

Mid-Atlantic Benefits

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2008 SEP 30 A 11:09

September 30, 2008

General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street N.W.
Washington, DC 20463

AOR 2008-18

**Re: Payment of Transaction Fees to Political Party's
Distributing a Prescription Discount Card**

Dear General Counsel,

I am soliciting a written opinion from you regarding the captioned topic prior to entering discussions with each of our major political party's.

I desire to provide a prescription discount drug card to both political parties who would then distribute this card, without charge, to citizens of our country. In exchange for having distributed this discount card, the political parties would receive a transaction fee with each prescription when the prescription discount card is used.

For example, if a citizen utilizes this card when finalizing their purchase for their prescription drug(s), a \$.10* transaction fee would be paid to the political party who distributed this card for each prescription paid by the citizen utilizing this card at time of payment.

The prescription discount card is:

1. Given free of charge to the citizen;
2. Has no expiration date;
3. Does not require any personal information from the card holder / user;
4. Is recognized nationally by more than 50,000 pharmacies;
5. Clearly states that this card is not insurance.

*Amount used is hypothetical – For example purposes only.

General Counsel
September 30, 2008
Page 2

This fee for service opportunity will be made available to all political parties and each party will be paid a transaction fee for having distributed the discount card to our citizens. This endeavor is a normal commercial enterprise wherein the referenced transaction fee payable is the norm for the distribution of this card by any enterprise. Specifically, the fee a political committee will earn will be no more than that paid to any private enterprise.

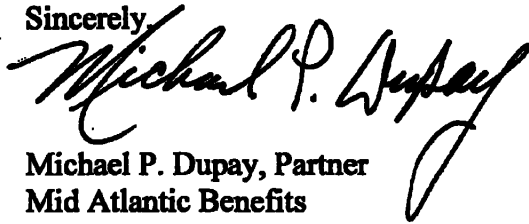
Again, I seek your professional written opinion on two (2) points:

1. Is the activity I describe in this letter a permissible activity for our political party's and;
2. May the funds earned by the political party's from this activity be deposited in their federal account?

I look forward to your timely opinion.

Thank you for your time and consideration.

Sincerely,



Michael P. Dupay, Partner
Mid Atlantic Benefits

/MPD

Mid-Atlantic Benefits

October 10, 2008

Mr. Joshua Blume, Attorney
Office of the General Counsel
Federal Election Commission
999 E Street N.W.
Washington, DC 20463

**Re: Executed Contracts with
West Virginia Democratic Executive Committee
West Virginia Republican State Executive Committee**

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2008 OCT 14 P 1:50

Dear Joshua,

I am enclosing copies of the captioned contracts (the Democratic Executive Committee contract has live signatures) and six (6) discount cards being distributed by Madison Bank in Kentucky. I wish to encourage you or any of your associates to use this card when they next purchase a prescription.

Use of this card is very basic and simple. At the time a prescription is about to be paid for, the card is presented to the cashier and a discount for the prescribed drug will be given.

The verbiage you see on both sides above the perforation of the card will appear on any card printed and distributed by any political party.

During our telephone conversation, I said the distributor (political party, religious organizations, banks, etc.) will produce, pay for the printing of the card, and distribute the card and receive a transaction fee each time the card is used by a cardholder.

I ask you to examine the card. Note the cardholder ID number. This is a static number that is identifying the distributor of the card. The group ID number identifies the group (political party, religious organization, bank, etc.,) personnel who uses the card. As you can see, there **is no** solicitation for information nor is there a fee to use the card. Additionally, the distributor is not being paid to enter a contract. They receive a transaction fee (see page 8 of the enclosed contracts) when the card is used. If the card is not distributed or used, no transaction fee is paid to the organization distributing the card.

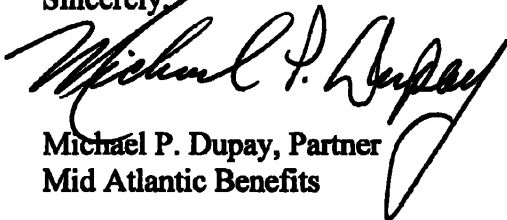
What is the down side with this program? Actually nothing. People are being helped when they use the card and their prescription drug costs are reduced. The transaction fee is earned and paid to the distributor because the distributor has freely distributed the card. Nothing is paid to the distributor until the card has been distributed to its target market and used by the recipient.

Mr. Joshua Blume
October 10, 2008
Page 2

As you read and review the two contracts, you will find the language of each is identical as is the transaction fee payable. The transaction fee is an earned fee, and becomes payable when the card has been distributed and is used. The earned fee is not a contribution or a donation, and therefore, the income received by the organization is taxable as earned income.

I will be responding to your series of questions next week.

Sincerely,

A handwritten signature in cursive script that reads "Michael P. Dupay". The signature is written in black ink and is positioned to the right of the typed name.

