FEDERAL ELECTION COMMISSION
Washington, DC 20463

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CERTIFIED MAIL
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ADVISORY OPINION 1997-25

Robert M. Hall
Vice President and Assistant General Counsel
Hughes Electronics Corporation
7200 Hughes Terrace
Los Angeles, CA 90045-0066

Dear Mr. Hall:

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

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

I. Background

A. Relationships of Corporations

Prior to December 17, HE was a wholly owned subsidiary of GM. It operated in three principal business areas: (1) defense electronics; (2) telecommunications and space; and (3) automotive electronics. The defense electronics and telecommunications sectors

were conducted by a wholly owned subsidiary known as HE Holdings, Inc. ("Holdings"). The automotive electronics sector was conducted by a wholly owned subsidiary of HE known as Delco Electronics Corporation ("Delco"). Raytheon was a parent company separate from GM and its subsidiaries.

On December 17, a number of nearly simultaneous corporate reorganization transactions took place that changed the relationships of the HE entities to GM and to Raytheon. As a result of these transactions, the three business sectors of HE were realigned, as follows:

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

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

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

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

Neither GM nor Raytheon/Holdings owns any stock in the other company. You state that the only common control between the two companies is that the initial holders of R/H Class A stock are GM's common stockholders. You note, however, that GM's common stock is widely dispersed, with over 700,000 stockholders, no one of which owns more than 10 percent of either of its classes. In addition, it is anticipated that there will be active trading in the Class A stock of Raytheon/Holdings as the GM stockholders who are interested in automotive and telecommunications investments sell to other investors who are interested in defense electronics investments.

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

B. SSFs Past and Present

HE's SSF will continue to be the Hughes Electronics Corporation Active Citizenship Fund ("HACF") which is a qualified multicandidate committee. Its statement of organization in effect prior to the reorganization disclosed affiliation with the SSF of GM, the Civic Involvement Program/General Motors ("CIP/GM").[2] Prior to the reorganization, HACF had payroll deduction authorizations from 1452 employees.[3] Thirty percent of these employees were with the telecommunications and space business, and remain with HE. The defense electronics business, which merged with Raytheon, accounted for 62 percent of the employees using payroll deduction. Eight percent were with Delco. HE created another SSF registered as connected to Holdings ("Holdings PAC") that received transfers from HACF prior to the reorganization. (See question 2 below.) Another new SSF, hereinafter referred to as Delco/Delphi PAC, was also established before the reorganization.

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

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

[2] It also discloses HACF's affiliation with the SSF of another wholly owned subsidiary of GM.

[3] 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.

II. Questions

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

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

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

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

(4) If the answers to questions 2 and 3 are yes, may a computation be done using the ratio of 62%/30%/8% (corresponding to the weekly payroll deductions attributable to the employees of each HE business sector) applied to the existing HACF funds at the time of a split-up of HACF to determine the one-time transfers to the pre-merger Holdings SSF and to the Delco/Delphi SSF?

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

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

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

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

III. Responses

A. Affiliated Status of SSFs

As indicated at the beginning of this opinion, the responses to these questions depend in large measure on the affiliated status of the SSFs of the corporate entities involved. The Act and Commission regulations provide that committees, including separate segregated funds, that are established, financed, maintained or controlled by the same corporation, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2). Contributions made to or by such committees shall be considered to have been made to or by a single committee. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1), and 110.3(a)(1)(ii). Therefore, transfers between affiliated committees are not limited by 2 U.S.C. §441a. 11 CFR 102.6(a)(1). In addition, a corporation may make communications to and solicit the restricted class (i.e., executive and administrative personnel and stockholders, and the families thereof) of its subsidiaries or other affiliates for contributions to the corporation's separate segregated fund. 2 U.S.C. §441b(b)(2)(A) and (4)(A)(i); 11 CFR 114.3(a)(1) and 114.5(g)(1). Commission regulations further state that committees established by a single corporation and its subsidiaries, or committees established by the same group of persons, are affiliated *per se*. 11 CFR 110.3(a)(2)(i) and (v). Advisory Opinion 1990-10.

Where an entity is not an acknowledged subsidiary of another entity, Commission regulations provide for an examination of various factors in the context of an overall relationship to determine whether one company is an affiliate of another and, hence, whether their respective SSFs are affiliated with each other. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J).[4] The relevant factors in the situation you have presented are as follows: (A) whether a sponsoring organization owns a controlling interest in the voting stock or securities of another sponsoring organization; (B) whether a sponsoring organization has the authority or ability to direct or participate in the governance of another sponsoring organization through provisions of constitutions, by-laws, contracts or other rules, or through formal or informal practices or procedures; (C) whether a sponsoring organization has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decision-making employees of another

[4] 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.

sponsoring organization; (E) whether a sponsoring organization has common or overlapping officers or employees with another sponsoring organization which indicates a formal or ongoing relationship between the organizations; (F) whether a sponsoring organization has any members, officers, or employees who were members, officers, or employees of another sponsoring organization which indicates a formal or ongoing relationship or the creation of a successor entity; and (I) whether a sponsoring organization had an active or significant role in the formation of another sponsoring organization. 11 CFR 110.3(a)(3)(ii)(A), (B), (C), (E), (F), and (I). The list of ten circumstantial factors set out at 11 CFR 110.3(a)(3)(ii) is not an exclusive list, and other factors may be considered. See Advisory Opinion 1995-36.

