advisory Opinion 2014-07 (Crowdpac) at 2
6 (providing webpage for "each federal candidate" with authorized committee registered with
7 Commission); Advisory Opinion 2012-22 (skimmerhat) at 2 (comparing user survey answers to
8 positions of "all Federal candidates"); Advisory Opinion 2011-19 (GivingSphere) at 2 (including
9 "all active political committees registered with the Commission" in searchable database);
10 Advisory Opinion 2011-06 (Democracy Engine) at 2 (proposing to process contributions to any
11 political committee in directory and to add political committees to directory upon users'
12 requests).³

13 Thus, the requestor's proposal entails providing services both to the individual users (by
14 processing certain contributions) and to the political committee recipients (by allowing
15 committees that pass the requestor's ideological screening to receive users' contributions). As
16 noted above, the requestor's provision of services to *contributors* will not result in the requestor

³ The Requestor characterizes its proposal as similar to "affinity programs" that the Commission has considered in the past. AOR004. While the Requestor's proposal does resemble an affinity program in some respects, a key characteristic of those programs that the Commission has approved is that a vendor provides rebates or other funds to individuals who earn the rebates through engaging in transactions with the vendor and who designate the rebates to be contributed to specified committees. *See, e.g.*, Advisory Opinion 2010-21 (ReCellular) (concluding that corporate contribution does not result where individual users earn rebates or rewards and choose to have rebates or rewards transmitted to political committee affinity partner); Advisory Opinion 2010-06 (Famos) (same); Advisory Opinion 2006-34 (Working Assets) (same); Advisory Opinion 2003-16 (Providian National Bank) (same). Here, in contrast, the Requestor proposes to charge each contribution made through the MyChange platform directly against each user's credit or debit card. In any event, even if the Requestor's proposal were an affinity program, the Commission has consistently concluded that such programs provide a service to participant political committees. *See e.g.* Advisory Opinion 2010-21 (ReCellular) at 5; Advisory Opinion 2010-06 (Famos) at 6; Advisory Opinion 2006-34 (Working Assets) at 5. The Commission would therefore engage in the same analysis it does below to determine whether the services will be provided at the usual and normal charge. *See e.g.*, Advisory Opinion 2010-21 (ReCellular) at 4-5; Advisory Opinion 2010-06 (Famos) at 6; Advisory Opinion 2006-34 (Working Assets) at 5.

1 making contributions to the recipient committees. *See supra* p.7. But the question of whether
2 the requestor’s provision of services to recipient *committees* is permissible is governed by a
3 different legal framework: The Commission must determine whether the requestor will act as a
4 “commercial vendor” in providing those services. *See* Advisory Opinion 2012-09 (Points for
5 Politics) at 6.

6 Commission regulations permit a “commercial vendor” to provide goods or services to
7 political committees in the ordinary course of business and at the usual and normal charge. 11
8 C.F.R. § 114.2(f)(1); *see, e.g.*, Advisory Opinion 2007-04 (Atlatl) at 3. To act as a “commercial
9 vendor” in providing services to a committee, a company must satisfy three criteria. Advisory
10 Opinion 2012-09 (Points for Politics) at 5-6 (applying criteria to conclude that company
11 processing contributions was acting as commercial vendor) (citing Advisory Opinion 2007-04
12 (Atlatl) and Advisory Opinion 2004-19 (Dollar Vote)). First, it must render the service in the
13 ordinary course of business at the usual and normal charge. Second, it must forward
14 contributions to candidates and political committees through segregated accounts. Third, it must
15 employ adequate screening procedures to ensure that it is not forwarding illegal contributions.

16 The requestor will satisfy all three criteria. First, the requestor proposes to provide the
17 services in the ordinary course of business and at the usual and normal charge: The requestor’s
18 business will be to process contributions and donations through its round-up program, and it will
19 process contributions to political committees under the same terms and conditions — including a
20 market-rate, “usual and normal” fee (AOR004) — as it will apply in processing donations to
21 other nonprofit organizations. *See* AOR001-03 (describing proposal to process contributions to
22 political committees and other nonprofit organizations), AOR010 (“The amount of the fee will
23 be the same regardless of whether the recipient of the funds is a political committee or a

1 nonprofit organization.”); *see also* Advisory Opinion 2006-34 (Working Assets) at 7 (concluding
2 that rebates and round-ups would be provided to political committees in ordinary course of
3 business when consistent with existing affinity program for nonpolitical clients). Moreover, the
4 fee that the requestor intends to charge for transmitting contributions further demonstrates that
5 this activity will be conducted in the ordinary course of business because that fee will be
6 calculated to cover “all costs incurred” by the requestor in providing the service, AOR004, and
7 provide the requestor with “a reasonable profit,” AOR003 (stating that fees will “cover its
8 vendor and operational costs associated with transferring users’ funds”). *See also* AOR004
9 (stating that fees will cover costs “including transaction processing fees and other bank fees”),
10 AOR010 (stating that fees will cover “the cost of collecting the users information and
11 transmitting such information to the recipient”).⁴