Michael P. Dupay, Partner
Mid Atlantic Benefits

MPD/d

Enclosures

[FRONT OF CARD]



MADISON BANK



Prescription Drug Savings Card



The Madison Bank Prescription Drug Savings Card is an easy way to save up to 15% on brand name drugs and up to 40% on generics. It's available to anyone, accepted nationwide and best of all, obtaining the card is FREE.

You do not need to be a Madison Bank customer to enjoy the benefits of this card.

There are no limits, so use it as often as you like. Even if your prescription costs are fully or partially covered by insurance or Medicare, this card may provide discounts on drugs not covered by your plan.



Plus, this one card is all you need for everyone in your family.



MADISON BANK

CARDHOLDER ID: [REDACTED]

GROUP ID: [REDACTED]

BIN: 009265

PCN:AG

powered by

Agility

Valid for entire family



[BACK OF CARD]

Rx **MADISON BANK**
Prescription Drug Savings Card



IT'S EASY! There are no forms to fill out or claims to file. You don't even have to be a Madison Bank customer to participate. Just detach the card below and start saving on your prescriptions today.

FIND IT ON-LINE!

www.madisonbankky.com

Comparison shop - See the costs of your prescriptions at all participating pharmacies in your area. You'll even see the cost of generic equivalents to ensure you're getting the best deal.

On the go - Find participating pharmacies across the country for peace of mind when traveling.

In the mail - get mail order pricing and ordering information and have your prescriptions mailed directly to you.



PHARMACY HELP DESK: 800-847-7147

CARDHOLDER CUSTOMER SERVICE: 888-281-0659

This is not insurance - Discounts Only

By using this card the holder agrees to the terms under which it was issued. Void where prohibited.
Process all prescriptions electronically.

Rx

SPONSOR AGREEMENT

THIS AGREEMENT, to be effective the 20 day of JULY, 2008, is between Mid-Atlantic Benefits, LLC with headquarters at 108-A Cadle Drive, Cross Lanes, West Virginia 25313 (hereinafter referred to as "MAB") and WEST VIRGINIA DEMOCRATIC EXECUTIVE COMMITTEE (hereinafter referred to as "SPONSOR"), and joined in by Agelity, Inc., with headquarters at 115 Broad Hollow Road, Melville, NY 11747 (hereinafter referred to as "AGELITY").

WITNESSETH:

WHEREAS, MAB partners with AGELITY (Prescription Benefit Manager) who maintains Prescription Drug Discount Sponsor Program with a national pharmacy discount network (hereinafter referred to as "AGELITY PRESCRIPTION DRUG DISCOUNT PROGRAM"); and

WHEREAS, MAB wishes to provide the AGELITY PRESCRIPTION DRUG DISCOUNT PROGRAM to the SPONSOR; and

WHEREAS, SPONSOR is desirous of participating in AGELITY's Prescription Drug Discount Sponsor Program and retaining the services of MAB for the management of the AGELITY PRESCRIPTION DRUG DISCOUNT PROGRAM; and

WHEREAS, SPONSOR wishes to provide the AGELITY PRESCRIPTION DRUG DISCOUNT PROGRAM to customers (including affiliates of SPONSOR), their employees, owners and members, and others, as it determines appropriate;

WHEREAS, this Agreement supersedes all prior agreements between MAB and SPONSOR and;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

DEFINITIONS

1. "100% CO-PAYMENT" means that amount of money the *cardholder* must pay to cover the total cost of the prescription.
2. "AVERAGE WHOLESALE PRICE" (AWP) means the price for a Prescription (Pharmaceutical Product) as provided in the First DataBank or MediSpan price file and updated no less than twice monthly.
3. "CO-PAYMENT" means that amount of money the *cardholder* must pay for each Prescription filled or refilled under this Agreement.
4. "DEPENDENT" means the *cardholder's* spouse and dependent children.
5. "CARDHOLDER" means any individual that SPONSOR identifies as being eligible for the AGELITY PRESCRIPTION DRUG DISCOUNT PROGRAM under this Agreement.

6. "LEGEND DRUGS" means any substance Federal or State, restricted drug or Bulk Medicinal Substance, commonly referred to as a "prescription drug" which by Law cannot be dispensed without a prescription.
7. "LICENSED PHYSICIAN" means a licensed Doctor of Medicine (M.D.), or Doctor of Osteopathy (D.O.), Doctor of Podiatry (D.P.M.) or Doctor of Dentistry (DDS) when acting within the scope of his/her practice.
8. "PARTICIPATING PHARMACY" means any pharmacy that has entered into a participating pharmacy agreement with *AGELITY* and is required to provide pharmaceutical services to Sponsor's members and dependents.
9. "PRESCRIPTION" means the legal request for prescription Legend Drugs issued by a duly Licensed Physician as defined in this Agreement.
10. "USUAL AND CUSTOMARY" means the reasonable, usual or customary fees charged by a participating pharmacy which do not exceed the fees the participating pharmacy would charge any other person regardless of whether the person is a member.

