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*Elliott Johnson*

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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

January 8, 1998

## AGENDA ITEM

For Meeting of: 1-15-98

### MEMORANDUM

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Jonathan M. Levin  
Senior Attorney

Subject: Draft AO 1997-25

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for January 15, 1998.

Attachment

**DRAFT**

2  
3 Robert M. Hall  
4 Vice President and Assistant General Counsel  
5 Hughes Electronics Corporation  
6 7200 Hughes Terrace  
7 Los Angeles, CA 90045-0066

8  
9 Dear Mr. Hall:

10  
11 This responds to your letter dated November 20, 1997, as supplemented by your  
12 letters dated November 26 and December 10, 1997, on behalf of Hughes Electronics  
13 Corporation ("HE"), concerning the application of the Federal Election Campaign Act of  
14 1971, as amended ("the Act"), and Commission regulations to the relationships among  
15 various separate segregated funds (SSFs) as a result of a corporate spin-off and merger.

16 On December 17, 1997, a portion of HE was spun off to the stockholders of  
17 General Motors Corporation ("GM") and that portion of HE merged with Raytheon  
18 Company ("Raytheon"). This opinion addresses the affiliated or non-affiliated status of  
19 the SSFs of the corporate entities involved both before and after the reorganization  
20 transactions and the resulting impact on the ability of the SSFs to make transfers to each  
21 other and to solicit the corporations' eligible employees.

22 ***I. Background***

23 ***A. Relationships of Corporations***

24 Prior to December 17, HE was a wholly owned subsidiary of GM. It operated in  
25 three principal business areas: (1) defense electronics; (2) telecommunications and space;  
26 and (3) automotive electronics. The defense electronics and telecommunications sectors  
27 were conducted by a wholly owned subsidiary known as HE Holdings, Inc. ("Holdings").  
28 The automotive electronics sector was conducted by a wholly owned subsidiary of HE  
29 known as Delco Electronics Corporation ("Delco"). Raytheon was a parent company  
30 separate from GM and its subsidiaries.

31 On December 17, a number of nearly simultaneous corporate reorganization  
32 transactions took place that changed the relationships of the HE entities to GM and to

1 Raytheon. As a result of these transactions, the three business sectors of HE were  
2 realigned, as follows:

3 (1) The defense electronics sector of Holdings was spun off to the common  
4 stockholders of GM. Raytheon merged with this sector and the surviving company is  
5 called Raytheon (referred to hereinafter as "Raytheon/Holdings" or "R/H"). The former  
6 Raytheon stockholders received common stock of Raytheon/Holdings. As a result,  
7 Raytheon/Holdings is now owned by the stockholders of GM and the former stockholders  
8 of Raytheon, but GM owns none of the company's equity.

9 (2) Delco was transferred from HE up to GM and became a wholly owned  
10 subsidiary of GM. It now operates in combination with a division of GM, Delphi  
11 Automotive Systems, and is hereinafter referred to as Delco/Delphi.

12 (3) The telecommunications and space business (the other part of Holdings) is  
13 retained by HE.

14 The changes in stock ownership in the reorganization are briefly described as  
15 follows. Prior to the reorganization, GM was owned by two classes of common  
16 stockholders. These two classes became the owners of Class A stock of  
17 Raytheon/Holdings. They also remain the common stockholders of GM. The common  
18 stockholders of Raytheon became the Class B common stockholders of  
19 Raytheon/Holdings. The Class A stock represents approximately 30 percent of the  
20 economic interest in Raytheon/Holdings, while the remaining 70 percent is represented  
21 by the Class B stock. The voting is weighted with respect to the election (and removal) of  
22 directors on the R/H board so that Class A stockholders have approximately 80 percent of  
23 the voting power, and Class B stockholders have the other 20 percent. With respect to all  
24 other stockholder voting matters, each stockholder has one vote, and such matters require  
25 the approval of each class separately.

