

OCT - 9 2006

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, D.C. 20463

SECRETARIAT

2006 OCT - 9 A 10 03

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

Pre-MUR 434

DATE SUBMISSION RECEIVED: 2/28/06

DATE ACTIVATED: 5/24/06

EXPIRATION OF SOL: 12/15/04 – 10/7/09¹

SOURCE:

RESPONDENTS:

Bank of America Corporation
Kathleen Cannon
Alec Reinstadtler
Edward Kalush
Jan C. Brown
Wayne Roltzen
Christian R. Baehr
Don Mills
Gemma Boykin
Robert Rubio

RELEVANT STATUTES:

2 U.S.C. § 441b(a)
2 U.S.C. § 441f
11 C.F.R. § 110.4(b)(ii) & (iii)

INTERNAL REPORTS CHECKED:

Disclosure reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter originated with _____ filed by the Bank of America

Corporation (the "Bank"), on behalf of its wholly owned subsidiary, Bank of America N.A. The

Bank admits reimbursing political contributions totaling \$10,030, made by thirteen officers and

¹ The statute of limitations expired on 12/15/04 for one \$500 contribution that is at issue in this matter; and will expire for three additional contributions totaling \$750 in December 2006.

1 managers in the Bank's Student Banking and Wholesale Lending Divisions from 1999 through
2 mid-2004.² _____

3 Specifically, _____ contends that Kathleen Cannon, Senior Vice
4 President of the Student Banking Division, engineered a scheme by which she collected political
5 contributions from managers under her immediate supervision ("direct reports"), instructed the
6 direct reports to request reimbursement for the contributions from the Bank, and then improperly
7 authorized the reimbursements, resulting in impermissible corporate contributions made in the
8 name of another.³ As a part of this scheme, Cannon was able to collect and authorize
9 reimbursement of political contributions from seven managers who were her direct reports.

10 In addition, two of Cannon's direct reports, Robert Rubio, Accounts and Production
11 Support Manager, and Alec Reinstadtler, Sales Manager, each authorized a contribution made by
12 one of their respective direct reports. The _____ suggests that Rubio may have
13 authorized this reimbursement knowing that it was illegal. _____

² In July 2005, the Bank instituted an internal audit in response to reports that Kathleen Cannon, the Senior Vice President in charge of the Student Banking Division, had improperly accepted personal gifts from a vendor specializing in student loans. During the course of this audit, the Bank's internal auditors discovered information indicating that Cannon may have approved the reimbursement of political contributions. The Bank retained outside counsel to conduct an internal investigation into the alleged reimbursements. _____ see also Sasha Talcott and Chris Reidy, *Tip on Improper Gifts Led to CEO's Exit*, BOSTON GLOBE, Sept. 29, 2005, at C1. Outside counsel also attempted to determine whether the pattern of reimbursements extended beyond the Student Banking Division. _____ The Bank's _____ is based on the information gathered in the course of conducting the internal investigation.

³ According to the _____ some of Cannon's subordinates stated they "felt coerced" into making contributions. _____ However, there is no information to suggest that Cannon made direct and specific threats of retaliation, or took any adverse action against anyone who failed to contribute. *Id.* at 15 - 16. Accordingly, we do not address this issue in our legal analysis. If the Commission authorizes an investigation in this matter, and we discover information to support possible coercion of contributions by Cannon, we will make additional recommendations as appropriate.

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1 In the course of conducting its internal investigation, the Bank also discovered that three
2 managers in the Bank's Wholesale Lending Division authorized the reimbursement of political
3 contributions made by four of the division's personnel, resulting in additional impermissible
4 corporate contributions made in the name of another. There does not appear to be any
5 connection between the reimbursed contributions in the Student Banking and Wholesale Lending
6 Divisions.

7 Based on all of the available information, we recommend that the Commission (1) open a
8 MUR; (2) make the following reason to believe findings: that Kathleen Cannon knowingly and
9 willfully violated 2 U.S.C. §§ 441b(a) and 441f by authorizing the reimbursement of political
10 contributions from Bank funds, that Robert Rubio knowingly and willfully violated 2 U.S.C.
11 § 441f by authorizing the reimbursement of a political contribution, that Bank of America
12 Corporation violated 2 U.S.C. §§ 441b(a) and 441f by making impermissible corporate
13 contributions in the names of others, and that all other Bank personnel who authorized the
14 reimbursement of political contributions and/or received reimbursement of political contributions
15 of \$1,000 or more violated 2 U.S.C. § 441f;

16 **II. FACTS**

17 **A. Reimbursed Contributions From the Student Banking Division**

18
19 The Bank's Los Angeles-based Student Banking Division employs about 160 individuals
20 for the purpose of providing education financing and other banking services to students. At all
21 times relevant to this matter, the division was managed by Senior Vice President, Kathleen
22 Cannon. Cannon served as the division's senior vice president for twelve of the twenty-nine
23 years she worked at the Bank, and in that capacity, directly supervised nine managers. It appears

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1 that Cannon had significant autonomy in running the division, due in part to frequent turnover
2 among her direct supervisors. _____

3 According to the _____, the Bank's internal investigation concluded that
4 the Bank reimbursed a total of \$8,200 in political contributions made by employees of the
5 Student Banking Division. Cannon directly authorized \$7,100 of the reimbursements for
6 managers, who reported directly to her. Two of Cannon's subordinate managers who reported
7 directly to Cannon authorized the reimbursement of the remaining \$1,100 for contributions made
8 by employees who reported directly to them. Specifically, Robert Rubio, Accounts and
9 Production Support Manager, authorized the reimbursement of one \$600 political contribution
10 made by one of his employees; and Alec Reinstadtler, Sales Manager, authorized the
11 reimbursement of one \$500 contribution made by one of his employees. The following chart
12 summarizes the details regarding each individual political contribution that appears to have been
13 reimbursed to Student Banking Division personnel.