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

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

Another factor discussed in opinions addressing the effect of spin-offs, but not specifically mentioned in the ten factors, is the common shareholder base. See Advisory Opinions 1996-42, 1996-23, and 1993-23. This situation relates somewhat to factor (A) and also relates to the question of whether the companies are affiliated through control by a group of otherwise associated persons. See 11 CFR 110.3(a)(1)(ii) and (a)(2)(v). Although all of the GM common stockholders own shares in Raytheon/Holdings, there is not a complete overlap in the ownership of the two companies. Immediately after the

merger, the voting interest of GM shareholders was not the only interest in Raytheon/Holdings; former Raytheon shareholders (Class B) held a 20 percent interest in the selection of the board, a 70 percent economic interest, and equal voting power as a class with GM shareholders on all other matters. Moreover, you anticipate active trading in the shares (Class A) held by GM stockholders. These facts pose a similar or, perhaps, lower level of possible control than in other spin-off situations where the Commission concluded that affiliation no longer existed. In Advisory Opinions 1993-23 and 1996-42, all of the shareholders of the originating company owned shares in the spun-off company at the time of the spin-off, but 14 percent (in the 1993 opinion) and 18 percent (in the 1996 opinion) of the spun-off company's shares had already been offered for public purchase (in an IPO) prior to the spin-off, and further active public trading of the spun-off company's commonly owned shares was anticipated.[5]

B. Effect on Transfers, Multicandidate Status, Aggregation, and Payroll Deduction Authorizations

As implied in the discussion of affiliation above, HACF may split into affiliated PACs. Prior to the reorganization transactions, GM, HE, or Holdings could lawfully act as connected organizations and create Holdings PAC; as an affiliated committee, HACF could make unlimited transfers to Holdings PAC at that time. The allocation of 62 percent of HACF's cash on hand for transfer to Holdings PAC prior to the reorganization is permissible, but such an allocation is not mandated by Commission regulations. HACF could also make transfers to the newly created Delco/Delphi PAC before or after the reorganization in view of the fact that the affiliated status of the connected corporations did not change. This transfer amount is also not limited by 2 U.S.C. §441a and need not be limited to eight percent. 11 CFR 102.6(a)(1). In addition, the merger or consolidation of Holdings PAC with Raytheon PAC after the reorganization is permissible since they became affiliated committees as a consequence of that event. See Advisory Opinion 1988-14.[6]

Under the Act and Commission regulations, a multicandidate political committee is a political committee that has been registered for not less than six months, that has received contributions from more than 50 persons, and that (except for State political party organizations) has made contributions to five or more candidates. 2 U.S.C. §441a(a)(4); 11 CFR 100.5(e)(3). Contributions by a multicandidate committee are subject to the limits of 2 U.S.C. §441a(a)(2), rather than §441a(a)(1), thus enabling it to

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[5] 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.

[6] 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).

contribute $5,000, rather than $1,000, to a Federal candidate with respect to an election.[7] The Commission has held that, since all affiliated committees share a single contribution limit and may make unlimited transfers among themselves, a committee that becomes affiliated with a pre-existing multicandidate committee qualifies for treatment as a multicandidate committee. Advisory Opinions 1995-12, n.12 and 1993-23. Because Holdings PAC and Delco/Delphi PAC were affiliated with multicandidate committees, CIP/GM and HACF, both committees qualified as multicandidate committees before the reorganization. After the reorganization, HACF, Delco/Delphi PAC, and Raytheon PAC will retain their multicandidate status.

The Commission concludes that, after the reorganization, Raytheon PAC must make its future contributions in compliance with both the contribution history of the GM PACs (including, among others, CIP/GM and HACF) and its own contributions before the reorganization. Since Holdings PAC was affiliated with the GM PACs before the reorganization, the contributions of all the GM PACs before the reorganization must be attributed to Holdings PAC. As a result, the total of contributions made by the GM PACs to a particular recipient must be added to the amounts given by Raytheon PAC (Holdings PAC's post-reorganization affiliate and successor) to the same recipient in determining the amounts that Raytheon PAC may contribute after the reorganization. For example, if, before the reorganization, the GM PACs together gave $2,000 to candidate X for the 1998 primary election and Raytheon PAC gave $1,000 to candidate X for the same election, then, after the reorganization, Raytheon PAC may only give $2,000 to X to stay in compliance with 2 U.S.C. §441a(a)(2)(A). The GM PACs, however, will not have to account for Raytheon PAC's pre-reorganization contributions. Unlike the pre-reorganization Holdings PAC, the pre-reorganization Raytheon PAC was not part of the GM SSF group. Therefore, using the above example, the GM PACs may still contribute another $3,000 to candidate X for the 1998 primary.[8] Compare Advisory Opinions 1996-42 and 1993-23.[9]

The same principles applicable to post-reorganization contributions by Raytheon PAC apply to contributions made by the new employees of Raytheon to the SSF. If an HE executive gave $2,000 to HACF during 1997 and then became an executive of

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[7] 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).

[8] 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.

[9] 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.

Raytheon, she would be limited to giving no more than an additional $3,000 to Raytheon PAC in 1997 after the merger. 2 U.S.C §441a(a)(1)(C).

You ask whether Raytheon PAC may merely notify the former Holdings donors to HACF of the transfer to R/H of their payroll deduction authorizations and you cite Advisory Opinion 1994-23. That opinion involved a merger of two companies and the subsequent consolidation of the SSFs of the two companies. The Commission approved a plan in which the newly merged corporation notified its eligible employees in writing of the PAC consolidation plan and their right to cancel their payroll deduction authorizations. If the employees did not cancel their payroll deductions, the proceeds resulting from such deductions would be automatically contributed to the surviving PAC, and resolicitation by the surviving PAC of a separate payroll deduction authorization would not be required. Advisory Opinions 1994-23; see also Advisory Opinion 1991-19.

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

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

[10] 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.

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

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

Sincerely,

(signed)

Joan D. Aikens
Chairman

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