12 Second, the requestor proposes to segregate its funds from its users’ funds by using a
13 merchant account to charge and collect the rounded-up amounts from the users’ personal credit
14 and debit cards. The merchant account will be segregated from the requestor’s own treasury
15 accounts and will be used solely to deposit users’ rounded-up funds prior to transmitting them.
16 Further, the requestor’s fees will be deducted from users’ funds before the funds are transferred
17 to the recipients so that the fees and contributions will not be commingled and so that the
18 requestor will not unlawfully transfer its fees to the recipient committees. *See* Advisory Opinion
19 2012-09 (Points for Politics) at 6; Advisory Opinion 2004-19 (Dollar Vote.org) at 4. Thus, the
20 requestor’s proposal ensures that the requestor will transmit only segregated user funds — and

⁴ The Commission has noted that a commercial vendor may “protect the commercial viability of the vendor’s program” by applying “commercial eligibility requirements” in selecting the political committees to which it will forward contributions. *See* Advisory Opinion 2012-28 (CTIA – The Wireless Association) at 8-9. Accordingly, the requestor’s plan to apply such requirements to its political committee participants is consistent with the conclusion that the requestor will be forwarding contributions to those committees in the ordinary course of business.

1 not the requestor's corporate funds — to political committees.

2 Third, the request states that the requestor will screen contributions to ensure that they are
3 not excessive and are not from prohibited sources. The requestor will require any user who
4 selects a political committee as a recipient to attest that (1) the contribution will be made from
5 the user's own funds and not from funds provided by another person for the purpose of making
6 the contribution; (2) the user will make the contribution with his or her own personal credit card
7 and not with a corporate or business credit card or a card issued to another person; and (3) the
8 user is not a prohibited source under the Act or Commission regulations. Users who do not make
9 these attestations will not be allowed to designate a political committee as a recipient (although
10 they will still be able to donate funds to nonprofit organizations). Because the merchant account
11 that the requestor will use to collect contributions will likely also contain donations from
12 prohibited sources to nonprofit organizations, the requestor proposes to use URL tracking
13 identifiers and a recordkeeping and reconciliation system to ensure that no funds from prohibited
14 sources are transferred from the account to political committees. AOR003, AOR007, AOR 009.
15 Furthermore, the requestor will have the ability to limit the amount of a transfer if necessary to
16 avoid an excessive contribution. AOR003. Thus, based on the representations made in the
17 request, the proposed tracking, recordkeeping, and compliance measures for processing
18 contributions will constitute "adequate screening procedures" under the standards approved in
19 previous advisory opinions. *See, e.g.* Advisory Opinion 2012-09 (Points for Politics) at 6;
20 Advisory Opinion 2007-04 (Atlatl) at 4; Advisory Opinion 2004-19 (DollarVote.org) at 4.

21 Accordingly, the Commission concludes that the requestor will lawfully provide the

1 proposed services to political committees as a commercial vendor.⁵

2 *B. Corporate Conduits and Commercial Fundraising Firms*

3 For purposes of the Act’s contribution limitations, “all contributions made by a person,
4 . . . including contributions which are in any way earmarked or otherwise directed through an
5 intermediary or conduit to such candidate,” are treated as contributions from the person to the
6 candidate. 52 U.S.C. § 30116(a)(8). “Earmarked” means “a designation, instruction, or
7 encumbrance, whether direct or indirect, express or implied, oral or written, which results in all
8 or any part of a contribution . . . being made to . . . a clearly identified candidate.” 11 C.F.R.
9 §110.6(b)(1). A “conduit or intermediary” is “any person who receives and forwards an
10 earmarked contribution to a candidate.” 11 C.F.R. § 110.6(b)(2). Persons prohibited from
11 making contributions are prohibited from being conduits or intermediaries. 11 C.F.R.
12 § 110.6(b)(2)(ii).

13 Here, the requestor proposes to process contributions to candidates’ authorized
14 committees (as well as to other political committees). Because the requestor asks the
15 Commission to treat it as a corporation for purposes of this advisory opinion, AOR009, and
16 corporations may not make contributions, *see* 52 U.S.C. § 30118, the requestor would not be
17 permitted to act as a “conduit” for contributions earmarked for candidates. *See* 52 U.S.C.
18 § 30116(a); 11 C.F.R. §§ 110.6(b)(2)(ii), 114.2(b)(1).

19 Commission regulations provide, however, that “a commercial fundraising firm retained
20 by the candidate or the candidate’s authorized committee to assist in fundraising” is not a

⁵ Corporations are also prohibited from facilitating the making of contributions, 11 C.F.R. § 114.2(f), but “[a] corporation does not facilitate the making of a contribution . . . if it provides goods and services in the ordinary course of its business as a commercial vendor . . . at the usual and normal charge.” 11 C.F.R. § 114.2(f)(1). Because the Commission concludes that the requestor will provide its services in the ordinary course of business as a commercial vendor at the usual and normal charge, the requestor will not impermissibly facilitate the making of contributions.