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Contributor	Contri- bution Amount	Recipient Committee	Reimburse- ment Amount	Expense Report Date	Authorizing Manager
Baehr	\$500	McKeon	\$500	12/15/99	Cannon
Rubio	\$250	Johnson	\$250	12/6/01	Cannon
Reinstadtler	\$250	Johnson	\$250	12/14/01	Cannon
Mills	\$250	Johnson	\$250	12/19/01	Cannon
Reinstadtler	\$1,000	McKeon	\$1,000	5/6/02	Cannon
Mills	\$500	McKeon	\$500	10/11/02	Cannon
Evans	\$500	McKeon	\$500	10/16/02	Reinstadtler
Baehr	\$500	McKeon	\$500	10/25/02	Cannon
Ainilian	\$400	McKeon	\$400	11/10/03	Cannon
Baehr	\$400	McKeon	\$500	11/10/03	Cannon
Mills	\$400	McKeon	\$400	11/10/03	Cannon
Rubio	\$400	McKeon	\$400	11/10/03	Cannon
Cline	\$400	McKeon	\$400	12/9/03	Cannon
Boykin	\$400	McKeon	\$400	12/10/03	Cannon
Mills	\$250	Pomeroy	\$250	12/11/03	Cannon
Rubio	\$150	McKeon	\$150	3/3/04	Cannon
Ainilian	\$150	McKeon	\$150	5/19/04	Cannon
Boykin	\$600	McKeon	\$600	7/8/04	Cannon
Robertson	\$600	McKeon	\$600	7/9/04	Rubio
Cline	\$300	McKeon	\$300	7/13/04	Cannon
Total:	\$8,200		\$8,300 ⁴		

In an interview with investigators for the Bank's counsel, Cannon apparently admitted that she solicited contributions from her subordinates, instructed them to submit requests for

⁴ This figure includes a \$100 excess reimbursement given to Christian Baehr, one of Cannon's direct reports. For unknown reasons, on November 10, 2003, Baehr was reimbursed \$500 for a \$400 contribution he made to McKeon for Congress. } 15K. This \$100 was not included in the total of reimbursed political contributions at issue in this matter.

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1 reimbursement of the contribution, and subsequently approved those requests.⁵ Cannon stated
2 that she began this practice in 1999 after being informed by staff of Representative Howard P.
3 "Buck" McKeon, that she could not use a corporate check to pay for a table at the annual
4 fundraising dinner for McKeon's principal campaign committee, McKeon for Congress. _____

5 _____ As shown in the chart of contributions, the majority of
6 Cannon's fundraising efforts were on behalf of McKeon, Chairman of the House Committee on
7 Education and the Workforce, which is the authorizing committee for federal student lending
8 legislation. Cannon apparently told investigators that she lives in Representative McKeon's
9 district and has known him since approximately 1993. _____ However,
10 she also apparently stated that she was not a McKeon supporter and did not get any personal
11 benefit out of soliciting contributions for his committee, asserting that her sole motivation in
12 soliciting political contributions was to assist the Bank.⁶

13 In her interview, Cannon apparently asserted that she understood the McKeon
14 committee's admonition against corporate checks to mean that while Bank checks could not be

⁵ _____ The Bank's counsel states that it interviewed fifty Bank employees during the course of its investigation. The _____ contains references to, and quotes from, these interviews. We requested that the Bank provide us with copies of the written summaries of the interviews. _____ The Bank explained that it is currently defending a wrongful termination lawsuit filed by Don Mills, the former Manager of Sales and Marketing in the Student Banking Division, who was terminated for his failure to inform Bank officials regarding the reimbursement of political contributions in that division immediately upon learning that the activity was illegal. The Bank's counsel asserts that providing us with copies of the interview summaries may result in a waiver of any potential privilege and/or work product claims that it may have regarding the documents in the pending litigation. As a result, the Bank's counsel requested that we accept a detailed verbal synopsis of these interviews, in lieu of producing the written summaries. We accepted a verbal summary of the written documents, and this report contains additional information verbally provided by counsel for the Bank.

⁶ Cannon had previously made two \$250 contributions to McKeon in 1998. Between 1998 and 2005, Cannon contributed a total of \$6,450 to McKeon for Congress. During that same period, she contributed an additional \$2,950 to other political committees. _____ According to the _____ Cannon did not seek reimbursement from the Bank for any of these contributions because she was well paid and she did not want to deplete her limited "client development budget," although the _____ does not define the term "client development budget" or provide further details about the amount or purpose of such a budget. *Id.* at 22.