BENEFITS

1. The AGELITY PRESCRIPTION DRUG DISCOUNT PROGRAM covers all Legend Drugs
2. The AGELITY PRESCRIPTION DRUG DISCOUNT PROGRAM contains no quantity dispensing limits
3. The AGELITY PRESCRIPTION DRUG DISCOUNT PROGRAM has no "refill too soon" limits
4. The AGELITY PRESCRIPTION DRUG DISCOUNT PROGRAM provides "discounts only" on prescription legend drugs – this is not insurance.
5. At the time of purchase, a cardholder may present his or her card at a participating pharmacy to instantly receive a discount on prescription legend drugs.

CARDHOLDER REQUIREMENTS

1. All *cardholders* are required to make a 100% co-payment for all prescriptions at the point of sale
2. All *cardholders* must present to participating pharmacy a properly completed identification card in order for the participating pharmacy to provide the required service.

DUTIES OF MAB

MAB, *through Agelity*, will perform the following duties under this Agreement subject to the performance standards described below:

MAB Initials



SPONSOR Initials



AGELITY Initials



Page 2 of 9

1. Provide all personnel, equipment, and facilities necessary to perform the processing operations for all prescriptions submitted under this Agreement.
2. Review all prescriptions to determine whether each prescription is payable.
3. Maintain complete, current and accurate listings of *AGELITY* participating pharmacies and provider files.
4. MAB, *through AGELITY*, shall provide SPONSOR with monthly utilization summary report(s).
5. MAB, *through AGELITY*, agrees to provide electronic security for the SPONSOR *cardholder* database and MAB, *through AGELITY*, will ensure access to the SPONSOR *cardholder* database only by those *AGELITY* employees required to complete the responsibilities of *AGELITY* under this Agreement.
6. *AGELITY* will maintain at its sole cost and expense a toll free line for access by Participating Pharmacies or SPONSOR for matters related with the use of the discount prescription card.
7. *AGELITY*, at its sole cost and expense, arrange for the issuance of unique group numbers for SPONSOR's distribution partners and of a single activation number for each group issued as defined by SPONSOR, within 5 days of SPONSOR's request.
8. Safeguard and keep confidential all SPONSOR provided data, including all *cardholder* information and ensure that all such data is maintained by MAB, *through AGELITY*, in accordance with HIPAA regulations and any other applicable law or industry standard.
9. *AGELITY* will ensure participating pharmacies accept the discount prescription card. The discounts under the *AGELITY* PRESCRIPTION DRUG DISCOUNT PROGRAM will be no less favorable than discounts offered under other *AGELITY* prescription discount programs.
10. MAB, *through AGELITY*, is responsible for adhering to all applicable local, state and federal rules and regulations pertaining to pharmacy discount programs including, but not limited to, filing and registering of sponsor program(s).
11. MAB, *through AGELITY*, will provide SPONSOR, and SPONSOR's distribution partners, at no additional charge, the turn-key system offered under *AGELITY*'s Prescription Drug Discount Sponsor Program, including sponsor branded Web-based online tools. (See Exhibit A)

DUTIES OF SPONSOR

SPONSOR shall have the following duties with respect to this Agreement:

1. SPONSOR will use its commercially reasonable best efforts to oversee the distribution of the programs prescription drug identification card, *cardholder* guide and other inserts approved by *AGELITY* for use in *AGELITY*'s Prescription Drug Discount Sponsor Program to all of SPONSOR *cardholders*. (See Exhibit A)

MAB Initials



SPONSOR Initials



AGELITY Initials

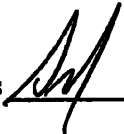


Page 3 of 9

2. SPONSOR is responsible for all *cardholder* customer service correspondence and must include a customer service toll free phone number and website address on the *cardholder* identification card.
3. SPONSOR is responsible for adhering to all applicable local, state and federal rules and regulations pertaining to pharmacy discount programs including, but not limited to, filing and registering of sponsor program(s), to the extent applicable to SPONSOR, when notified and made aware of the same.
4. SPONSOR is responsible for providing to AGELITY copies of all applicable local, state and federal filings and registrations of sponsor pharmacy discount program(s), SPONSOR is required to make, when notified and made aware of such filings and registrations.
5. SPONSOR must submit to MAB / AGELITY all marketing materials for approval prior to distribution.
6. SPONSOR must submit to MAB / AGELITY identification card layout specification for approval prior to distribution, to the extent the same deviates from that authorized for use in AGELITY's Prescription Drug Discount Sponsor Program.

TERM AND TERMINATION

1. This exclusive Agreement shall remain in full force and effect, unless otherwise terminated, for a term of five (5) years. The term of this Agreement shall be automatically renewed for successive additional three (3) year terms unless written notice to the contrary is given by either party. Written termination notice must occur not less than one hundred eighty (180) days prior to the end of the current term. Agelity and MAB agree not to withhold their consent to the automatic renewal of the term of this Agreement without good reason.
2. In the event of any material breach of any term of this Agreement, the non-breaching party may terminate as hereinafter provided. The party complaining of such breach shall give the other party written notice of the breach. The breaching party shall have thirty (30) days in which to correct and remedy such breach, to the extent it is capable of being cured within thirty (30) days. Upon failure to correct and remedy within thirty (30) days (if applicable), the complaining party may terminate this Agreement on thirty (30) days written notice.
3. SPONSOR may terminate this Agreement upon 30 days written notice if the AGELITY PRESCRIPTION DRUG DISCOUNT PROGRAM ceases to be viable or if any legal or regulatory requirements applicable to the AGELITY PRESCRIPTION DRUG DISCOUNT PROGRAM, prescription discount cards, SPONSOR or its affiliates or financial institutions generally make continuation of the AGELITY PRESCRIPTION DRUG DISCOUNT PROGRAM unlawful or unduly burdensome, in SPONSOR's good faith judgment.
4. Neither party shall be liable to the other for any special, consequential or liquidated damages. Liability of either party to the other in the event of any material breach of any term of this Agreement shall be limited to recovery of the loss of any revenues occasioned by any such breach.


5. All transactions from SPONSOR derived business and their associated payments to SPONSOR from AGELITY, as defined under TERMS page #8 item #2, will be paid in perpetuity to SPONSOR by AGELITY. Should AGELITY be acquired by another entity, payments to SPONSOR from SPONSOR derived business will continue as defined under TERMS page #8 item #2 and be paid in perpetuity to SPONSOR from AGELITY's acquiring entity.
6. This agreement shall be binding on AGELITY and its respective successors and assigns.

NON-SOLICITATION

SPONSOR acknowledges that the *AGELITY* Pharmacy Network has been developed by *AGELITY* through substantial expenditure of time, effort and expense. Accordingly, SPONSOR agrees that during the Term of this Agreement and for a period of one (1) year from the date of termination of this Agreement for any reason, SPONSOR shall not, directly or indirectly, itself or on behalf of any other person or entity, solicit, interfere with or induce any pharmacy comprising the *AGELITY* Pharmacy Network.

CONFIDENTIAL INFORMATION

Neither party shall disclose any information or knowledge concerning the other party's claims, accounting procedures, or histories, all of which are deemed confidential information except as otherwise required by law. All data, information, and knowledge supplied by MAB through *AGELITY*, shall be used by SPONSOR exclusively for the purposes of performing this Agreement. It is agreed that all computer programs, flow charts, screens and applications, routines, subroutines, data banks, and formulae relating to the processing, handling, or treatment of data developed or brought to the performance of this Agreement by either party in the processing and payment of claims under this Agreement shall be and remain the property of the developer. Upon termination of this Agreement, MAB shall return to SPONSOR all confidential information provided by SPONSOR including, without limitation, all copies and electronic magnetic versions thereof. Upon termination of the Agreement, SPONSOR shall return to MAB all confidential information and manuals provided to SPONSOR by MAB including, without limitation, all copies and electronic magnetic versions.

INDEMNIFICATION

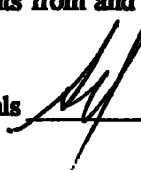
MAB and *AGELITY*, jointly and severally, shall indemnify, defend and hold harmless SPONSOR, its officers, directors, stockholders, employees and agents from and against any and all claims, actions, demands, costs and expenses, including reasonable attorney fees and disbursements, as a result of a breach by MAB or *AGELITY* of any of its obligations under this Agreement or arising out of the negligent act or omission or willful misconduct of MAB or *AGELITY*.

SPONSOR shall indemnify, defend and hold harmless MAB and *AGELITY* jointly and severally, its officers, directors, stockholders, employees and agents from and against any and all claims, actions, demands, costs

MAB Initials



SPONSOR Initials



AGELITY Initials



Page 5 of 9

and expenses, including reasonable attorney fees and disbursements, as a result of a breach by SPONSOR of any of its obligations under this Agreement or arising out of the negligent act or omission or willful misconduct of SPONSOR, subject to the terms of this Agreement.

ARBITRATION

Any and all controversies between MAB and SPONSOR in connection with and/or arising out of this Agreement shall be exclusively settled by arbitration in accordance with the Rules of the American Arbitration Association. The award of the arbitrator shall be final and binding on the parties and judgment upon such award may be entered in any court having jurisdiction thereof. Arbitration under the provision shall be conducted in the state of New York unless otherwise agreed to by the parties.

ACCEPTANCE OF OFFER

Notwithstanding anything to the contrary set forth above, this Agreement shall not be binding upon MAB & AGELITY unless and until the Agreement shall be signed and executed by a duly authorized officer of MAB. The signing of this Agreement by SPONSOR constitutes an offer only until the same has been accepted.

PROFESSIONAL JUDGMENT

Nothing in this Agreement shall be construed to require participating pharmacy to dispense any Prescription Medication if, in the pharmacist's professional judgment, such medication should not be dispensed.

