

**SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000

FAX: (202) 393-5760

FIRM/AFFILIATE OFFICES

BOSTON  
CHICAGO  
HOUSTON  
LOS ANGELES  
NEWARK  
NEW YORK  
PALO ALTO  
SAN FRANCISCO  
WILMINGTON

BEIJING  
BRUSSELS  
FRANKFURT  
HONG KONG  
LONDON  
MOSCOW  
PARIS  
SINGAPORE  
SYDNEY  
TOKYO  
TORONTO

DIRECT DIAL  
(202)371-7007  
DIRECT FAX  
(202)371-7956

Supplement to  
AOR 2003-16  
June 4, 2003

**Via Hand Delivery**

Rosemary C. Smith, Esq.  
Acting Associate General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

2003 JUN -5 A 10:07  
RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

RE: Response to Questions Regarding Advisory Opinion Request on  
Affinity Credit Card Program

Dear Ms. Smith:

This is in response to your letter, dated May 16, 2003, in which you ask certain questions regarding the advisory opinion request ("AOR") we submitted on behalf of Providian National Bank ("Providian") on May 6, 2003. The following responds to those questions. Please note that Providian has not agreed with a National Party as to the specific terms of the business practices and procedures described below. Accordingly, the following information describes possible actions Providian may take depending on its business objectives and needs, and not steps it definitely will take with a National Party. Unless otherwise indicated in this letter, the capitalized terms used in this letter have the same meaning as defined in our AOR.

**Question 1**

Please describe in detail the general statistical data and the data about prospects who respond positively to the Bank's offer that the Bank will provide to a national party. Also, please clarify whether the general statistical data provided extends only to the prospects who positively respond to the Bank's credit card offer, to all of the names

on the mailing list provided by a national party, or to all of the names on the Bank-edited mailing list once the list has been provided.

*Answer*

The general statistical and individual data that Providian may share with a National Party falls into three categories. Each category of information is generated from the steps that Providian takes in its normal course of business to generate profitable credit card accounts. Providian has also shared similar information in the Affinity Program context.

Category 1: Providian obtains the National Party list from the National Party and puts that list through contact-information update filters, creditworthiness filters, and profitability screens (which use Providian's card-usage models to project the names that will be profitable to Providian).

After the above-described filtering process, Providian sends a solicitation for an Affinity Card to all, or a portion of, the names that pass the filters. The list of names that Providian ultimately solicits is called the Mailing List.

Providian may share this Mailing List and data on the consumers who respond to the solicitation ("Responders") with a National Party subject to applicable privacy laws and the terms of our arrangement with that National Party. Providian anticipates that it could share any or all of the following information:

**Mailing List:**

- Name and address
- The type of product offer given (offer specifics – e.g., APR, creative solicitation materials, and credit line)
- The type of reward offered (i.e., Bonus, Rebate, or Value Added)

**Responders:**

- Name and address
- The type of product offer given
- The type of reward offered
- Responder information as required to be reported to the FEC (i.e., name, address, occupation, and employer name)
- Information regarding whether the Responder has agreed to forward his or her reward to the National Party, and the amount of the reward if applicable

Category 2 : Responders that pass Providian's final creditworthiness check (performed after a prospect responds to the solicitation) will be approved and mailed

Rosemary C. Smith, Esq.  
June 4, 2003  
Page 3

their new credit card. Providian calls these "Booked Accounts." Providian may share with a National Party individual names of Booked Accounts and aggregate statistical information on account performance, i.e., accounts that are open, accounts that are active, and new purchase volume.

Subject to the conditions described above, after each solicitation that Providian conducts, Providian may combine the data in Category 1 and Category 2 into a single data file to share with a National Party.

Category 3: Providian will track the performance of the Booked Accounts and may share this data as an aggregated, statistical report with a National Party on an ongoing basis. This aggregate data may include the number of Booked Accounts that are active (cardholder is actively making charges), average monthly dollars charged per account, and average monthly balances per account. Providian may also provide Booked Account information segmented by performance, e.g., Booked Accounts with balances greater than \$50.

#### **Question 2**

You indicate that as part of the Affinity Program, a national party may purchase advertising space in the Bank's communications to cardholders and in promotional materials to prospects. Please describe the type of advertising contemplated and specifically state whether the advertising will include the names of federal candidates or refer to elections.

#### *Answer*

As described in our AOR, a National Party may purchase advertising space (at fair market value) in Providian's mailings to solicit contributions in connection with the Value Added Card. Also, subject to Providian's discretion, a National Party may also purchase advertising space (at fair market value) for its fundraising purposes in any Providian mailing, at the same rate as any other advertiser that purchases such space. Under no circumstances will any message contained in such advertising space contain the names of federal candidates or refer to elections.

#### **Question 3**

Please describe more specifically the type of disclaimers that Providian will include in its communications giving cardholder the opportunity to authorize the Bank to send rebates or bonuses to the national party.

#### *Answer*

Rosemary C. Smith, Esq.  
June 4, 2003  
Page 4

Providian will use the disclaimers that are consistent with those the National Party uses, including language that describes the prohibition on contributions by corporations, foreign nationals, labor organizations, national banks and federal contractors. In addition, Providian will specify that a cardholder's decision to designate their Rebate or Bonus reward to the National Party is entirely voluntary and include the "paid for/authorized by" language as required under 11 C.F.R. § 110.11.

**Question 4**

Please explain how the Bank will determine the amount of the bonus contemplated in the bonus feature described in your request and clarify whether or not it will be a one-time bonus to encourage initial use of the affinity credit card.

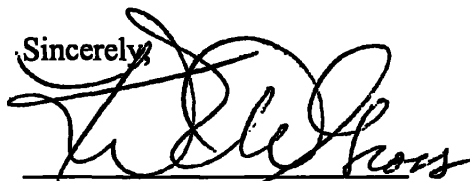
*Answer*

Providian may use a Bonus to stimulate activity of cardholders. Indeed, the Bonus would be used to encourage initial and ongoing card usage. Such a marketing strategy is customary in the credit card industry.

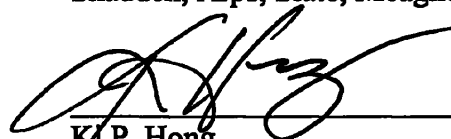
Providian would determine the Bonus amount based on the following two factors: (1) whether the amount is sizable enough to stimulate such behavior; and (2) whether the Bonus is financially justifiable. Thus, the size of the Bonus and the frequency with which Providian includes it in its solicitations are based on what its profitability projections allow. Typically in the industry, bonus sizes range between \$5 and \$50.

Please call if you need any further information.

Sincerely,



Kenneth A. Gross  
Skadden, Arps, Slate, Meagher & Flom LLP



Kenneth P. Hong  
Skadden, Arps, Slate, Meagher & Flom LLP

Attorneys for Providian National Bank