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FEDERAL ELECTION COMMISSION  
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**AGENDA DOCUMENT NO. 18-19-A**  
**AGENDA ITEM**  
**For meeting of April 26, 2018**  
**SUBMITTED LATE**

April 24, 2018

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS*  
Acting General Counsel

Erin Chlopak *EC*  
Acting Associate General Counsel

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Assistant General Counsel

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Attorney

Subject: AO 2018-05 (CaringCent, 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 9:00 am (Eastern Time) on April 26, 2018.

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 <https://www.fec.gov/legal-resources/advisory-opinions-process/>

Attachment

1 ADVISORY OPINION 2018-05

2

3 Graham M. Wilson, Esq.

4 Emma Olson Sharkey, Esq.

5 Perkins Coie

6 700 13<sup>th</sup> Street, NW, Suite 600

7 Washington, DC 20005-3960

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9 Dear Mr. Wilson and Ms. Olson Sharkey:

**DRAFT A**

10 We are responding to your advisory opinion request on behalf of CaringCent, LLC  
11 concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the  
12 “Act”), and Commission regulations to the requestor’s proposal to offer contribution-processing  
13 services to political committees. The Commission concludes that the requestor’s provision of  
14 these services would not constitute a contribution from the requestor to a political committee and  
15 would not cause the requestor to be subject to any registration or reporting requirements with the  
16 Commission. Moreover, by providing these services, CaringCent, LLC would not be acting as a  
17 conduit or an intermediary. Finally, the proposed services comply with the provisions of the Act  
18 and Commission regulations concerning the forwarding of contributions to political committees.

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on March  
21 16, 2018 and your email dated March 22, 2018.

22 CaringCent, LLC (“CaringCent”) is a limited liability company that has elected to be  
23 treated as a corporation for federal tax purposes. Advisory Opinion Request at AOR001. The  
24 requestor currently provides donation-processing services to non-profit and charitable  
25 organizations through two platforms, “Round-Up” and “Micro-Pledge,” AOR010, and plans to  
26 provide corresponding contribution-processing services to political committees through the same  
27 platforms. AOR001, AOR010. Through the Round-Up platform, a political committee will

1 invite individuals to “round up” their credit or debit card purchases and contribute the difference  
2 to the political committee. AOR001. Through the Micro-Pledge platform, a political committee  
3 will invite individuals to pledge contributions of a set amount every time a specified event  
4 occurs, such as when a candidate’s name appears in a tweet made by his or her opponent. *Id.*  
5 CaringCent will make its platforms available to political committees regardless of “party or  
6 partisan affiliation.” AOR002.

7 A political committee will sign up for either the Round-Up or the Micro-Pledge platform  
8 by creating an account through the platform’s website and agreeing to the terms of service. *Id.*  
9 After validating the political committee’s information against the Commission’s database,  
10 CaringCent will send the political committee an activation email. *Id.* Once the political  
11 committee has completed its registration, it will receive a unique URL, which it can share with  
12 potential contributors. *Id.*

13 When contributors sign up to make contributions using a political committee’s unique  
14 URL, they will be directed to a webpage to enter their credit or debit card information and  
15 contribution preferences, including a cap on their monthly contributions (by default, set at \$75  
16 per month). *Id.* Contributors must enter their name, mailing address, occupation, and the name  
17 of their employer.<sup>1</sup> AOR003.

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<sup>1</sup> Contributors will also be required to affirmatively agree 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 purchase method and not with a corporate or business purchase method or a method issued to another person. I am at least eighteen years old. I am a U.S citizen or lawfully admitted permanent resident (*i.e.* green card holder).

1           When contributors sign up through the Round-Up platform, each time they make a  
2 purchase, CaringCent will tabulate the rounded-up amount as a pledged contribution from the  
3 contributor to the political committee. AOR002. Contributors who wish to contribute to more  
4 than one political committee will be required to create a separate account for each political  
5 committee and will be able to set separate contribution preferences for each account. *Id.*

6           When contributors sign up through the Micro-Pledge platform, they will select a  
7 triggering event as one of their contribution preferences.<sup>2</sup> AOR003. Each time the triggering  
8 event occurs, CaringCent will tabulate the amount pledged as a contribution from the contributor  
9 to the political committee. *Id.* Contributor who wish to make contributions to more than one  
10 political committee, or to pledge contributions based on more than one triggering event, will be  
11 required to create a separate account for each political committee or each triggering event and  
12 will be able to set separate contribution preferences for each account. *Id.*