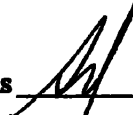
GENERAL

1. Neither of the parties to the Agreement, nor any of their respective employees, shall be construed to be the agent, employee or representative of the other, or liable for any acts of omission or commission on the part of the other.
2. This Agreement may not be assigned by either party without the express written consent of the other party provided SPONSOR may assign its rights under this Agreement to an affiliate of SPONSOR. This Agreement shall inure to the benefit of and be binding on the parties hereto, their successors and permitted assigns.
3. The headings contained in the Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
4. Both parties reserve the right to and control of the use of their names, symbols, trademarks or service marks presently existing or hereafter established.
5. Neither the failure nor any delay on the part of either party to exercise any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right,

MAB Initials



SPONSOR Initials



AGELITY Initials



Page 6 of 9

power or privilege. In the event either party should waive any breach of any provision of this Agreement, it will not be deemed or construed as a waiver of any other breach of the same or different provision.

6. The invalidity or non-enforceability of any term or provision of this Agreement shall in no way affect the validity or enforceability of any other term or provision.
7. Notices shall be in writing and shall be sent by return receipt mail addressed to the other party at the address shown in this Agreement.
8. This Agreement and the exhibits and schedules attached hereto shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
9. Any modification or amendment to this Agreement or additional obligation assumed by any party in connection with this Agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.
10. This Agreement shall constitute the entire Agreement between the parties and any prior understanding or representation of any kind preceding this Agreement shall not be binding upon any party except to the extent incorporated in this agreement.
11. Each of the parties represents and acknowledges that they have read this Agreement and that they understand the same and that they have entered into this Agreement voluntarily.
12. Each party executing this Agreement specifically warrants and represents that he or she has full power and authority to execute this Agreement and that he or she understands the terms of this Agreement. Each person executing this Agreement represents that he or she has not transferred or assigned or otherwise conveyed in any manner or form any of the rights, obligations or claims which are the subject matter of this Agreement.
13. MAB represents it is authorized to enter into this Agreement on behalf of *AGELITY* and agree to the obligations to be performed by it hereunder.



TERMS

1. MAB, *through AGELITY*, will provide, at no cost to SPONSOR, the development and hosting of web based SPONSOR branded Pharmacy Locator and Drug Pricing tools.
2. MAB shall pay to SPONSOR \$0.25 (twenty five cents) for each transaction fee *AGELITY* collects from participating pharmacy. The payment of the transaction fee, payable to the SPONSOR, by MAB will be immediately vested to the SPONSOR. Payment of the transaction fee will continue for as long as the prescription discount drug card is used by the cardholders, originated by WEST VIRGINIA DEMOCRATIC EXECUTIVE COMMITTEE, as long as transactions fees are paid to MAB. SPONSOR will receive monthly reports to reconcile the fees due it under this Agreement.
3. The transaction fee only applies to prescriptions that are adjudicated at the negotiated rates. Prescriptions that adjudicate at the pharmacies Usual & Customary price DO NOT qualify for transaction fee payments.
4. MAB, *through AGELITY*, will exercise commercially reasonable best efforts to collect transaction fees but is under no obligation to pay uncollected transaction fees to SPONSOR if for any reason these funds can not be collected from participating pharmacies.
5. Transaction fees will be paid within 45 days of the end of each month.
6. SPONSOR one time setup fee in the amount of \$1,500 has been waived.

MAB Initials



SPONSOR Initials



AGELITY Initials



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Mid-Atlantic Benefits, LLC
Company

WEST VIRGINIA DEMOCRATIC EXECUTIVE COMMITTEE
Company

Michael Dupay
Name

B. Nick CASEY
Name

Manager
Title

CHAIR
Title

Michael P Dupay
Signature

[Signature]
Signature

07/02/08
Date

7/11/08
Date

AGELITY, INC
Company

Robert E. Duggan
Name

President + CEO
Title

Robert E. Duggan
Signature

7/18/08
Date

Mid-Atlantic Benefits

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2008 OCT 15 P 12: 39

October 14, 2008

Mr. Joshua Blume, Attorney
Office of the General Counsel
Federal Election Commission
999 E Street N.W.
Washington, DC 20463

**Re: Payment of Transaction Fees to Political Parties and Committees for
Distributing a Free Prescription Discount Card**

Dear Joshua,

I attached our written responses to the questions we discussed on Friday, October 10, 2008.

I am confident you will find my responses complete and your understanding of our objective will be clear.

Our mission, with the Prescription Drug Discount Card is to help make prescription drugs more affordable for every person in our country by giving them our discount card absolutely free. In our opinion, the best most effective way to achieve this objective is to encourage it's (the discount drug card) distribution through our national political parties.

If they choose to distribute the card nationally, we, Mid Atlantic Benefits, will pay the sponsor / party a transaction fee each time the card is used for having distributed the card. The transaction fee is payment for services rendered and is considered earned income that is taxable.

