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RECEIVED

By Office of General Counsel at 1:52 pm, Jul 18, 2017

June 19, 2017

Lisa J. Stevenson, Esq.
Acting General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Advisory Opinion Request

Pursuant to 52 U.S.C. § 30108, Point Bridge Capital, LLC (PBC), a Delaware for-profit limited liability company with its primary place of business in Texas, requests an advisory opinion on the permissibility of PBC's proposed business plan under the Federal Election Campaign Act of 1971 (the "Act"), as amended (the "Act"), and the Federal Election Commission's (the "Commission") regulations.

I. BACKGROUND

PBC is an investment advisory firm registered with the Securities and Exchange Commission (SEC). PBC has developed an index of publicly traded equity securities based on the aggregated political contributions of the companies' Political Action Committees (PACs) and employees. The index will measure how supportive a company is of a particular political party and its candidates by aggregating data on contributions to and expenditures in support of political party committees, candidates, and leadership PACs. This support will be measured solely on the political party affiliation of the donees, and the level of that support. Using the index, PBC plans to offer an Exchange Traded Fund (ETF) that will allow investors to track the performance of the index and thus invest in the stocks of companies that were selected based on the level of support for a particular political party and its candidates.

The aggregated data is collected from the Commission's reports, as well as other aggregators of Commission data. PBC will not publicly provide any individual contributor contact information in creating or marketing its index and ETF. Instead, PBC's index and ETF will rely on aggregated data, thus preventing individual contributor information from being used for solicitation purposes. Furthermore, PBC itself will not use any individual contributor information to solicit political contributions or other products and services, nor will it make such information available for similar use by third parties. At no point will PBC use, distribute, sell, or license data identifying individual contributors.

To monetize its product, PBC intends to license its index to other parties for the creation of baskets of securities for investment purposes. PBC also intends to charge customary advisory fees and other fees on its ETF that tracks the performance of the index. PBC will advertise the existence of both the index and the ETF in order to successfully monetize these products. The advertisements will identify the particular political party associated with the index and ETF, but will not mention or identify particular candidates. PBC will not use (aside from party affiliation) or provide factual or other information about candidates or political parties, such as voting records or positions on issues, in connection with its index or ETF, or advertisements for same. The advertisements will not expressly advocate for political parties or candidates, and PBC will not make independent expenditures. PBC will not coordinate (within the meaning of 11 CFR 109.21) its efforts or advertisements with any candidates or political parties. PBC will, consistent with the opinion to be issued by the Commission, structure its advertisements to avoid them qualifying as electioneering communications.

II. QUESTIONS PRESENTED

- 1. May PBC create an index of companies based on the aggregated political contributions of the company PACs and employees?**
- 2. May PBC publicly discuss and report factual data on the aggregated political contributions of any of these companies?**
- 3. May PBC license the index, as described, to other parties for creation of baskets of securities for investment purposes?**
- 4. May PBC charge advisory fees and other fees on an ETF that tracks the performance of the index created on the aggregated political contributions of the company PACs and employees?**
- 5. May PBC advertise the existence of the index?**
- 6. May PBC advertise the existence of the ETF?**
- 7. Under the proposed plan, is PBC required to file any reports with the Commission?**

III. DISCUSSION

- 1. May PBC create an index of companies based on the aggregated political contributions of the company PACs and employees?**

PBC should be permitted to create an index of companies based on the aggregated political contributions of the company PACs and employees. As explained above, PBC will not use any data relating to individual contributors, and the data in its index could not therefore be

used by third parties to solicit contributions or for other commercial purposes. For these reasons, PBC's proposal is consistent with the applicable laws, regulations and prior Commission Advisory Opinions.

The Act prohibits any information copied from Commission reports from being "sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee." 52 U.S.C. § 30111(a)(4); *see also* 11 C.F.R. § 104.15(a). The Commission has explained, however, that "[a]ggregated data and data that does not contain individual contributors' contact information does not implicate the privacy concerns at the heart of section 30111(a)(4)." AO 2015-12 (Ethiq). For this reason, the Commission has consistently approved proposals to use "non-individualized contribution data . . . so long as the data is not used to solicit contributions and cannot be so used by third parties to whom the data is provided." AO 2015-12 (Ethiq).

PBC intends to create an index to track the performance of publicly traded equity securities based on only aggregated political contributions of the companies' PACs and employees. PBC will not use or display data regarding individual contributors, as all data related to individual contributors will be provided in the aggregate. Furthermore, PBC will not identify or provide contact information for individual contributors, thus precluding third parties from using such data for solicitation or other commercial purposes. Accordingly, PBC's index relying on aggregated contributor data falls squarely within the Commission's precedents.