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1 used, individual employees could make personal contributions and then obtain reimbursement
2 from the Bank as a business development expense.⁷ Therefore, instead of using a Bank check to
3 cover the cost of the table at the McKeon fundraiser as she had planned, Cannon wrote a
4 personal check in the amount of \$1,000 to McKeon for Congress and requested that at least one
5 of her direct reports also make a personal contribution to McKeon.

6 Christian Baehr, Credit Manager, apparently told investigators that Cannon
7 instructed him to contribute \$500 to the McKeon campaign, which he subsequently did, and told
8 him that he could expense it. Baehr submitted a request for reimbursement of the political
9 contribution, which Cannon authorized, and the Bank reimbursed Baehr.⁸ *Id.* at Exhibit 15A.

10 The next instance of Cannon soliciting political contributions from Student Banking
11 personnel apparently did not occur until December 2001. At that time, Cannon asked some of
12 her direct reports to attend a fundraiser for Senator Tim Johnson. In response to Cannon's
13 request, Alec Reinstadtler, Sales Manager; Robert Rubio, Accounts and Production Support
14 Manager; and Don Mills, Manager of Sales and Marketing; contributed \$250 each to attend a
15 breakfast fundraiser for the Senator. Each submitted a request for reimbursement. With
16 Cannon's approval, the Bank issued reimbursements to each manager.

⁷ In an interview with investigators, the Bank's PAC administrator apparently stated that Cannon regularly solicited PAC contributions from all eligible employees in the division via conference call. Unlike the specific contributions solicited by Cannon which are at issue in this matter, it appears that Cannon never offered to authorize the reimbursement of any contributions she solicited for the Bank's PAC. According to the Cannon told investigators that she never offered to reimburse employee contributions to the Bank's PAC because, unlike the McKeon events, such contributions were not "business development."

⁸ The Bank admits that it reimbursed each of the political contributions at issue in this matter. While [redacted] did not include copies of the reimbursement checks, the Bank provided copies of the Travel and Expense Account documents submitted by the employees who received reimbursement for their political contributions.

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1 In the spring of 2002, Cannon again asked one of her direct reports to make a personal
2 political contribution to McKeon. Reinstadtler told investigators that Cannon called him and told
3 him that she needed him to travel to the District of Columbia in order to participate in a golf
4 event benefiting Representative McKeon. _____ Reinstadtler stated that
5 he wrote a personal check to cover the \$1,000 fundraising event. As he had done with a previous
6 contribution, he submitted a request for reimbursement, Cannon approved the request, and the
7 Bank issued the reimbursement. _____

8 On October 18, 2002, Baehr and Mills, along with Kenneth Evans, West Regional Sales
9 Manager for Student Banking, each contributed \$500 to McKeon for Congress.⁹ _____
10 _____, each submitted a request for reimbursement. Cannon authorized
11 Baehr's and Mills's requests, and Evans's request was approved by his immediate supervisor,
12 Reinstadtler. _____ Evans told Bank investigators
13 that Cannon instructed him to categorize the contribution on his expense report as a "charitable
14 contribution." _____ Cannon admitted to investigators that she
15 usually told her direct reports how to expense the political contribution checks. _____
16 _____

17 In 2003, Cannon began soliciting contributions via e-mail. The first of these e-mails,
18 dated November 3, 2003, contained the subject line "McKeon dinner – Important" and was sent
19 to eighteen Bank employees, including eight of Cannon's direct reports. Cannon stated that she
20 "agreed, once again to purchase a table" for McKeon's annual dinner and needed eight people to

⁹ Cannon also contributed \$500 to McKeon for Congress on the same date that these three contributions were made. We do not have specific information establishing that Cannon solicited these contributions, but it appears that the contributions were made to purchase tickets for a McKeon fundraiser. Baehr's expense report included a McKeon Committee receipt titled "Let Freedom Ring," and Evans's expense report included the invitation for the same event.

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1 join her. _____ In response to an e-mail query from direct report
2 Susan Ainilian, Manager of Service and Audit Support, about the cost of attending, Cannon
3 simply stated, "you can expense it." *Id.* at Exhibit 11. In addition to Ainilian, five other direct
4 reports each contributed \$400 to McKeon for Congress: Bachr, Milla, Rubio, Dee Cline,
5 Strategic Initiatives Manager, and Gemma Boykin, Manager of Loan Origination, Loan Support,
6 Voice of the Customer. Each submitted a request for reimbursement of their respective
7 contribution and, with Cannon's authorization, the Bank reimbursed all six contributions. *Id.* at
8 Exhibit 15J – O.

9 Cannon made a verbal solicitation for political contributions from two direct reports in
10 December 2003. Reinstadtler and Mills told investigators that, during the course of the
11 December 2003 Consumer Banking Association conference in Washington D.C., Cannon asked
12 them to contribute to Earl Pomeroy for Congress. _____ Each
13 contributed \$250 to the committee, but only Mills requested and received, with Cannon's
14 authorization, reimbursement for this contribution.¹⁰ *Id.* at Exhibits 15; 15I.

