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FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2007–6]

Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process

AGENCY: Federal Election Commission.

ACTION: Statement of Policy.

SUMMARY: The Federal Election Commission (''Commission'') is issuing a Policy Statement to clarify the various ways that the Commission addresses Matters Under Review (''MURs'') at the initial stage of enforcement proceedings. The Commission may take any of the four following actions at this stage: find ''reason to believe,'' ''dismiss,'' ''dismiss with admonishment,'' and find ''no reason to believe.''

DATES: *Effective Date:* March 16, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Shonkwiler, Assistant General Counsel, or Lynn Tran, Attorney, Enforcement Division, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (''FECA'' or ''the Act''), grants the Commission ''exclusive jurisdiction with respect to civil enforcement'' of the provisions of the Act and Chapters 95 and 96 of Title 26. 2 U.S.C. 437c(b)(1). Enforcement matters come to the Commission through complaints from the public; information ascertained in the ordinary course of the Commission's supervisory responsibilities, including referrals from the Commission's Reports Analysis and Audit Divisions; referrals from other government agencies; and self-reported submissions.

The FECA provides that ''upon receiving a complaint'' or upon the basis of information ascertained in the course of carrying out its supervisory responsibilities, the Commission ''shall make an investigation of such alleged violation'' of the Act where the Commission, with the vote of four members, determines that there is ''reason to believe that a person has committed, or is about to commit'' a violation of the Act. 2 U.S.C. 437g(a)(2); *see also* 11 CFR 111.10(f). Commission ''reason to believe'' findings have caused confusion in the past because they have been viewed as definitive determinations that a respondent violated the Act. In fact, ''reason to believe'' findings indicate only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred. Indeed, the Commission has recommended that Congress modify the FECA to clarify this point. *See* Legislative Recommendations in 2003 and 2004 FEC Annual Reports. Other kinds of dispositions at this preliminary stage would also benefit from clarification to ensure consistency and promote understanding of the Commission's reasons for taking action. Thus, the Commission is issuing this policy statement to assist complainants, respondents, and the public in understanding the Commission's findings at this stage of the enforcement process.

Generally speaking, at the initial stage in the enforcement process, the Commission will take one of the following actions with respect to a MUR: (1) Find ''reason to believe'' a respondent has violated the Act; (2) dismiss the matter; (3) dismiss the matter with admonishment; or (4) find ''no reason to believe'' a respondent has violated the Act. This policy statement is intended to clarify the circumstances under which the Commission uses each of these dispositions.

A. ''Reason To Believe''

The Act requires that the Commission find ''reason to believe that a person has committed, or is about to commit, a violation'' of the Act as a predicate to opening an investigation into the alleged violation. 2 U.S.C. 437g(a)(2). The Commission will find ''reason to believe'' in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation. A ''reason to believe'' finding will always be followed by either an investigation or pre-probable cause conciliation. For example:

- A ''reason to believe'' finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope.
- A ''reason to believe'' finding followed by conciliation would be appropriate when the Commission is certain that a violation has occurred and the seriousness of the violation warrants conciliation.

A ''reason to believe'' finding by itself does not establish that the law has been violated. When the Commission later accepts a conciliation agreement with a respondent, the conciliation agreement speaks to the Commission's ultimate conclusions. When the Commission does not enter into a conciliation agreement with a respondent, and does not file suit, a Statement of Reasons, a Factual and Legal Analysis, or a General Counsel's Report may provide further explanation of the Commission's conclusions.

The Commission has previously used the finding ''reason to believe, but take no further action'' in cases where the Commission finds that there is a basis for investigating the matter or attempting conciliation, but the Commission declines to proceed for prudential reasons. As discussed below, the Commission believes that resolving these matters through dismissal or dismissal with admonishment more clearly conveys the Commission's intentions and avoids possible confusion about the meaning of a reason to believe finding.

B. Dismissal and Dismissal With Admonishment

Under *Heckler* v. *Chaney*, 470 U.S. 821 (1985), the Commission has broad discretion to determine how to proceed with respect to complaints or referrals. The Commission has exercised its prosecutorial discretion under *Heckler* to dismiss matters that do not merit the additional expenditure of Commission

resources.[1] As with other actions taken by the Commission, dismissal of a matter requires the vote of at least four Commissioners.

Pursuant to the exercise of its prosecutorial discretion, the Commission will dismiss a matter when the matter does not merit further use of Commission resources, due to factors such as the small amount or significance of the alleged violation, the vagueness or weakness of the evidence, or likely difficulties with an investigation, or when the Commission lacks majority support for proceeding with a matter for other reasons. For example, a dismissal would be appropriate when:

- The seriousness of the alleged conduct is not sufficient to justify the likely cost and difficulty of an investigation to determine whether a violation in fact occurred; or
- The evidence is sufficient to support a ''reason to believe'' finding, but the violation is minor.

The Commission may also dismiss when, based on the complaint, response, and publicly available information, the Commission concludes that a violation of the Act did or very probably did occur, but the size or significance of the apparent violation is not sufficient to warrant further pursuit by the Commission. In this latter circumstance, the Commission will send a letter admonishing the respondent. For example, a dismissal with admonishment would be appropriate when:

- A respondent admits to a violation, but the amount of the violation is not sufficient to warrant any monetary penalty; or
- A complaint convincingly alleges a violation, but the significance of the violation is not sufficient to warrant further pursuit by the Commission.

C. ''No Reason To Believe''

The Commission will make a determination of ''no reason to believe'' a violation has occurred when the available information does not provide a basis for proceeding with the matter. The Commission finds ''no reason to believe'' when the complaint, any response filed by the respondent, and any publicly available information, when taken together, fail to give rise to a reasonable inference that a violation has occurred, or even if the allegations were true, would not constitute a violation of the law. For example, a ''no reason to believe'' finding would be appropriate when:

- A violation has been alleged, but the respondent's response or other evidence convincingly demonstrates that no violation has occurred;
- A complaint alleges a violation but is either not credible or is so vague that an investigation would be effectively impossible; or
- A complaint fails to describe a violation of the Act.

If the Commission, with the vote of at least four Commissioners, finds that there is ''no reason to believe'' a violation has occurred or is about to occur with respect to the allegations in the complaint, the Commission will close the file and respondents and the complainant will be notified.

D. Conclusion

This policy enunciates and describes the Commission's standards for actions at the point of determining whether or not to open an investigation or to enter into conciliation with respondents prior to a finding of probable cause to believe. The policy does not confer any rights on any person and does not in any way limit the right of the Commission to evaluate every case individually on its own facts and circumstances.

This notice represents a general statement of policy announcing the general course of action that the Commission intends to follow. This policy statement does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay effective under 5 U.S.C. 553 of the Administrative Procedures Act (''APA''). As such, it does not bind the Commission or any member of the general public. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: March 7, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

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[1] The FECA and Commission regulations also recognize the Commission's authority to dismiss enforcement matters. *See* 2 U.S.C. 437g(a)(1); 11 CFR 111.6(b) and 111.7(b).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26166; Directorate Identifier 2006–CE–58–AD; Amendment 39–14992; AD 2007–06–11]

RIN 2120–AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Cracks on a vertical stabilizer attachment fitting due to corrosion, have been found on an aircraft in service.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 20, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 20, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri, 64106; telephone: (816) 329–4119; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet