

## FEDERAL ELECTION COMMISSION HOLDS HEARING ON BUNDLING

*On September 17, 2008, the Federal Election Commission (“FEC” or “Commission”) held a public hearing on its proposed “bundling rules.” As described in previous Client Advisories on this topic, under the Honest Leadership and Open Government Act of 2007 (“HLOGA”), the Commission was charged with promulgating rules that would require federal campaign committees and leadership PACs to disclose the names of federal lobbyists that bundle \$15,000 or more of contributions for the committee in a covered period (e.g. semi-annually or quarterly) on their periodic reports.*

The Commission proposed a rule on November 6, 2007 and accepted public comments on or before November 30, 2007. However, due to a lack of a quorum, the FEC was not able to vote on a Final Rule earlier this year. Consequently, the FEC missed its statutory deadline to promulgate the bundling rule and have it go into effect for the 2008 election cycle. We expect the Commission to vote on a Final Rule this Fall and for it to go into effect in 2009. We do not believe that any Final Rule would be retroactive for the 2008 cycle.

At the hearing, the Commission focused on three main points:

1. The issue of what constitutes “credit”;
2. How to treat funds raised at events hosted by multiple individuals, including lobbyists; and
3. Whether to include in the rule agents or employees of registered lobbyists or registered organizations.

With regard to the first issue of credit, opinions were generally split into two distinct groups. Public interest groups urged the Commission to adopt as broad of a disclosure requirement as possible. In their view, any

knowledge by a campaign committee or candidate that an individual is responsible for bundling would constitute credit. Conversely, other witnesses argued that an objective, prescriptive list of crediting methods should be issued and used as the standard.

The Commission also heard sharply divided testimony about how to credit bundled contributions for fundraising events. In written and oral testimony, public interest groups supported crediting co-hosts of events with the full amount raised at an event, as opposed to the amount that a person actually raised for an event. Such an approach has been generally opposed by the business community in formal comments as misleading. That position was echoed in oral testimony at the hearing.

Positions on the agent issue seemed to be less distinct. As a threshold matter, there was some disagreement over whether or not the statute even required the Commission to include agents. More specifically, HLOGA provides for disclosure of registered lobbyists who are “bundlers.” However, it is possible that a non-lobbyist CEO or other in-house employee of a lobbying registrant company might assemble contributions for a federal candidate or leadership PAC in a manner that constitutes bundling and that would require disclosure under HLOGA, were that individual a registered lobbyist. The FEC rulemaking is asking whether the candidate or leadership committee should be required to identify these non-lobbyist employees or officials of a lobbying entity as bundlers, just as if the individual were a registered lobbyist.

Assuming that the Commission would include them, a business community witness supported drawing the line on agents of lobbying organizations at the point of whether or not the non-registered bundler acts within his or her employment capacity. Others circled back to the issue of credit, and suggestions included methods to determine who is getting the credit (registered company or non-registered individual) for the bundling.

The hearing revealed little as to what the Final Rule will look like. It was clear that the Chairman and Commissioners have concerns about the proper way to allocate and report credit for bundling contributions and who to cover within the Final Rule. To aid in further deliberation, the Commission held the record open for one week to allow for submission of additional comments on these three main issues, as well as guidance on what a new bundling form could look like.

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### **FOR MORE INFORMATION**

As new developments regarding HLOGA and FEC compliance continue to be announced, we will provide further updates. In the meantime, should you have any legal questions related to HLOGA or FEC compliance, please contact:

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