Joshua, this is as simple an explanation as I can provide.

Regarding the public, here are the advantages to them:

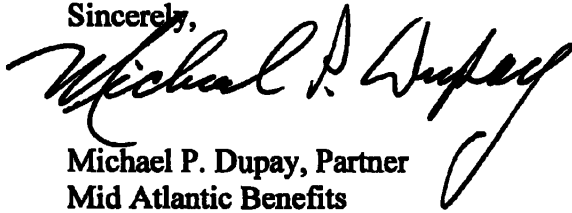
1. Given free of charge to all individuals in the United States;
2. There are no qualifications to use the card. They present it to the cashier when paying for their prescriptions.
3. There are no deductibles to meet.
4. There are no waiting periods. All individuals can use this card immediately upon receipt.
5. There are no pre-existing conditions.
6. Everyone receiving the card is qualified to use it.

Mr. Joshua Blume
October 14, 2008
Page 2

7. Our free prescription discount card has **no expiration date**;
8. Discounts to the public cardholder average from **15% on brand named drugs to 40%** (or more) on **generic drugs**.
9. **No medical or personal information** (like name, address, phone number or social security number) is ever received, asked for, or distributed to or by Mid Atlantic Benefits and or the distributing entity.

I look forward to hearing from you soon.

Sincerely,



Michael P. Dupay, Partner
Mid Atlantic Benefits

MPD/d

Enclosures

Federal Election Commission (FEC) – Interrogatories
Questions Posed by Joshua Blume, Esq.

RECEIVED
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COUNSEL

1. **What kind of entity is Mid-Atlantic Benefits? (e.g., regular for-profit corporation, partnership, limited liability partnership, non-profit corporation?)**

2008 OCT 15 P 12:39

Answer: Mid Atlantic Benefits is an LLC whose ownership consists of:
Michael P. Dupay
Steven F. Golin
Steven M. Richmond

The formation of Mid Atlantic Benefits is to market and service various kinds of employee benefits.

2. **Although your letter says that “I” will provide the cards to the parties, is it Mid-Atlantic Benefits that will actually provide the cards?**

Answer: No, Mid Atlantic Benefits will arrange, through negotiations for sponsor arrangements of the prescription discount drug cards. Contractual agreements are entered into with various entities, i.e., corporate, religious, or political. These entities agree to distribute the prescription discount cards, **free of any charges, contributions or donations**, to any individuals within the United States. Under a contractual relationship, the distributing entity is named as a sponsor and agrees to print and distribute the prescription discount cards. The contract that is entered into by a given entity (corporate, religious, political, etc.) will be paid a transaction fee by Mid Atlantic Benefits each time a cardholder uses the card to purchase his/her prescription drug(s). If, after distribution by a sponsor, the card isn't used, no fee will be paid to the sponsor.

Any arrangements for the printing or distribution of the prescription discount drug cards are done by the sponsor (corporate, religious, political, etc.).

Lastly, Mid Atlantic Benefits has not, does not, and will not, pay any fees or arrange for any donations or contributions of any kind to any sponsor in return for any sponsor to enter into the contractual relationship described.

3. **The letter indicates the cards will be provided to “both political parties” in one place and in another place state the opportunity will be available to “all political parties.” Which is correct?**

Answer: It is the intent of Mid Atlantic Benefits to approach all political parties, who are legitimately recognized by the F.E.C. as a political party, with the purpose of contracting with that entity to be a sponsor and distribute the prescription discount drug card as described in response number two (2).

Also, will the card be furnished to national committees of parties, or will it be given to State and/or local party committees as well?

Answer: It is the intent of Mid Atlantic Benefits to approach the National Committees and contract with these for distribution of the prescription discount drug card. If a National Committee determines that a State Committee would be more effective in the distribution process, and would be more effective in motivating the utilization of the prescription drug cards, we, Mid Atlantic Benefits, can accommodate that kind of arrangement. How the transaction fee will be divided under this arrangement is a matter to be agreed to between the National Committee and State Committee. No additional monies are or will be paid under this kind of arrangement.

4. We would like additional details about the proposal.

(a) Does Mid-Atlantic Benefits create the cards or does it only distribute them for other corporations?

Answer: Neither. Mid-Atlantic Benefits negotiates with prospective sponsors of the card to print and distribute the card. The sponsor will earn a transaction fee **only** when the cardholder, receiving the card from the sponsor, actually uses the card.

(b) Who pays for the creation and distribution of the cards to the parties?

Answer: The sponsor (contracted entity) prints the card and does the distribution of the card. Mid Atlantic Benefits will provide specimen copies of the proposed card and must approve any design and language before any printing and distribution of the card occurs.

(c) Who pays for the distribution of the cards to the recipients?

Answer: The sponsor (contracted entity) pays for all distribution and printing costs for the prescription discount card. This process is what the sponsor does to earn its transaction fee.