26 Neither GM nor Raytheon/Holdings own any stock in the other company. You  
27 state that the only common control between the two companies is that the initial holders  
28 of R/H Class A stock are GM's common stockholders. You note, however, that GM's  
29 common stock is widely dispersed, with over 700,000 stockholders, no one of which  
30 owns more than 10 percent of either of its classes. In addition, it is anticipated that there

1 will be active trading in the Class A stock of Raytheon/Holdings as the GM stockholders  
2 who are interested in automotive and telecommunications investments sell to other  
3 investors who are interested in defense electronics investments.

4 You note some overlap between the board of R/H, on the one hand, and the  
5 boards of GM and HE, on the other. The R/H board has 15 members, two of whom (the  
6 President and Vice Chairman of HE) sit on the nine member HE board and one of whom  
7 sits on the 16-member GM board. The three directors that overlap with the GM  
8 companies are new to the board. The other 12 were directors of Raytheon prior to the  
9 merger and were elected by Raytheon shareholders at the last annual stockholders  
10 meeting. To the best of your knowledge, there are no current plans to add any HE or GM  
11 officer, director, or employee to the R/H board, or any such R/H personnel to the board of  
12 GM or HE. You state that GM and HE had and have no control or influence over the 12  
13 continuing Raytheon directors. You maintain that, in view of this fact and the fact that the  
14 GM companies have no ownership interest in R/H, GM and HE have no ability to control  
15 the future selection of the R/H board, nor any authority to hire, demote, or otherwise  
16 control the directors, officers, or employees of Raytheon/Holdings.<sup>1</sup> You also note that,  
17 other than the two HE officers that sit on the R/H board, there is no current plan for an  
18 officer or employee of GM (including HE) or Raytheon to serve as an officer or employee  
19 of the other company.

20 *B. SSFs Past and Present*

21 HE's SSF will continue to be the Hughes Electronics Corporation Active  
22 Citizenship Fund ("HACF") which is a qualified multicandidate committee. Its statement  
23 of organization in effect prior to the reorganization disclosed affiliation with the SSF of  
24 GM, the Civic Involvement Program/General Motors ("CIP/GM").<sup>2</sup> Prior to the  
25 reorganization, HACF had payroll deduction authorizations from 1452 employees.<sup>3</sup>  
26 Thirty percent of these employees were with the telecommunications and space business,

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<sup>1</sup> The Prospectus states that, of the six directors comprising the R/H board's nominating committee, only one will be affiliated with GM.

<sup>2</sup> It also discloses HACF's affiliation with the SSF of another wholly owned subsidiary of GM.

<sup>3</sup> Before the spin-off, HACF received \$8,500 per month in payroll deductions and the approximate cash on hand on October 31, 1997, was \$99,000.

1 and remain with HE. The defense electronics business, which merged with Raytheon,  
2 accounted for 62 percent of the employees using payroll deduction. Eight percent were  
3 with Delco. HE created another SSF registered as connected to Holdings ("Holdings  
4 PAC") that received transfers from HACF prior to the reorganization. (See question 2  
5 below.) Another new SSF, hereinafter referred to as Delco/Delphi PAC, was also  
6 established before the reorganization.

7 Prior to the reorganization, Raytheon had an SSF named Raytheon Company PAC  
8 ("Raytheon PAC") which qualified as a multicandidate committee. Immediately after the  
9 reorganization, Holdings PAC, referred to above, merged into Raytheon PAC, which  
10 continued as the SSF of R/H.

## 11 **II. Questions**

12 Based on the facts presented, you ask a number of questions. Your request letter  
13 was sent in advance of the spin-off and merger, and in advance of the proposed activities  
14 related to the SSFs. The Commission understands that the proposed transfers that could  
15 take place only between affiliated political committees have already occurred. You have  
16 framed the questions in the future tense, and the Commission restates them likewise.