13           For both platforms, CaringCent will work with data aggregators to determine each  
14 contributor's total pledged contributions. For the Round-Up platform, CaringCent will receive  
15 authorization from the contributor's credit card company or bank to view the amounts, dates, and  
16 times of the relevant credit or debit card purchases. AOR004. Third-party data aggregators will  
17 also provide data on social media activity to calculate the total number of events triggering  
18 pledged contributions. AOR004, AOR010. At the end of every month, or at alternative times  
19 agreed upon between CaringCent and its clients, CaringCent will calculate the total pledged  
20 contributions generated through each platform for each contributor and charge the contributor's  
21 credit or debit card for the total amount of the contributions. AOR002-003. During the

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<sup>2</sup> CaringCent plans to allow flexibility in the type of event a political committee will be able to use to trigger a pledge, as long as the event is public and verifiable. AOR003.

1 registration process, political committees will select their per-year or per-election contribution  
2 limit, as applicable. AOR004. CaringCent will not allow a contributor to exceed the  
3 contribution limit to a political committee through CaringCent's platforms. *Id.*

4 Contributors will be able to change their contribution preferences, including the  
5 contribution cap, or suspend or cancel their enrollment, at any point in the process prior to  
6 CaringCent charging their credit or debit card, even if the contributor has already accumulated  
7 pledged contributions. AOR002-003, AOR009. CaringCent will not exercise any direction or  
8 control over the transfers, which will be made according to contributors' designations. AOR005.

9 CaringCent will send the money to a merchant account separate from CaringCent's  
10 treasury funds and used solely to deposit contributions to federal political committees. AOR004.  
11 Within one day of charging a contributor's credit or debit card, CaringCent's merchant bank  
12 account will process an automated transfer of the funds to the recipient political committee  
13 designated by the contributor, less a fee retained by CaringCent. *Id.* The amount of the fee will  
14 cover CaringCent's operational costs associated with transferring contributors' funds, as well as  
15 a "reasonable profit," AOR005, and will represent the "usual and normal charge" for its services,  
16 AOR006. CaringCent may charge different fees to political committees than it charges to its  
17 non-political clients, but any variation in fees will be based on business considerations and will  
18 not be based on any political considerations. AOR010.

19 At the same time that CaringCent's software charges contributors' credit or debit cards,  
20 the software will automatically generate a spreadsheet record of all contributors' itemized  
21 contributions for the month and year to date. *Id.* CaringCent will keep a separate record of the  
22 contributions designated to each political committee and will send each recipient political  
23 committee a monthly itemized spreadsheet of all contributions to that political committee,

1 including the date, time, and amount of each contribution and the information each contributor  
2 provided when signing up with CaringCent (*e.g.*, name, address, occupation, and employer). *Id.*  
3 The itemized record of contributions that CaringCent will provide to political committees will  
4 include the total amount of contributions from each contributor, as well as the amount of the fees  
5 deducted and retained by CaringCent. *Id.* CaringCent expects that political committees will  
6 report the entire amount of each contribution (including the fee) as a contribution from the  
7 contributor and then will report the fee as a payment for the services rendered by CaringCent.  
8 AOR005. CaringCent also will automatically email a confirmation to each contributor after the  
9 contribution is processed (within the first five business days of the month following the relevant  
10 contribution period). *Id.*

11 ***Questions Presented***

- 12 1. *May CaringCent provide its contribution-processing services to political committees*  
13 *without making impermissible contributions?*
- 14 2. *Will CaringCent's contribution-processing services cause it to have any registration or*  
15 *reporting obligations to the Commission?*
- 16 3. *Will CaringCent, by providing contribution-processing services, be acting as a conduit*  
17 *or intermediary?*
- 18 4. *Will CaringCent's contribution-processing services comply with the Act and Commission*  
19 *regulations with respect to the forwarding of contributions to political committees?*

20

1 ***Legal Analysis and Conclusion***

2 1. *May CaringCent provide its contribution-processing services to political committees*  
3 *without making impermissible contributions?*