5. Although the letter refers to the final recipients as "citizens" generally, presumably the parties would distribute the cards to their members only. Is this correct?

Answer: No. There is no prerequisite to determining who can or can't have the prescription discount drug card. There is no application process either. Therefore, the cards can be distributed, regardless of age, sex, or political party affiliation, and all persons residing in the United States.

6. Does Mid-Atlantic Benefits contemplate some form of notification to party members of the availability of the cards, coupled perhaps with some form of solicitation?

Answer: No. Mid Atlantic Benefits does not anticipate any form of notification to party members of the card availability. Mid Atlantic Benefits would offer suggestions to any party hierarchy, but the ultimate decision for distribution will be made by the party.

(a) If so, what form(s) will the solicitation take?

Answer: Not applicable per the above response.

(b) Who will pay for the form(s) of solicitation?

Answer: There is no solicitation involved. The prescription discount drug cards are given absolutely free to all individuals. There is no membership fee nor any solicitation for contributions in exchange for receiving the card. The distributing party earns a transaction fee when the card is used. No distributing party solicits any money in exchange for receiving the card.

7. How does Mid-Atlantic Benefits generate revenue from this proposal?

Answer: Mid Atlantic Benefits is also paid a transaction fee whenever a cardholder of clients contracted through Mid Atlantic Benefits use the prescription discount card. From the fee received by Mid Atlantic Benefits, a portion of that fee, as stated contractually, will be paid to the sponsoring entity by Mid Atlantic Benefits.

8. On the first page, the letter states that a transaction fee is paid every time a drug purchase is made with the card. On the second page, the letter states that a transaction fee is paid to the party for having distributed the cards. Are these two different kinds of transaction fees?

Answer: No, it is the same fee. The only time any transaction fee is paid, is when a cardholder uses the prescription discount drug card to purchase his/her prescription. Again, no transaction fee is earned or paid unless the card is used by the cardholder when he/she obtains prescription drugs.

9. What or who is the source of the transaction fees? That is to say, do the fees come out of the purchase price paid by the cardholders or from some other source?

Answer: Mid Atlantic Benefits is the source of the transaction fees. The arrangement Mid Atlantic Benefits has is identical to the arrangements discussed with Mid Atlantic Benefits clients. Mid Atlantic Benefits has agreed, in exchange for a transaction fee, with Agility, Inc., a company located in New York, to market the distribution of the prescription discount drug card. There is a sharing of Mid Atlantic's transaction fee with its clients. As an added measure of safety and comfort to Mid Atlantic's clients, Agility, Inc., is also a party to the contracts signed by clients of Mid Atlantic Benefits. When a participating pharmacy honors the card, a transaction fee is paid to Agility, Inc. From the fee Agility is paid, Agility, Inc., pays Mid Atlantic Benefits who then pays the sponsor. The cardholder is not responsible for anything other than paying the discounted price of his/her prescription.

10. You provide a hypothetical transaction fee amount, but what will the actual amount be?

Answer: The transaction fee Mid Atlantic Benefits will pay to clients is \$.25 for each prescription use of the discount drug card. This fee is consistent for all of our clients, including any political committee

11. Is the transaction fee fixed for all customers or does it vary according to customer?

Answer: Yes, the fee is fixed at \$.25 per each transaction for each client.

(a) If the fee varies, what factors determine the amount?

Answer: The fee does not vary.

(b) Could the fee vary among different political parties?

Answer: No. The fee paid to each political party choosing to participate will be the same.

12. Are there criteria for screening prospective card recipients to determine who should receive the cards, or are the cards just made available to anyone who wants them?

Answer: The cards are available to any person who accepts the card. Keep in mind that the card can only be used for prescription drugs that have been prescribed by a licensed physician. In addition, the card can only be used in the United States by a cardholder. There is no screening

(a) Is this arrangement (as elucidated by responses to) the same as that used for non-political customers? Are all charges usual and normal for this type of business?

Answer: Yes, there is no difference in the transaction fee amount paid to any entity.

13. Will there be a formal contract between MAB and the parties?

Answer: Yes, copies have already been forwarded to the F.E.C. for review and comparison.

(a) Do you have a sample of form contract that you could send us?

Answer: Yes, copies have already been forwarded to the F.E.C. for review and comparison.



"Insurance Schools, Inc."
<mike.dupay@insurance-schools.com>

11/20/2008 10:18 AM

Please respond to
<mike.dupay@insurance-schools.com>

To <JBlume@fec.gov>

cc

bcc

Subject FW: October 28 Discussion

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2008 NOV 20 A 10: 29

Joshua,

The summary you prepared, from the corrections I provided, is an accurate summary of our October 28, 2008 discussion.

I look to hear back from you soon.

Thanks,

Mike

From: Insurance Schools, Inc. [mailto:mike.dupay@insurance-schools.com]
Sent: Wednesday, November 19, 2008 2:38 PM
To: 'JBlume@fec.gov'
Subject: RE: October 28 Discussion

Joshua,

I am in receipt of your email and will respond back to you by tomorrow (11/20/08).