17 (1) Will HACF and Raytheon PAC remain non-affiliated entities following the merger?  
18

19 (2) If the answer to question 1 is yes, HACF wishes to execute a transfer before the  
20 reorganization. HACF will determine which of the HACF funds on hand are attributable  
21 to the telecommunication and space business employees as a group and to the defense  
22 electronics business as a group. It will allocate those funds to SSFs that will be  
23 associated respectively with their future employers, HE and Raytheon/Holdings.  
24 Accordingly, the question is whether HACF may split into two affiliated SSFs prior to  
25 the reorganization transactions. One would be the existing SSF, registered as HACF, and  
26 it would continue to receive payroll deductions and contributions from employees in the  
27 telecommunications and space business. The other would be a new SSF registered as  
28 connected to Holdings. It would receive from HACF a one time transfer of the funds on  
29 hand that are attributable to the payroll deductions and contributions from the employees  
30 in the defense electronics business.

31  
32 (3) If the answer to question 2 is yes, may the new Holdings-connected SSF be merged  
33 into Raytheon PAC, which will be the SSF of Raytheon/Holdings immediately after the  
34 merger of Holdings and Raytheon?

35  
36 (4) If the answers to questions 2 and 3 are yes, may a computation be done using the  
37 ratio of 62%/30%/8% (corresponding to the weekly payroll deductions attributable to the

1 employees of each HE business sector) applied to the existing HACF funds at the time of  
2 a split-up of HACF to determine the one-time transfers to the pre-merger Holdings SSF  
3 and to the Delco/Delphi SSF?  
4

5 (5) Will all the SSFs have multicandidate status both during the period leading up to the  
6 reorganization and following the reorganization?  
7

8 (6) After the merger, must Raytheon PAC, as well as HACF or any GM affiliated SSFs,  
9 aggregate their respective contributions from employees and to candidates with those  
10 previously received or made by each other to ascertain compliance with the Act's  
11 contribution limits?  
12

13 (7) May Raytheon PAC merely notify the former Holdings donors to HACF, after they  
14 become employees of Raytheon/Holdings, that their payroll deduction are now being  
15 transferred to Raytheon PAC, without a requirement that Raytheon PAC seek new  
16 authorizations from such employees?  
17

18 (8) May the Delco/Delphi PAC merely notify the prior HACF contributors employed by  
19 Delco/Delphi that their payroll deductions are now being transferred to Delco/Delphi  
20 PAC, without a requirement that it seek new authorizations from such employees?  
21

### 22 *III. Responses*

#### 23 *A. Affiliated Status of SSFs*

24 As indicated at the beginning of this opinion, the responses to these questions  
25 depend in large measure on the affiliated status of the SSFs of the corporate entities  
26 involved. The Act and Commission regulations provide that committees, including  
27 separate segregated funds, that are established, financed, maintained or controlled by the  
28 same corporation, person, or group of persons, including any parent, subsidiary, branch,  
29 division, department, or local unit thereof, are affiliated. 2 U.S.C. §441a(a)(5); 11 CFR  
30 100.5(g)(2). Contributions made to or by such committees shall be considered to have  
31 been made to or by a single committee. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2),  
32 110.3(a)(1), and 110.3(a)(1)(ii). Therefore, transfers between affiliated committees are  
33 not limited by 2 U.S.C. §441a. 11 CFR 102.6(a)(1). In addition, a corporation may make  
34 communications to and solicit the restricted class (i.e., executive and administrative  
35 personnel and stockholders, and the families thereof) of its subsidiaries or other affiliates  
36 for contributions to the corporation's separate segregated fund. 2 U.S.C. §441b(b)(2)(A)  
37 and (4)(A)(i); 11 CFR 114.3(a)(1) and 114.5(g)(1). Commission regulations further state

1 that committees established by a single corporation and its subsidiaries, or committees  
2 established by the same group of persons, are affiliated *per se*. 11 CFR 110.3(a)(2)(i) and  
3 (v). Advisory Opinion 1990-10.