4 Yes, CaringCent may provide the proposed services without making a contribution to a  
5 political committee.

6 The Act and Commission regulations prohibit corporations from making contributions to  
7 federal candidates and political committees that make contributions to federal candidates. 52  
8 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).<sup>3</sup> A “contribution” includes any “direct or indirect  
9 payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of  
10 value . . . .” 52 U.S.C. § 30118(b)(2); 11 C.F.R. § 114.2(b); *see also* 52 U.S.C. § 30101(8)(A)(i);  
11 11 C.F.R. § 100.52(a). “Anything of value” includes all in-kind contributions, such as the  
12 provision of goods and services without charge or at a charge that is less than the usual and  
13 normal charge. *See* 11 C.F.R. § 100.52(d)(1). The “usual and normal charge” for services is the  
14 commercially reasonable prevailing rate at the time the services were rendered. *See* 11 C.F.R.  
15 § 100.52(d)(2).

16 The Commission has determined that the provision of contribution-processing services to  
17 a political committee by a commercial vendor does not constitute a contribution to the political  
18 committee. *See, e.g.*, Advisory Opinion 2016-08 (eBundler.com) at 6-7; Advisory Opinion  
19 2012-09 (Points for Politics) at 5-6; Advisory Opinion 2007-04 (Atlatl) at 3-4. In these advisory

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<sup>3</sup> Corporations may, however, make contributions to nonconnected political committees that make only independent expenditures, *see, e.g.*, Advisory Opinion 2011-11 (Colbert); *Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*), and to non-contribution accounts of hybrid political committees, *see* FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/>.

1 opinions, the Commission determined that commercial vendors rendered services in the ordinary  
2 course of business and at the usual and normal charge; forwarded contributions through a  
3 segregated account to candidates and political committees; and employed adequate screening  
4 procedures to ensure that they were not forwarding illegal contributions. *See, e.g.*, Advisory  
5 Opinion 2016-08 (eBundler.com) at 6-7; Advisory Opinion 2012-09 (Points for Politics) at 5-6;  
6 Advisory Opinion 2007-04 (Atlatl) at 3-4.

7         Here, the requestor's proposal to provide contribution-processing services to political  
8 committees satisfies all three criteria. First, the requestor will be providing its services in the  
9 ordinary course of its business as a for-profit LLC that currently offers web-based donation-  
10 processing services to non-profit and charitable organizations. AOR001, AOR010. In providing  
11 its services, the requestor will charge a commercially reasonable fee at the "ordinary and usual  
12 charge" for its services. AOR006. The fee will be included in the total amount of the  
13 contribution as reported by CaringCent to the recipient political committee, and CaringCent  
14 expects that political committees will report the entire amount (including the fee) as a  
15 contribution from the contributor and then report the fee as payment for the services rendered by  
16 CaringCent. AOR004-005. Although CaringCent may charge different fees to political  
17 committee clients than it charges to non-political clients, any variation in fees will be based on  
18 business considerations and will not be based on political considerations. AOR010. Second, the  
19 requestor will transfer contributions made through both its Round-Up and Micro-Pledge  
20 platforms from a segregated account within 10 days of receipt. AOR004. And, third, the  
21 requestor will screen contributions to ensure both that they are not excessive and that they are not  
22 from prohibited sources: CaringCent will not allow a contributor to exceed the contribution limit  
23 applicable to the recipient political committee through CaringCent's platforms; and all



1 contributors wishing to make a contribution to a political committee will be required to attest to  
2 statements verifying their eligibility under federal law to make contributions. *Id.*

3 Accordingly, because the requestor will be acting as a commercial vendor, the provision  
4 of contribution-processing services to its political committee clients will not result in a  
5 contribution to them.

6 2. *Will CaringCent's contribution-processing services cause it to have any registration or*  
7 *reporting obligations to the Commission?*

8 3. *Will CaringCent, by providing contribution-processing services, be acting as a conduit*  
9 *or intermediary?*

10 No, the proposed activities will not subject CaringCent to any registration or reporting  
11 requirements under the Act and Commission regulations, including those requirements  
12 applicable to conduits or intermediaries.<sup>4</sup>

13 The Act and Commission regulations require all political committees to register with the  
14 Commission by filing a Statement of Organization. 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(d).  
15 Additionally, the “treasurer of a political committee shall file reports of receipts and  
16 disbursements.” *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1.