2. May PBC publicly discuss and report factual data on the aggregated political contributions of any of these companies?

PBC should be permitted to publicly discuss and report factual data on the aggregated political contributions of these companies. The Commission has repeatedly explained that corporations may publicly provide factual information about a candidate, including information regarding contributor data. *See* AO 2015-12 (Ethiq). In doing so, the Commission has approved programs displaying contribution data "designed to help users make and process contributions." AO 2015-12 (Ethiq). Such programs are permissible so long as the corporation does not coordinate with a candidate. AO 2015-12 (Ethiq).

In Advisory Opinion 2015-12 (Ethiq), the Commission approved a plan to publicly discuss and report factual data regarding the aggregate political contributions of companies' PACs and employees for the purpose of allowing users to make educated decisions about the candidates and corporations to support. The Commission explained that this proposal was permissible and did not constitute an unlawful disbursement under the Act because Ethiq was not coordinating with particular candidates. *Id.*

Similarly, PBC intends to publicly display and report factual data regarding the aggregated political contributions of companies listed in its index. It will not coordinate with candidates regarding the reporting or displaying of such information, but will merely provide this factual data for individuals to use in making independent decisions about their investment

preferences. Under the Commission's precedent, PBC should be permitted to make such factual reports.

3. May PBC license the index, as described, to other parties for creation of baskets of securities for investment purposes?

PBC believes it should be permitted to license its index to third parties for the creation of baskets of securities for investment purposes. As explained above, PBC will not provide individual contribution data or contact information. The Commission has explained that “[s]ale and use of Commission data that does not contain ‘sufficient information to generate solicitations’ to individual contributors is therefore permissible.” AO 2015-12 (Ethiq) (citing AO 1995-09 (NewtWatch), *Federal Election Commission v. Political Contributions Data*, 943 F.2d 190, 198 (2d Cir 1991)).

In Advisory Opinion 2015-12 (Ethiq), the Commission ruled that Ethiq could license a dataset it created that aggregated contributor information from company PACs and executive-level employees. The Commission explained that Ethiq was permitted to license its dataset because it contained only aggregated contributor information and therefore could not “be used for solicitations as contemplated by section 104.15.” *Id.*

Similarly, PBC's index will only include aggregated contributor information based on contributions by company PACs and employees. Just like the dataset at issue in Advisory Opinion 2015-12, PBC's dataset cannot be used for solicitations as contemplated by section 104.15. For those reason, and those stated above with regard to Question #1, PBC believes that it may license its index for the creation of baskets of securities for investment purposes.

4. May PBC charge advisory fees and other fees on an ETF that tracks the performance of the index created on the aggregated political contributions of the company PACs and employees?

PBC believes it should be permitted to charge advisory fees and other fees on an ETF that tracks the performance of its index, in the same manner as it would charge fees for other similar products unrelated to political contributions. PBC will not use, display, sell, or provide data identifying individual contributors in offering its ETF or charging the appropriate fees. Because it will not provide factual information about candidates or mention specific candidates, no contribution to any candidate will result.

For these reasons, PBC believes it should be permitted to charge advisory fees and other fees on an ETF that tracks the performance of its index.

5. May PBC advertise the existence of the index?

PBC should be permitted to advertise the existence of the index because its advertisements will not involve the use or sale of any individual contribution data. The Commission has explained that “[s]ale and use of Commission data that does not contain

‘sufficient information to generate solicitations’ to individual contributors” is permissible. AO 2015-12 (Ethiq) (citing AO 1995-09 (NewtWatch), *Political Contributions Data*, 943 F.2d at 198). Furthermore, the Commission has stated that corporations may publicly provide factual information about a candidate, including information regarding contributor data. *See* AO 2015-12 (Ethiq). PBC’s advertisements of the index will be limited to publicly displaying factual information regarding candidate contributions from various companies’ PACs and employees. In advertising its index, it will not sell or use individual contributor data, nor will it coordinate its advertisements with any candidates.

The advertisements will identify the particular political party associated with the index and ETF, but will not mention or identify particular candidates. PBC will not use (aside from party affiliation) or provide factual or other information about candidates or political parties, such as voting records or positions on issues, in connection with its index or ETF, or advertisements for same. The advertisements will not expressly advocate for political parties or candidates, and PBC will not make independent expenditures. PBC will not coordinate its efforts or advertisements with any candidates or political parties. PBC will, consistent with the opinion to be issued by the Commission, structure its advertisements as necessary to avoid them qualifying as electioneering communications.