4 Where an entity is not an acknowledged subsidiary of another entity, Commission  
5 regulations provide for an examination of various factors in the context of an overall  
6 relationship to determine whether one company is an affiliate of another and, hence,  
7 whether their respective SSFs are affiliated with each other. 11 CFR 100.5(g)(4)(i) and  
8 (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J).<sup>4</sup> The relevant factors in the situation you  
9 have presented are as follows: (A) whether a sponsoring organization owns a controlling  
10 interest in the voting stock or securities of another sponsoring organization; (B) whether a  
11 sponsoring organization has the authority or ability to direct or participate in the  
12 governance of another sponsoring organization through provisions of constitutions,  
13 by-laws, contracts or other rules, or through formal or informal practices or procedures;  
14 (C) whether a sponsoring organization has the authority or ability to hire, appoint, demote  
15 or otherwise control the officers, or other decision-making employees of another  
16 sponsoring organization; (E) whether a sponsoring organization has common or  
17 overlapping officers or employees with another sponsoring organization which indicates a  
18 formal or ongoing relationship between the organizations; (F) whether a sponsoring  
19 organization has any members, officers, or employees who were members, officers, or  
20 employees of another sponsoring organization which indicates a formal or ongoing  
21 relationship or the creation of a successor entity; and (I) whether a sponsoring  
22 organization had an active or significant role in the formation of another sponsoring  
23 organization. 11 CFR 110.3(a)(3)(ii)(A), (B), (C), (E), (F), and (I). The list of ten  
24 circumstantial factors set out at 11 CFR 110.3(a)(3)(ii) is not an exclusive list, and other  
25 factors may be considered. See Advisory Opinion 1995-36.

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<sup>4</sup> Specifically, the regulations, at 11 CFR 110.3(a)(3)(ii), state in part:

The Commission will examine these factors in the context of the overall relationship between committees or sponsoring organizations to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained or controlled by another committee or sponsoring organization.

1 Prior to the reorganization transactions, Holdings was a wholly owned subsidiary  
2 of HE. Accordingly, Holdings PAC was affiliated with HACF prior to the  
3 reorganization. 11 CFR 110.3(a)(2)(i). Prior to the reorganization, Delphi was a division  
4 of GM, and Delco was a wholly owned corporate subsidiary of HE which, in turn, was  
5 wholly owned by GM. Presently, Delco/Delphi is wholly owned by GM. As the SSFs  
6 of GM subsidiaries both before and after the reorganization, Delco/Delphi PAC and  
7 HACF were affiliated with each other before the reorganization, and they remain  
8 affiliated with each other. 11 CFR 110.3(a)(2)(i).

9 Although Raytheon/Holdings in its present form may be said to have been created  
10 in part by GM or HE, a consideration of other factors indicates that HACF and Raytheon  
11 PAC remain unaffiliated. See 11 CFR 110.3(a)(3)(ii)(I). Neither GM nor R/H has an  
12 ownership interest in each other. See 11 CFR 110.3(a)(3)(ii)(A). There is some overlap  
13 between the GM and HE boards, on one hand, and the R/H board, on the other. However,  
14 this overlap constitutes only three out of the 15 R/H board members, two out of the nine  
15 members of HE's board, and one out of the 16 members of the GM board. These  
16 overlaps are smaller in percentage than the overlaps of the boards of the three companies  
17 that were established as a result of the 1996 break-up of ITT addressed in Advisory  
18 Opinion 1996-23. In that opinion, the Commission concluded that the SSFs of each of  
19 the three companies were not affiliated with either of the other two. You also note that  
20 the 12 members retained from the previous Raytheon board were elected at the ~~last~~  
21 annual Raytheon stockholders meeting, ~~which~~ prior to the merger, that neither GM  
22 nor HE have any control over those directors, and that there are no plans to add more GM  
23 or HE personnel to the R/H board. Also important is the lack of officer or employee  
24 overlap other than the presence of two HE executive officers on the R/H Board. See 11  
25 CFR 110.3(a)(3)(ii)(B), (C), (E), and (F).

26 Another factor discussed in opinions addressing the effect of spin-offs, but not  
27 specifically mentioned in the ten factors, is the common shareholder base. See Advisory  
28 Opinions 1996-42, 1996-23, and 1993-23. This situation relates somewhat to factor (A)  
29 and also relates to the question of whether the companies are affiliated through control by  
30 a group of otherwise associated persons. See 11 CFR 110.3(a)(1)(ii) and (a)(2)(v).