17 The Commission concludes that based on the facts set forth in the request, the requestor  
18 will be a commercial service provider, not a political committee, and therefore will not be  
19 subject to the Act’s reporting requirements for political committees. *See* Advisory Opinion  
20 2012-22 (skimmerhat) at 9 (reaching same conclusion in response to request by corporation

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<sup>4</sup> The Commission’s response is limited to the requestor’s proposed contribution-processing services. The Commission does not opine on any reporting or other requirements that may be implicated by activities not described in the request, such as the reporting of independent expenditures or electioneering communications. *See, e.g.*, 52 U.S.C. § 30104(c)(1), (f)(1); 11 C.F.R. §§ 109.10(b), 104.20(b).

1 proposing to collect and forward earmarked contributions to federal candidates); *see also* 52  
2 U.S.C. §§ 30104(4) (defining “political committee”), 30103(a), (b) (setting forth registration  
3 requirements of political committees), 30104(a), (b) (setting forth reporting requirements of  
4 political committees).

5         The Act and Commission regulations also require intermediaries or conduits of  
6 earmarked contributions to report the original source of such a contribution and the recipient  
7 candidate or authorized committee. 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(c)(1).  
8 Commission regulations clarify, however, that “a commercial fundraising firm retained by the  
9 candidate or the candidate’s authorized committee to assist in fundraising” is not a “conduit or  
10 intermediary.” 11 C.F.R. § 110.6(b)(2)(i)(D). Because the requestor will act as a commercial  
11 vendor when it provides its services to its political committee clients, the requestor will also  
12 qualify as a “commercial fundraising firm” for purposes of that regulation. *See* Advisory  
13 Opinion 2016-08 (eBundler.com) at 8 (concluding that limited liability company providing  
14 contribution-forwarding services to political committees would be acting as commercial  
15 fundraising firm rather than conduit). As a commercial fundraising firm, the requestor will not  
16 be subject to the reporting requirements applicable to conduits and intermediaries in connection  
17 with its proposed activities.

18 4.         *Will CaringCent’s contribution-processing services comply with the Act and Commission*  
19 *regulations with respect to the forwarding of contributions to political committees?*

20         Yes, the proposed contribution-processing services comply with the Act and Commission  
21 regulations concerning the forwarding of contributions to political committees.

22         Every person who receives a contribution for a political committee that is not an  
23 authorized committee must forward such contribution to the committee’s treasurer within 10 or

1 30 days of receiving it, depending upon the amount of the contribution. 52 U.S.C.  
2 § 30102(b)(2)(A)-(B); 11 C.F.R. § 102.8(b)(1)-(2). Contributions of \$50 or less must be  
3 forwarded within 30 days of receipt, while contributions exceeding \$50 must be forwarded  
4 within 10 days of receipt. 52 U.S.C. § 30102(b)(2)(A)-(B); 11 C.F.R. § 102.8(b)(1)-(2). Every  
5 person who receives a contribution for an authorized political committee must forward the  
6 contribution and any required information about the contribution to the committee's treasurer  
7 within 10 days of receipt. 52 U.S.C. § 30102(b)(1); 11 C.F.R. §§ 102.8(a), 100.12.

8         The requestor will forward all contributions to a designated recipient political committee  
9 within 10 days after the contributors' funds are transferred to the requestor's merchant account.  
10 AOR004. The requestor will also collect contributors' names, addresses, occupations, and  
11 employers, and provide this information to the designated recipient political committee, along  
12 with an itemized record of all contributions to that committee, to enable the committee to meet  
13 its own reporting obligations under the Act and Commission regulations. AOR004, AOR010.

14         Moreover, consistent with previous advisory opinions approving of proposals involving  
15 the forwarding of contributions, the requestor here will screen for impermissible and excessive  
16 contributions, and will require contributors to affirm that they are using their own, permissible  
17 funds for their contributions. *See, e.g.*, Advisory Opinion 2017-06 (Stein and Gottlieb) at 8. The  
18 requestor also will maintain contributors' funds in an account separate from the requestor's own  
19 treasury funds and from funds designated for recipients other than federal political committees.  
20 AOR004; *see, e.g.*, Advisory Opinion 2016-08 (eBundler.com) at 6-7.

21         Accordingly, the proposed contribution-processing services are consistent with the  
22 requirements of the Act and Commission regulations concerning the forwarding of contributions  
23 to political committees.