Thanks,

Mike

From: JBlume@fec.gov [mailto:JBlume@fec.gov]
Sent: Wednesday, November 19, 2008 10:00 AM
To: mike.dupay@insurance-schools.com
Subject: October 28 Discussion

Hi, Mr. Dupay. As I indicated in the voice-mail message I left for you this morning, attached please find a memorandum reflecting our telephone discussion of October 28.

Please review it and then let me know whether the memorandum is an accurate reflection of our discussion. If you believe it is not accurate respecting certain particulars, please indicate the areas of inaccuracy. Thanks very much.

Joshua Blume
Attorney
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

[ATTACHMENT TO 11/19/08 E-MAIL]

Agelity, MAB & The Business Model

Agelity is a Delaware corporation.

Although MAB is an LLC, it does not elect corporate treatment for IRS purposes. It is treated as a partnership.

Agelity maintains a contractual relationship with various national pharmacy chains (e.g., Rite Aid). These pharmacy chains in turn control approximately 56,000 pharmacies. The chains honor discount drug cards "powered" by Agelity in exchange for benefits the pharmacies reap from attracting individuals to the stores where those individuals may elect to purchase other products offered there.

When a cardholder makes a purchase using the card at a participating pharmacy, that transaction can be identified because of the static numbers on the card, as your previous submissions indicate. A monthly report is generated that summarizes the use of various cards identified by number at different pharmacies. The numbers allow for the tracing of uses of the cards back to their originating sponsors. Because the names of the sponsors appear on the cards, the pharmacies know who the sponsors are, but that is all the pharmacies know. Using this information about the use of the cards, the home offices of the pharmacies pay a transaction fee to Agelity out of the purchase price of the drug(s). Since MAB is not privy to Agelity's contracts with the pharmacies, you cannot state the amount of this transaction fee or anything else about the terms of these contracts. Out of this fee, and utilizing the information in the generated monthly reports, Agelity in turn pays MAB a transaction fee of \$.70 for each transaction. Agelity then communicates its tracking data to MAB and MAB uses the data to pay a transaction fee to the sponsor out of the fee it receives from Agelity, as you have previously indicated.

The entire process is not designed as an attempt to influence an election. It is an arms-length business transaction. Also the transaction fees MAB pays are not a commission.

Because Agelity signs the contracts, Agelity is aware in all cases of the identity of the sponsors. Agelity will be aware that a portion of its fees will go to political parties, for example, where parties are the sponsors.

The Contracts

The contracts with the political parties, which are the standard contracts MAB uses with its non-political sponsors, contain a list of 11 enumerated services that MAB undertakes to perform. All 11 of these enumerated services are provided to the sponsors, political and non-political, free of charge. The only costs a political party sponsor would incur are those involved in printing and distributing the drug cards. This is a standard industry practice for this type of business activity.

This is also the case for Duty #11, according to which MAB/Agelity undertakes to provide the sponsor with the “turnkey” system. The turnkey system is provided at no charge. Agelity normally charges a fee for installing the website component of the turnkey system, however MAB has negotiated with Agelity the right to waive this initial fee for all of the sponsors with which it deals, both political and non-political (See Term #6 on Page 8 of 9 of the Contracts). This waiver is standard practice for MAB, but not necessarily standard practice for Agelity. Although Agelity’s website describes various features of the turnkey system, such as sponsor-branded introduction letters and brochures, Agelity in practice does not generate these for MAB’s sponsors. Rather, the sponsors are free to generate their own marketing materials. However, MAB/Agelity reviews the sponsors’ marketing materials to determine whether the materials are properly focused on promoting the drug cards themselves and not on promoting their own unrelated activities. In the case of political party-sponsors, MAB will scrutinize the marketing materials to ensure that they are not about soliciting political contributions or about promoting the political parties. The West Virginia Democratic and Republican parties have not shared any proposed marketing materials with MAB yet, since they are awaiting the results of the FEC Advisory Opinion process before proceeding further. MAB does not have any available samples of what such marketing materials would look like.

One aspect of the turnkey system that Agelity does provide, and will provide to the political parties, is the “sponsor branded Web-based online tools.” Agelity requires that all sponsors have a website containing a link to Agelity’s website, and that the website carry a toll-free telephone number for

the use of cardholders with customer service inquiries, so that the sponsor may provide maximum assistance to cardholders.

The websites contain features that allow cardholders to compare the prices of drugs and to locate pharmacies that honor the cards. The websites also allow prospective cardholders to print out cards directly from the computer. As far as political party sponsors are concerned, the parties' websites would have a separate link with a "click here" button that would access Agelity's prescription drug discount program on a separate webpage labeled with the sponsor's name, which would not contain any other politically-related communications. Neither solicitations for political contributions nor communications that promote the political parties would appear on the same webpage on which the drug card materials appear.