1 Although all of the GM common stockholders own shares in Raytheon/Holdings, there is  
2 not a complete overlap in the ownership of the two companies. Immediately after the  
3 merger, the voting interest of GM shareholders was not the only interest in  
4 Raytheon/Holdings; former Raytheon shareholders (Class B) held a 20 percent interest in  
5 the selection of the board, a 70 percent economic interest, and equal voting power as a  
6 class with GM shareholders on all other matters. Moreover, you anticipate active trading  
7 in the shares (Class A) held by GM stockholders. These facts pose a similar or, perhaps,  
8 lower level of possible control than in other spin-off situations where the Commission  
9 concluded that affiliation no longer existed. In Advisory Opinions 1993-23 and 1996-42,  
10 all of the shareholders of the originating company owned shares in the spun-off company  
11 at the time of the spin-off, but 14 percent (in the 1993 opinion) and 18 percent (in the  
12 1996 opinion) of the spun-off company's shares had already been offered for public  
13 purchase (in an IPO) prior to the spin-off, and further active public trading of the spun-off  
14 company's commonly owned shares was anticipated.<sup>5</sup>

15 *B. Effect on Transfers, Multicandidate Status, Aggregation, and Payroll*

16 *Deduction Authorizations*

17 As implied in the discussion of affiliation above, HACF may split into affiliated  
18 PACs. Prior to the reorganization transactions, GM, HE, or Holdings could lawfully act  
19 as connected organizations and create Holdings PAC; as an affiliated committee, HACF  
20 could make unlimited transfers to Holdings PAC at that time. The allocation of 62  
21 percent of HACF's cash on hand for transfer to Holdings PAC prior to the reorganization  
22 is permissible, but such an allocation is not mandated by Commission regulations.  
23 HACF could also make transfers to the newly created Delco/Delphi PAC before or after  
24 the reorganization in view of the fact that the affiliated status of the connected  
25 corporations did not change. This transfer amount is also not limited by 2 U.S.C. §441a  
26 and need not be limited to eight percent. 11 CFR 102.6(a)(1). In addition, the merger or  
27 consolidation of Holdings PAC with Raytheon PAC after the reorganization is

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<sup>5</sup> In Advisory Opinion 1996-23, there was complete overlap of stock ownership at the time of the spin-off. However, the Commission addressed that situation several months after the spin-off. At that point, significant public trading had occurred in the stocks of all three companies.

1 permissible since they became affiliated committees as a consequence of that event. See  
2 Advisory Opinion 1988-14.<sup>6</sup>

3 Under the Act and Commission regulations, a multicandidate ~~committee~~ political  
4 committee is a political committee that has been registered for not less than six months,  
5 that has received contributions from more than 50 persons, and that (except for State  
6 political party organizations) has made contributions to five or more candidates. 2 U.S.C.  
7 §441a(a)(4); 11 CFR 100.5(e)(3). Contributions by a multicandidate committee are  
8 subject to the limits of 2 U.S.C. §441a(a)(2), rather than §441a(a)(1), thus enabling it to  
9 contribute \$5,000, rather than \$1,000, to a Federal candidate with respect to an election.<sup>7</sup>  
10 The Commission has held that, since all affiliated committees share a single contribution  
11 limit and may make unlimited transfers among themselves, a committee that becomes  
12 affiliated with a pre-existing multicandidate committee qualifies for treatment as a  
13 multicandidate committee. Advisory Opinions 1995-12, n.12 and 1993-23. Because  
14 Holdings PAC and Delco/Delphi PAC were affiliated with multicandidate committees,  
15 CIP/GM and HACF, both committees qualified as multicandidate committees before the  
16 reorganization. After the reorganization, HACF, Delco/Delphi PAC, and Raytheon PAC  
17 will retain their multicandidate status.