1 “conduit.” 11 C.F.R. § 110.6(b)(2)(i)(D). Thus, if the requestor is a commercial fundraising
2 firm, its proposed activities would not render it a prohibited conduit. The regulations do not
3 define the term “commercial fundraising firm,” but in Advisory Opinion 2004-19
4 (DollarVote.org) the Commission determined that a corporation that provided contribution-
5 forwarding services to contributors and political committees would be a commercial fundraising
6 firm, and thus not a conduit, because it would be a “commercial vendor” retained by candidate
7 committees to assist them in raising contributions. Advisory Opinion 2004-19 (DollarVote.org)
8 at 5. In making this determination, the Commission “analyzed whether [the corporation]
9 exercise[d] any discretion that might influence which candidates would be recipients of the
10 contributions, or the amounts that candidates would receive.” *Id.* The Commission explained
11 that “the existence of such discretion would militate against a conclusion that the firm is
12 providing a commercial service on an equal basis to all candidates registered with the firm.” *Id.*

13 Under the facts presented here, the Commission concludes that the requestor will be a
14 commercial fundraising firm and thus not a conduit. As explained above, the Commission has
15 determined that the requestor will act as a commercial vendor under the Commission’s corporate
16 contribution regulations in processing contributions to political committees. Therefore, the
17 requestor will also qualify as a commercial fundraising firm under the Commission’s earmarking
18 regulations if the requestor does not exercise discretion over the contributions made by users.
19 No such discretion appears on the facts presented in the request. When a user signs up for
20 MyChange, the user will assign a percentage of his or her monthly round-up to a given political
21 committee selected from the list of eligible recipients. At any time until the user’s credit or debit
22 card is charged at the end of the month, the user may cap, modify, or cancel a contribution, or
23 withdraw from the program entirely. AOR001-02, AOR009. The requestor states that “all

1 transfers are made according to users' designations," except where necessary to avoid exceeding
2 the relevant contribution limit. AOR003. Thus, the requestor will not exercise discretion over
3 the users' contributions and will, instead, "provid[e] a commercial service on an equal basis to
4 all [political committees] registered with the firm." *See* Advisory Opinion 2004-19
5 (DollarVote.org) at 5.⁶ Therefore, the Commission concludes that the requestor will not
6 impermissibly serve as a corporate conduit in processing contributions from users to political
7 committees.

8 (2) *Will the fees paid by a contributor to the requestor have to be included in the total*
9 *amount of contribution to recipient political committees?*

10 Yes, the fees paid by contributors to the requestor must be included in the total amounts
11 of the contributions made to recipient political committees.

12 As explained above in the response to Question 1, the requestor will provide a service to
13 the political committees that it allows to participate in MyChange. Thus, to avoid making an
14 impermissible corporate contribution, the requestor must charge the usual and normal fees for the
15 services provided. The requestor proposes to have its users pay these fees by deducting them
16 from the amounts billed to the users' credit and debit cards prior to transferring the remaining
17 amounts as contributions to the recipient committees.

18 The Commission has previously approved proposals in which individuals would pay for
19 services provided by corporations to political committees because such payments are lawful
20 contributions from the individuals to the committees. *See* Advisory Opinion 2012-09 (Points for
21 Politics) at 6; Advisory Opinion 2007-04 (Atlatl) at 4-6. Specifically, the users' payment of the

⁶ The requestor must comply with all timing and information requirements when forwarding contributions to political committees under 52 U.S.C. § 30102(b) and 11 C.F.R. § 102.8.

1 fees “relieve[s] recipient political committees of a financial obligation that [the] political
2 committees would otherwise have to pay for themselves, thereby providing something of value
3 to these committees.” Advisory Opinion 2007-04 (Atlatl) at 5. Accordingly, the amount of the
4 fee attributable⁷ to each political committee recipient is a contribution from the user to the
5 political committee. Advisory Opinion 2012-09 (Points for Politics) at 6; Advisory Opinion
6 2007-04 (Atlatl) at 4.

7 The Commission expresses no opinion regarding the potential application of federal tax
8 law or other state or local laws to the proposed activities because those questions are not within
9 the Commission’s jurisdiction.

10 This response constitutes an advisory opinion concerning the application of the Act and
11 Commission regulations to the specific transaction or activity set forth in this advisory opinion
12 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of
13 the facts or assumptions presented, and such facts or assumptions are material to a conclusion
14 presented in this advisory opinion, then the requestor may not rely on that conclusion as support
15 for its proposed activity. Any person involved in any specific transaction or activity which is
16 indistinguishable in all its material aspects from the transaction or activity with respect to which
17 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
18 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be

⁷ Because MyChange will allow users to designate up to three recipients for his or her round-ups, the Requestor must allocate its fees among the recipients to determine the total contribution amounts. For example, if a user assigns 40% of his or her monthly round-up to a political committee and the remaining 60% to an organization that is not a political committee, the user’s contribution to the political committee would be 40% of the total round-up, which should equal the amount that the committee receives plus 40% of the assessed fees.

1 affected by subsequent developments in the law including, but not limited to, statutes,
2 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
3 on the Commission's website.

4 On behalf of the Commission,

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Ann M. Ravel
Chair

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