15 On February 20, 2004, Cannon sent eight of her direct reports another solicitation for
16 contributions via e-mail with the subject heading "McKeon Fundraiser." This e-mail states, in
17 pertinent part, "I need two checks for a McKeon fundraiser (hopefully two people that did not
18 write before). I will show you how to expense it so you will not be out of pocket." _____
19 _____ Rubio and Ainilian contributed \$150 to McKeon for Congress in
20 response to the e-mail. Each requested reimbursement and the Bank reimbursed both

¹⁰ Reinstadtler told investigators that he did not submit a reimbursement request for this political contribution because a Bank colleague had recently told him that the practice was the equivalent of the Bank making the contribution and was, thus, improper. _____

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1 contributions with Cannon's authorization. _____

2 On June 11, 2004, Cannon issued another e-mail solicitation inviting Anilian, Baehr,
3 Boykin, Cline, Evans, Mills, Rubio, and Bob Kolich, Portfolio Management Manager, as well as
4 eighteen other Student Banking Division employees to a July 9, 2004 fundraising dinner to
5 benefit Representative McKeon. After providing details regarding the event, the e-mail states in
6 pertinent part "[t]he tickets can not be expensed as it is a contribution." _____

7 _____ Cannon was asked to explain this statement, given that it appeared to directly
8 contradict her assurance in the February 20, 2004 e-mail that she would show those who
9 contributed "how to expense it." Cannon stated that the June 11, 2004 e-mail referred to the
10 prohibition on the Bank submitting a check directly, i.e. that the bank could not write the original
11 check. Cannon also offered that the Student Banking Division frequently "expensed" tables
12 purchased at charitable events. *Id.* at 19.

13 It appears that Cline, Mills and Rubio each contributed \$300 to McKeon for Congress in
14 response to Cannon's solicitation of June 11th, although only Cline requested and received
15 reimbursement. _____ Neither Mills nor Rubio requested
16 reimbursement for their contributions. *Id.* at 14; Exhibit 15. Cline apparently told investigators
17 that Cannon telephoned her to follow up on the June 11th e-mail solicitation. Cline asserts that,
18 during this conversation, Cannon pressured her to send in a contribution via intra-office mail,
19 adding that Cline could "expense it." Cline says she stated, "but that's not what your e-mail
20 says." According to Cline, Cannon responded that she should "just write the check, you're going
21 to expense it." _____ Cline subsequently contributed \$300 to McKeon

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1 for Congress and submitted a request for reimbursement of the contribution, which the Bank
2 reimbursed with Cannon's approval.¹¹ *Id.* at Exhibit 15S.

3 Boykin, who did not read the June 11th e-mail solicitation, told investigators that she
4 contributed \$600 to the McKeon for Congress committee in response to a verbal solicitation by
5 Cannon.¹² Boykin submitted a request for reimbursement of her \$600 political contribution,
6 which the Bank reimbursed with Cannon's authorization.

7 Although Mills and Rubio each contributed \$300 to McKeon for Congress in response to
8 Cannon's June 11, 2004 e-mail solicitation, each stated that they had recently developed
9 concerns regarding the propriety of the practice and, therefore, did not request that these
10 contributions be reimbursed. Mills told investigators that he was first alerted to the possible
11 illegality of the practice when he read a LOS ANGELES TIMES article in early 2004 regarding a
12 local employer who coerced his employees into making contributions. Although the article did
13 not discuss the reimbursement of contributions directly, Mills stated it made him think there was
14 something wrong with the reimbursement process.

15 Rubio told investigators that he started having doubts about the propriety of obtaining
16 Bank reimbursement for contributions at some point in 2004 prior to receiving the June 11th
17 e-mail solicitation from Cannon. Rubio was unable to
18 articulate exactly what caused him to have these doubts, but they were apparently serious enough

¹¹ In her reimbursement request form, Cline wrote that she had lost the receipt for the expense, which she described as "Public/Community Relations." Cline subsequently told Bank investigators that the statement about her losing the expense receipt was false. contained no discussion of why Cline made the false statement.

¹² Boykin apparently told investigators that she did not read the June 11th e-mail solicitation because her secretary deleted the e-mail while she was on vacation.

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1 to prevent him from seeking reimbursement for his \$300 contribution to McKeon for Congress in
2 June 2004. *Id.*

3 Despite his doubts about the practice, Rubio authorized the reimbursement of a \$600
4 contribution to McKeon for Congress made by his direct report, Dale Robertson, Senior
5 Technology Manager.¹³ According to investigators,
6 Rubio authorized this reimbursement after seeing Cannon's June 11, 2004 e-mail solicitation.
7 Rubio was unable to tell investigators exactly why he approved this reimbursement and instead
8 provided them with varying explanations, although it appears that he attempted to shift the blame
9 onto Cannon. At first, Rubio said he could not recall the circumstances surrounding the
10 authorization or whether he discussed it with Robertson. He then told investigators that although
11 he had not discussed it with Cannon, he assumed she had vetted and approved the request.
12 Rubio also contended that Robertson told him that Cannon "instructed Robertson to have the
13 contribution reimbursed." *Id.* at 26. Rubio stated that because Cannon approved the
14 reimbursement, it "wasn't his decision."