18 The Commission concludes that, after the reorganization, Raytheon PAC must  
19 make its future contributions in compliance with both the contribution history of the GM  
20 PACs (including, among others, CIP/GM and HACF) and its own contributions before  
21 the reorganization. Since Holdings PAC was affiliated with the GM PACs before the  
22 reorganization, the contributions of all the GM PACs before the reorganization must be  
23 attributed to Holdings PAC. As a result, the total of contributions made by the GM PACs  
24 to a particular recipient must be added to the amounts given by Raytheon PAC (Holdings  
25 PAC's post-reorganization affiliate and successor) to the same recipient in determining

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<sup>6</sup> Regardless of the duration of its existence, Holdings PAC was still obligated to file a statement of organization and report with the Commission. 2 U.S.C. §§433(a) and 434(a); 11 CFR 102.1(c) and 104.1(a). The committee could have filed one report, also labeled as a termination report, disclosing the receipt of the transfer from HACF, and the transfer to Raytheon PAC. See 2 U.S.C. §433(d)(1); 11 CFR 102.3(a)(1). Both Holdings PAC and Raytheon PAC were obligated to file amended statements of organization pertaining to their newly affiliated status. 2 U.S.C. §433(c); 11 CFR 102.2(a)(2).

<sup>7</sup> Multicandidate committee status, however, limits the committee's contributions to a national party committee to \$15,000 in a calendar year, rather than \$20,000. 2 U.S.C. §441a(a)(2)(B) and (1)(B).

1 the amounts that Raytheon PAC may contribute after the reorganization. For example, if,  
2 before the reorganization, the GM PACs together gave \$2,000 to candidate X for the  
3 1998 primary election and Raytheon PAC gave \$1,000 to candidate X for the same  
4 election, then, after the reorganization, Raytheon PAC may only give \$2,000 to X to stay  
5 in compliance with 2 U.S.C. §441a(a)(2)(A). The GM PACs, however, will not have to  
6 account for Raytheon PAC's pre-reorganization contributions. Unlike the pre-  
7 reorganization Holdings PAC, the pre-reorganization Raytheon PAC was not part of the  
8 GM SSF group. Therefore, using the above example, the GM PACs may still contribute  
9 another \$3,000 to candidate X for the 1998 primary.<sup>8</sup> Compare Advisory Opinions 1996-  
10 42 and 1993-23.<sup>9</sup>

11 The same principles applicable to post-reorganization contributions by Raytheon  
12 PAC apply to contributions made by the new employees of Raytheon to the SSF. If an  
13 HE executive gave \$2,000 to HACF during 1997 and then became an executive of  
14 Raytheon, she would be limited to giving no more than an additional \$3,000 to Raytheon  
15 PAC in 1997 after the merger. 2 U.S.C §441a(a)(1)(C).

16 You ask whether Raytheon PAC may merely notify the former Holdings donors  
17 to HACF of the transfer to R/H of their payroll deduction authorizations and you cite  
18 Advisory Opinion 1994-23. That opinion involved a merger of two companies and the  
19 subsequent consolidation of the SSFs of the two companies. The Commission approved  
20 a plan in which the newly merged corporation notified its eligible employees in writing of  
21 the PAC consolidation plan and their right to cancel their payroll deduction  
22 authorizations. If the employees did not cancel their payroll deductions, the proceeds

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<sup>8</sup> If an aggregation of the contributions by the SSFs of the two corporate families prior to the reorganization exceeds \$5,000 for candidate X's 1998 primary election, this only means that the post-reorganization Raytheon PAC may not contribute further to X for the election. It does not mean that the combined amount contributed prior to the reorganization that exceeds \$5,000 needs to be returned. Assuming the SSFs of each corporate family stayed within its \$5,000 limit prior to the reorganization, those contributions were in compliance with the Act's limits.

<sup>9</sup> Those opinions involved merely the spin-off of a subsidiary and not its merger with a previously unrelated corporation. In those opinions, the SSFs of the former parent and the SSF of the spin-off had to take each other's pre-disaffiliation contributions into account to determine their remaining separate post-disaffiliation limits. Unlike those situations, it appears that the GM companies did not have an affiliated relationship with Raytheon either before or after the reorganization and thus the GM PAC's would not have to take into account the Raytheon PAC contributions either before or after the reorganization.