For these reasons, PBC believes it should be permitted to advertise the existence of the index.

6. May PBC advertise the existence of the ETF?

As stated above, PBC’s advertisements will be limited to publicly displaying factual information regarding candidate contributions, and PBC’s advertisements will not involve the sale or use of individual contributor data. The advertisements will not expressly advocate for political parties or candidates, and PBC will not make independent expenditures. PBC will not coordinate its efforts or advertisements with any candidates or political parties. PBC will, consistent with the opinion to be issued by the Commission, structure its advertisements to avoid them qualifying as electioneering communications.

Consequently, PBC should be permitted to advertise the existence of the ETF.

7. Under the proposed plan, is PBC required to file any reports with the Commission?

PBC does not believe it should be required to file any reports with the Commission. The Act and Commission regulations require certain persons to file reports with the Commission. For example, political committees must “file reports of receipts and disbursements,” *see* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1. Additionally, persons who spend above threshold amounts on independent expenditures or electioneering communications must file reports with the Commission. *See* 52 U.S.C. § 30104(c), (f); 11 C.F.R. §§ 104.20, 109.10. The Commission, however, has recognized that persons who do not fall within these parameters are not required to file any reports with the Commission. AO 2015-12 (Ethiq).

PBC is a for-profit SEC registered investment advisory firm, not a political committee. Additionally, PBC will not be engaging in any express advocacy for or against a candidate, organization, or issue, and it will structure its advertisements as necessary to avoid them qualifying as electioneering communications. For these reasons, PBC believes that its proposed plan does not trigger any reporting requirements outlined in the Act.

IV. CONCLUSION

For the foregoing reasons, PBC believes that its proposed activities should be deemed permissible and should not trigger any reporting requirements under the Act.

Please do not hesitate to contact the undersigned if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "D. Eric Lycan". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke at the end.

D. Eric Lycan

DEL

Anthony Bell

From: Lycan, Eric <Eric.Lycan@DINSMORE.COM>
Sent: Monday, July 24, 2017 4:08 PM
To: Joanna Waldstreicher
Cc: Robert Knop; Anthony Bell
Subject: Re: AOR Point Bridge Capital - delivered 6/20/2017

Categories: Purple category

These statements are accurate as written. Thank you so very much to your prompt attention to this matter.

Eric Lycan
Dinsmore & Shohl LLP
859-425-1047 office
859-621-8888 mobile

Sent from my iPhone, please pardon brevity and typing errors

On Jul 24, 2017, at 3:48 PM, Joanna Waldstreicher <JWaldstreicher@fec.gov> wrote:

Dear Mr. Lycan:

Thank you for speaking with us on Friday of last week about your advisory opinion request on behalf of Point Bridge Capital ("PBC"). We have set out below our understanding of some of the information that you provided in that conversation. Please confirm the accuracy of these statements or correct them if they are not accurate as written.

1. PBC will establish an ETF comprising companies that support both a political party and that party's candidates. PBC will not separately break out and publicly identify support for a political party and support for that party's candidates. In addition, PBC will not establish separate ETFs for a political party and that party's candidates..
2. PBC plans to proceed with this proposal for one of the two major political parties, and may at some point add the other major political party. PBC does not currently plan to establish an ETF with respect to any political party other than the two major political parties.
3. PBC will include only contributions to and expenditures in support of political party committees, candidate committees, and leadership PACs in compiling the proposed index. PBC will not include support for independent expenditure-only committees (superPACs).
4. Whether a company is included in the ETF will depend on its score on the index, but fees charged to investors will not depend on how the company scores on the index, and the fees charged will be similar to those charged for other, non-political ETFs.
5. A company's score on the index will be based on its direct support for the political party and its candidates, as well as its support for, or opposition to, the other major political party and its candidates.
6. PBC will have information on how many employees are included in the aggregate data but will not disclose that information to investors or licensees.

7. PBC may not obtain all of its contribution or expenditure data directly from Commission reports; it may also obtain information from other sources' aggregations of Commission data.

We would appreciate your response by email. Your response may be considered part of your advisory opinion request; if so, it will be posted as such on the Commission's website.

Joanna S. Waldstreicher
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Federal Election Commission
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Washington, DC 20463
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