15 On July 8, 2005, Cannon sent a fourth and final e-mail, this time to Rubio, Boykin,
16 Baehr, Cline, Mills and Robertson soliciting contributions for a McKeon fundraiser being held
17 on July 9, 2005. Cannon states in the e-mail, "I would ask each of
18 you to write a check for \$250 and then expense it as business development. I have a receipt for
19 each of you to use in your expenses. Thanks - I will not mail the check until you get
20 reimbursed." *Id.*

¹³ There is no information as to who solicited this contribution from Robertson, who was not a recipient of Cannon's June 11, 2004 e-mail.

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1 Immediately after receiving Cannon's July 8th e-mail, Boykin reportedly confronted
2 Cannon regarding the legality of obtaining reimbursements for political contributions. _____
3 _____ Boykin told investigators that she had just completed the Bank's
4 new on-line ethics training and, as a result, claims that she learned for the first time that using
5 Bank funds to reimburse contributions was "wrong."¹⁴ Boykin stated that she entered Cannon's
6 office and gave Cannon her contribution check. According to Boykin, when Cannon asked
7 whether she had been reimbursed, Boykin responded that reimbursements were in violation of
8 the rules set forth in the ethics training. Boykin said that Cannon looked up at her and said, "Oh
9 – I know." Boykin asked Cannon why she told her to expense the contribution and Cannon did
10 not respond. *Id.* at 21. According to _____ Cannon denied telling Boykin
11 she knew that obtaining reimbursements from the Bank was improper or illegal.¹⁵ *Id.*

12 Cannon received several checks in response to her July 8th e-mail, including Boykin's
13 and one from Dee Cline. However, before Cannon delivered any of the checks to McKeon for
14 Congress, the Bank commenced its internal investigation. Even though Cline's check was never
15 delivered to McKeon for Congress, she requested, and received reimbursement for the
16 contribution check, with Cannon's authorization. _____ Exhibit 15U.

¹⁴ The Bank's ethics manual, dated June 1, 2005, stated that "[f]ederal statutes make it unlawful for a national bank to make any contribution through the use of funds, services, property or other resources in conjunction with any federal, state or local election. Additionally, corporations are also restricted from making contributions in federal elections and in many states." _____ In 2005, the Bank's ethics training was significantly revised and improved by its new on-line format, which required that employees answer specific questions on its contents. *Id.* at 22, n. 13 & Exhibit 18 at 42. According to _____ the 2005 on-line training finally prompted the Student Banking employees to discuss Cannon's practice of soliciting political contributions and authorizing their reimbursement with Bank funds. *Id.* at 24.

¹⁵ Boykin told investigators that she told several other Cannon direct reports, including Mills and Robertson, about this conversation soon after it occurred. According to _____ Mills apparently recalled that Boykin reported Cannon saying something along the lines of – "we won't get caught." _____

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B. The Wholesale Lending Division

As previously discussed, the Bank's internal investigation attempted to determine whether the pattern of reimbursements extended beyond the Student Banking Division. As a result of these efforts, the Bank discovered that it also reimbursed \$1,830 in contributions made by personnel in the Wholesale Lending Division between 2003 and 2004.

Specifically, Wayne Roltzen, Senior Vice President and Private Client Advisor, authorized the reimbursement of a single political contribution made by one of his direct reports. In addition, Edward Kalush, Manager for National Wholesale Production, authorized the reimbursement of a political contribution made by his direct report, Jan C. Brown, Senior Vice President for Wholesale Lending. Brown, in turn, authorized the reimbursement of political contributions made by two of her direct reports. The following chart summarizes the details regarding each individual political contribution that appears to have been reimbursed to Wholesale Lending Division personnel.

Contributor	Contri- bution Amount	Recipient Committee	Reimburse- ment Amount	Expense Report Date	Authorizing Manager
Hamil	\$250	Grassley	\$250	9/5/03	Roltzen
Brown	\$500	DFWAMB PAC	\$500	4/12/04	Kalush
Fitzgerald	\$250	DFWAMB PAC	\$250	5/17/04	Brown
Fitzgerald	\$80	DFWAMB PAC	\$80	5/17/04	Brown
Fitzgerald	\$250	TAMB PAC	\$250	10/7/04	Brown
Bettis	\$500	TAMB PAC	\$500	9/16/04	Brown
Total:	\$1,830		\$1,830		

provided little information relating to the first contribution reimbursed within the Wholesale Lending Division. Former employee Brandon Hamil contributed \$250 to Senator Chuck Grassley. The Bank reimbursed this contribution with the authorization of Hamil's supervisor, Wayne Roltzen. Attached to Hamil's expense report is an invitation to a reception for the Senator that took place in West Des

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1 Moines on June 7, 2003. Hamil categorized the expense in this report as "customer
2 entertainment." *Id.* at Exhibit 23. Because the Bank's investigation did not include interviews
3 with Hamil or Roltzen, who is now retired, there is not enough information in the record to
4 explain why Hamil made the contribution or why Roltzen authorized its reimbursement. *Id.* at
5 31.

6 As the chart shows, the majority of these contributions were made to two industry
7 political action committees, the Dallas/Ft. Worth Association of Mortgage Brokers PAC
8 ("DFWAMB PAC") and the Texas Association of Mortgage Brokers PAC ("TAMB PAC").
9 Brown and her direct report Kent Fitzgerald, a salesman in the Wholesale Lending Division,
10 each made contributions to DFWAMB PAC in the amount of \$500 and \$250, respectively, to
11 participate in a golf tournament sponsored by the PAC as a part of the association's 2004 annual
12 conference. Fitzgerald paid an additional \$80 to attend a horse race that was a part of the same
13 conference.