1 resulting from such deductions would be automatically contributed to the surviving PAC,  
2 and resolicitation by the surviving PAC of a separate payroll deduction authorization  
3 would not be required. Advisory Opinions 1994-23; see also Advisory Opinion 1991-19.

4 Your situation, however, does not involve only the merger of one corporation  
5 with another. This merger was immediately preceded by a spin-off of the corporate  
6 employer (Holdings) of the affected personnel, and its surviving parent (HE) continues  
7 business operations and its SSF (HACF). This situation is much more closely akin to the  
8 situation presented in Advisory Opinion 1996-42, where Lucent Technologies, a  
9 subsidiary of AT&T, was spun off and its SSF was no longer affiliated with AT&T's  
10 SSF. The Commission concluded that the requirements for a voluntary authorization of a  
11 payroll deduction were not satisfied by a pre-disaffiliation letter from Lucent to its  
12 eligible employees informing them that Lucent PAC had been established and that Lucent  
13 was making arrangements to transfer the employee's payroll deduction for AT&T's PAC  
14 to the Lucent PAC. Under that plan, an employee would have to mail an enclosed form  
15 in order to terminate the authorization. The Commission noted that, even though the  
16 letters were being sent while the PACs were still affiliated, they were being sent in  
17 contemplation of the impending separation of the two companies and the disaffiliation of  
18 the PACs. As such, these letters were inadequate as a means of affirmatively authorizing  
19 payroll deductions for the operation of a PAC that would become disaffiliated from  
20 AT&T PAC. Advisory Opinion 1996-42; see also Advisory Opinion 1989-16.

21 Here, the payroll deductions of Raytheon/Holdings' former HE employees had  
22 been authorized for an SSF that still exists as the SSF of a company that is not affiliated  
23 with R/H, the employees' new company. The Commission thus concludes that, in order  
24 for R/H to be able to deduct contributions to Raytheon PAC from those employees,  
25 Raytheon/Holdings must obtain express written and separate payroll deduction  
26 authorizations from them. In soliciting these authorizations, R/H and its PAC must  
27 follow the regulations on voluntariness set out at 11 CFR 114.5(a)(1)-(5).<sup>10</sup>

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<sup>10</sup> The Commission assumes that the employees who will participate in any payroll deduction will be the executive or administrative employees as defined in 11 CFR 114.1(c) or those employees who are also stockholders as defined in 11 CFR 114.1(h). Other classes of personnel are not eligible for participation in payroll deduction plans for SSFs. 11 CFR 114.6(e)(1). Advisory Opinions 1996-42, n.6 and 1994-23, n.1.

1 In contrast, Delco/Delphi never left the GM group of companies. The former HE  
2 employees who contributed by payroll deduction to HACF and who are now  
3 Delco/Delphi employees do not need to execute new authorizations for contributions to  
4 Delco/Delphi PAC. The latter PAC is an affiliate of HACF. In view of the Act's  
5 treatment of affiliated SSFs as one committee for the purposes of contribution limits and  
6 the ability of corporations to solicit SSF contributions from the eligible employees of its  
7 affiliated companies, the former HE employees are not making the type of significant  
8 change in their authorizations that occurs for the new Raytheon employees. To fulfill the  
9 Act's voluntariness concerns, Delco/Delphi or the PAC should provide written  
10 notification to each of the Delco/Delphi employees who were formerly payroll deduction  
11 contributors to HACF that their authorizations are being transferred. This should be done  
12 within 30 days of your receipt of this opinion. This notification should fulfill the  
13 requirements of 11 CFR 114.5(a)(1)-(5), including an explicit notice of the Delco/Delphi  
14 employee's continuing right to revoke the authorization without reprisal.

15 This response constitutes an advisory opinion concerning the application of the  
16 Act, or regulations prescribed by the Commission, to the specific transaction or activity  
17 set forth in your request. See 2 U.S.C. §437f.

18 Sincerely,

19  
20 Joan D. Aikens  
21 Chairman  
22

23 Enclosures (AOs 1996-42, 1996-23, 1995-36, 1995-12, 1994-23, 1993-23, 1991-19,  
24 1990-10, 1989-16, and 1988-14)  
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