14 Fitzgerald and Rusty Bettis, another salesman in the Wholesale Lending Division, each
15 made contributions to TAMB PAC in the amount of \$250 and \$500, respectively, to participate
16 in another golf tournament sponsored by that PAC as a part of the association's 2004 annual
17 conference. _____ [Exhibits 19 – 22. Brown, Fitzgerald and Bettis
18 each requested reimbursement of these contributions from the Bank. Brown's \$500 political
19 contribution was reimbursed by the Bank with the authorization of her superior, Edward
20 Kaluah.¹⁶ *Id.* at Exhibit 19. Fitzgerald's and Bettis's contributions to DFWAMB PAC and
21 TAMB PAC were reimbursed by the Bank with Brown's authorization. *Id.* at Exhibits 19 – 22.

¹⁶ The Bank did not interview Kaluah as part of its investigation because he had retired. _____

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1 Brown, Fitzgerald and Bettis stated that they considered these events as purely client
2 entertainment and not fundraisers for the sponsoring PACs even though all the golf and other
3 event invitations and other materials produced by the Bank indicate that the events were PAC
4 related, requested payment with personal funds and in at least one case stated that a corporate
5 credit card could not be used as payment. _____ Exhibits 19 – 22.

6 Brown told investigators that golf events were considered a standard industry method of doing
7 business. Additionally, Brown, who had some experience with a state PAC through her position
8 on the Board of Directors of a mortgage lending association, stated that while she was aware that
9 by seeking reimbursement they were not using personal funds, she understood that the PACs
10 allocated their funds in such a way that payments for these events were not political
11 contributions. *Id.* at 31 – 32. Fitzgerald told investigators that he did not view the events as
12 political and did not understand that the golf fees were going to political committees. Similarly,
13 Bettis told investigators that he thought the TAMB PAC event was simply a golf tournament and
14 had no idea the fees were political contributions.

15 It appears that the individual employees received invitations to these events (two of
16 which involved an opportunity to play golf and one of which involved an outing at a race track),
17 voluntarily decided to attend and bring clients, and requested that their supervisor authorize
18 reimbursement of the expense. Indeed, the expense reports filed by Brown, Fitzgerald and Bettis
19 indicate that they hosted industry clients at each of these events. _____

20 _____ According to _____, as with other forms of client
21 entertainment, reimbursements for golf and other outings were routinely requested and
22 authorized; in fact, the division included golf events in their marketing budget. *Id.* at 31 – 32.

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III. LEGAL ANALYSIS

A. Kathleen Cannon

Under the Act, corporations and national banks are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a). Corporate officers are prohibited from consenting to contributions made by the corporation or national bank. *Id.* The Act also provides that no person shall make a contribution in the name of another person. 2 U.S.C. § 441f; *see also* 11 C.F.R. § 110.4(b)(iii). Cannon, an officer of the Bank of America Corporation, approved \$7,100 in corporate reimbursements described in this report and knowingly assisted in making contributions in the name of another in violation of 2 U.S.C. §§ 441b(a) and 441f.

The information _____ provides sufficient basis for investigating whether Cannon's violations were knowing and willful.¹⁷ First, in 1999, McKeon for Congress explicitly told Cannon that the committee could not accept corporate checks. _____

_____ Cannon claimed that she did not understand that the McKeon committee's admonition against corporate checks prevented individual employees from making personal contributions and obtaining reimbursement from the Bank as a business development expense. *Id.* at 11 – 12. Perhaps not surprisingly, it is unclear from anything _____ why Cannon could possibly have thought corporate reimbursement of individual contributions was legal if direct corporate contributions were illegal.

¹⁷ The knowing and willful standard requires knowledge that one is violating the law. *FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Taking steps to disguise the source of funds used in illegal activities may reasonably be explained as a "motivation to evade lawful obligations" and will also be considered evidence of knowing and willing behavior. *Id.* at 213-4 (citing *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

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1 Second, as previously discussed, on July 11, 2004, Cannon sent an e-mail solicitation to
2 several direct reports soliciting contributions to the 2004 McKeon for Congress fundraiser,
3 which included the statement – “[t]he tickets can not be expensed as it is a contribution.”
4 _____ at Exhibit 13. This statement appears to indicate that by that time she
5 understood, at least on some level, that reimbursing contributions with Bank funds was
6 prohibited. Despite this apparent understanding, Cannon subsequently approved requests for
7 reimbursements of political contributions made by her direct reports.¹⁸ This may demonstrate a
8 willingness to ignore or contravene this understanding. Cannon was unable to provide a detailed
9 explanation to investigators regarding the meaning of the June 11, 2004 e-mail beyond
10 reiterating the statement that checks submitted directly by the Bank were prohibited and adding
11 as an aside that Student Banking frequently expensed the purchase of tables at charitable events.
12 *Id.* at 11, 19.

13 Third, the Bank speculates that Cannon recognized reimbursing contributions was
14 improper, in part, because her e-mails only explicitly stated that contributions could be
15 reimbursed when the recipient list was restricted to her direct reports. Specifically, e-mails
16 issued exclusively to her direct reports on November 3, 2003 (e-mail response to Ainilian),
17 February 20, 2004 and July 8, 2005 stated that contributions could be reimbursed, *see supra* pp.
18 9 – 10; 12, while e-mail solicitations issued to a wider audience in Student Banking Division,
19 dated November 3, 2003 and June 11, 2004, either did not mention the issue of reimbursements
20 at all or stated definitively that the contributions cannot be expensed, *see supra* pp. 8 – 10. As

¹⁸ Cannon subsequently authorized the reimbursement of Cline's \$300 political contribution and Boykin's \$600 political contribution to the 2004 McKeon for Congress fundraiser. Exhibits R – S. A year later, Cannon authorized the reimbursement of Cline's \$250 political contribution to the 2005 McKeon for Congress annual fundraiser. *Id.* at Exhibit U.

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1 noted in the _____ this behavior may indicate that Cannon knew the
2 reimbursement of contributions by the Bank was illegal and felt more comfortable
3 communicating openly about this illegal activity with her small group of direct reports. _____

4 _____
5 Finally, Boykin, one of Cannon's direct reports, told investigators that in a confrontation
6 with Cannon over the propriety of reimbursing political contributions, Cannon admitted the
7 practice was unlawful as set forth in the Bank's code of ethics. *See supra* p. 13. According to
8 _____ while Cannon was unclear regarding the exact details of the
9 conversation with Boykin, she firmly denied telling Boykin that she knew obtaining
10 reimbursements for political contributions was improper or illegal. _____

11 _____ If Boykin's allegation is true, this could constitute an admission that Cannon was aware
12 that reimbursing political contributions was illegal.

13 In sum, there appears to be ample reason to investigate whether Cannon's actions were
14 knowing and willful. In fairness to Cannon, however, _____
15 _____, we have not heard from her. As a matter of fair notice to Cannon, we recommend that
16 the Commission find reason to believe that she knowingly and willfully violated 2 U.S.C.
17 §§ 441b(a) and 441f.

18 B. Robert Rubio, Alec Reinstadtler, Edward Kalush, Jan C. Brown and, Wayne
19 Roltzen
20

21 As set forth in the factual section of this Report, it appears that Robert Rubio, Alec
22 Reinstadtler, Edward Kalush, Jan C. Brown and Wayne Roltzen each authorized the
23 reimbursement of political contributions made by Bank personnel under their immediate
24 supervision. Accordingly, we recommend that the Commission find reason to believe that each
25 violated 2 U.S.C. § 441f by knowingly assisting in the making of contributions in the name of

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1 another by approving the reimbursements of their subordinates' political contributions. *See also*
2 11 C.F.R. § 110.4(b)(iii).

3 _____ also provides a basis for investigating whether Rubio's
4 violation was knowing and willful. It appears that Rubio may have known that the
5 reimbursement of political contributions was illegal when he authorized the reimbursement of
6 Robertson's \$600 contribution to McKeon for Congress. *See supra* pp. 11 – 12. According to
7 the internal investigation, Rubio authorized this reimbursement after seeing Cannon's June 11,
8 2004 e-mail solicitation, which stated that the tickets for the McKeon fundraiser could not be
9 reimbursed because they were contributions. _____

10 Therefore, in the interest of putting Rubio on notice as to his potential liability, we
11 recommend that the Commission find reason to believe that Robert Rubio knowingly and
12 willfully violated 2 U.S.C. § 441f.

13 **C. Bank of America Corporation**

14 The Bank admits that through the actions of the officers and managers identified in this
15 report, it made prohibited corporate and national bank contributions and reimbursed \$10,030 in
16 political contributions made by thirteen of its employees, in violation of 2 U.S.C. §§ 441b(a) and
17 441f. The record in this matter demonstrates that the Bank's corporate officers and managers
18 routinely approved the reimbursement of certain categories of expenses incurred by their
19 subordinates. Therefore, the reimbursement of expenses by the Bank's corporate officers and
20 managers was within the scope of their employment and the Bank can be held liable for their
21 approval of the reimbursement of illegal expenses, such as political contributions.

22 It is well settled that a principal is liable for the acts of its agents committed within the
23 scope of his or her employment. *Weeks v. United States*, 245 U.S. 618, 623 (1918); *Rouse*

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1 *Woodstock Inc. v. Surety Federal Savings & Loan Ass'n*, 630 F. Supp. 1004, 1010-11 (N.D.Ill.
2 1986). Where a principal grants an agent express or implied authority, the principal generally is
3 responsible for the agent's actions that fall within the scope of his authority. *See Weeks* at 623;
4 RESTATEMENT (SECOND) OF AGENCY § 228(1); *see also Rouse Woodstock Inc.*, 630 F. Supp. at
5 1010-11 (principal who places agent in position of authority normally must accept the
6 consequences when the agent abuses that authority). Accordingly, we recommend that the
7 Commission find reason to believe that the Bank of America Corporation violated 2 U.S.C.
8 §§ 441b(a) and 441f.

9 Although Cannon and Rubio's knowing and willful *scienter* may be attributable to the
10 Bank, *see, e.g., United States v. A & P Trucking Co.*, 358 U.S. 121, 125 (1958); *Apollo Fuel Oil*
11 *v. United States*, 195 F.3d 74, 76 (2nd Cir. 1999), as a matter of prosecutorial discretion, we do
12 not at this time recommend that the Commission find that the Bank's violations of 2 U.S.C.
13 §§ 441b(a) and 441f were knowing and willful. The Bank revealed the apparent violations of the
14 law to the Commission soon after the completion of its internal investigation, has provided
15 voluminous documentation and other information to assist this agency in its evaluation of the
16 matter, and taken numerous steps to remedy the violations and ensure they are not repeated.¹⁹
17 Accordingly, unless we discover contradictory information in the course of our investigation, it

¹⁹ The Bank took disciplinary action against all the employees from the Student Banking Division involved in the illegal activity. Besides terminating Cannon, the Bank also fired Rubio, Cline, Reinstadtler and Mills. Additionally, the Bank has implemented a "compliance filter" to compare FEC disclosure data and Bank expense records in order to prevent future instances of contributions being reimbursed with Bank funds. While the Bank's 2005 Code of Ethics states, in pertinent part, that federal statutes prohibit national banks and corporations from making contributions in connection with federal elections, *see supra* p. 13 n. 14, the Bank intends to amend its code to clarify that the reimbursement of political contributions by banks and corporations is also unlawful. *Id.* at 37.

1 is our intention not to recommend that the Bank's violations of the Act were knowing and
2 willful.

3 **D. The Conduits**

4 As outlined in the factual section of this Report, it appears that thirteen Bank employees
5 made \$10,030 in contributions with their own personal funds, but did so knowing that they
6 would be reimbursed with Bank funds.²⁰ Reimbursement of these contributions constitutes a
7 contribution in the name of another in violation of 2 U.S.C. § 441f. *See also* 11 C.F.R.
8 § 110.4(b)(ii). However, as a matter of prosecutorial discretion, we recommend that the
9 Commission name as respondents only those conduits that received reimbursement for
10 contributions of \$1,000 or more.²¹ *See charts supra* pp. 5 and 14. Therefore, we recommend the
11 Commission find reason to believe that Christian Baehr, Alec Reinstadtler, Don Mills, and
12 Gemma Boykin violated 2 U.S.C. § 441f.²²

13 **E. The Recipient Committees**

14 Nothing _____ indicates that any of the six recipient committees,
15 including Buck McKeon for Congress, Tim Johnson for Senate, Inc., Earl Pomeroy for Congress,
16 the Dallas/Ft. Worth Association of Mortgage Brokers PAC, the Texas Association of Mortgage

²⁰ The _____ that most of the Bank employees who received reimbursements for their political contributions were unaware of the illegality of their actions until 2005, when they were required to take on-line Code of Ethics Training and the Bank instituted its internal investigation. At this point, we have not found any evidence to contradict this conclusion.

²¹ _____ appears to indicate that Dee Cline knew at the time she requested and received reimbursement of her \$300 contribution to McKeon for Congress on September, 1, 2004, that it was improper. However, because it appears that Cannon, her superior, instructed Cline to submit the request for reimbursement and because of the small amount in violation, we are not recommending that the Commission make any finding against Cline.

²² Assuming our investigation does not reveal that these conduit contributors acted knowingly and willfully, we anticipate taking no further action with respect to these respondents.

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1 Brokers PAC or the Grassley Committee, Inc., were aware that any of the received contributions
2 at issue in this matter were reimbursed.²³ Accordingly, we make no recommendations at this
3 time with respect to Buck McKeon for Congress, Tim Johnson for Senate, Inc., Earl Pomeroy for
4 Congress, the Dallas/Ft. Worth Association of Mortgage Brokers PAC, the Texas Association of
5 Mortgage Brokers PAC and the Grassley Committee, Inc. Should we obtain evidence indicating
6 that any of these committees violated the Act, we will make appropriate recommendations at a
7 later time.

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²³ [REDACTED], the Bank states that it will notify the recipient committees regarding the reimbursed contributions so that the committees can take appropriate corrective action and correct the relevant disclosure reports.

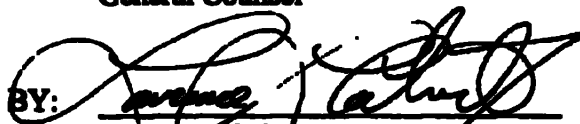
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V. RECOMMENDATIONS

1. Open a MUR;
2. Find reason to believe that Kathleen Cannon knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f;
3. Find reason to believe that Alec Reinstadtler, Edward Kalush, Jan C. Brown, Wayne Roltzen, Christian Bachr, Don Mills, and Gemma Boykin violated 2 U.S.C. § 441f;
4. Find reason to believe that Robert Rubio knowingly and willfully violated 2 U.S.C. § 441f;
5. Find reason to believe that Bank of America Corporation violated 2 U.S.C. §§ 441b(a) and 441f;
6. Approve the attached Factual and Legal Analyses;
7. _____
8. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

10/2/06
Date

BY: 
Lawrence Calvert, Jr.
Deputy Associate General Counsel
for Enforcement

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