FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 18, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2000-36

John C. Keeney, Jr.
Hogan & Hartson, LLP
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

Dear Mr. Keeney:

This responds to your letters dated October 26 and November 30, 2000, on behalf of Andersen Consulting PAC ("ACPAC"), requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to ACPAC's proposed disaffiliation from Arthur Andersen PAC ("AAPAC").

Background and Question

ACPAC is a multicandidate political committee maintained and controlled by the partners of Andersen Consulting LLP ("AC"), the U.S. entity among 44 Andersen Consulting firms worldwide. AAPAC is a multicandidate political committee maintained and controlled by the partners of Arthur Andersen LLP ("AA"), the U.S. entity among 93 Arthur Andersen firms worldwide. AAPAC filed its statement of organization with the Commission on January 15, 1988. On January 19, 1995, the treasurer of AAPAC, then known as Arthur Andersen/Andersen Consulting PAC, filed an amended statement of organization to change its name to Arthur Andersen PAC, along with a statement of organization for the new PAC, Andersen Consulting PAC. The statement of organization of each PAC disclosed the other PAC as an affiliated committee.[1] The two PACs have operated as separate but affiliated PACs since January 1995. Since 1998, ACPAC has

[1] On the date of those filings, AAPAC, in effect, split into two PACs, with AAPAC providing the initial funding for ACPAC via a $29,670 transfer.

solicited individual contributions solely from the partners of AC, and AAPAC has solicited contributions solely from the partners of AA.

You have attached a decision and order of the Secretariat of the International Court of Arbitration, International Chamber of Commerce (dated July 28, 2000), which, you state, "confirm[s] the final separation of Andersen Consulting LLP and Arthur Andersen in all respects." You state that the effective date of the order was August 7, 2000. The decision describes the history of the worldwide Arthur Anderson organization and its relationship to Andersen Consulting worldwide, a relationship that was terminated by the decision. In 1977, Arthur Andersen & Company created a new structure, the Andersen Worldwide Organization ("AWO") which was designed to "maintain the one firm concept" for all the Arthur Andersen partnerships throughout the world. The AWO is comprised of a Swiss cooperative entity, Arthur Andersen & Co. Societe Cooperative ("AWSC") which acts as the "umbrella" entity for the organization, the AWO member firms, and the partners. AWSC has been the entity that coordinates the professional practices of the partners on a worldwide basis, and the instrumentality for partners to participate in shaping and implementing the reciprocal commitment of resources and the coordination of common efforts. Each member firm (and its partners) enters into a Member Firm Interfirm Agreement ("MFIFA") with AWSC in which it agrees to adhere to certain standards coordinated by AWSC, adopt compatible policies, and carry out certain other responsibilities.

Andersen Consulting had its origins in the Management Information Consulting Division of the Arthur Andersen organization. In 1989, the organization split into two different business units, Arthur Andersen, which would conduct audit, tax, and other financial and specialty services, and Andersen Consulting, which would conduct strategic services, systems integration, and other management consulting. The Andersen Consulting firms, like the Arthur Andersen firms, became AWO member firms, entered into MFIFAs with AWSC, and were under the coordinating umbrella of AWSC.

Due to disagreements between the business units, including what Andersen Consulting considered to be unacceptable overlap in the consulting business, Andersen Consulting filed for arbitration in December 1997. Citing the "Award" section, you note that the arbitration order, *inter alia*: (1) excused AC (and the other 43 Anderson Consulting entities outside the U.S.) from any further obligations to AWSC (and thus to any Arthur Andersen member firm, including AA) under the MFIFAs; (2) ordered that AC (and its sister entities) "cease to represent themselves as associated" with any Arthur Andersen member firm and discontinue use of the Andersen name no later than December 31, 2000; and (3) ordered that AC (and its sister entities) end their use of certain "Andersen Technology."

You state that the separation of the Andersen Consulting business unit from the Arthur Andersen unit is final, and you note that the time for appealing the order has expired. You also state that AC "is no longer connected with [AA] in any way." Based on the effect of the arbitration order and facts described below related to affiliation

factors listed in Commission regulations, you ask that the Commission conclude that the two PACs are no longer affiliated as of the effective date of the arbitration order, August 7, 2000.

Applicable Law and Regulations

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. Contributions made to or by such committees shall be considered to have been made to or by a single committee and thus such committees share contribution limits. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1), and 110.3(a)(1)(ii). Moreover, transfers between affiliated committees are not limited by 2 U.S.C. §441a. 11 CFR 102.6(a)(1). Commission regulations denote categories of sponsoring entities whose political committees would be affiliated *per se*. These include (i) a single corporation and/or its subsidiaries; and (v) the same person or group of persons. 11 CFR 100.5(g)(3)(i) and (v), 110.3(a)(2)(i) and (v); *see* Advisory Opinion 1997-25.

Where entities do not readily fit into a *per se* category, 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 the political committees controlled by the companies or their principals 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). The same examination of factors may be done for the relationships between the committees themselves.[2] As discussed below, 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 or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, by-laws, contracts or other rules, or through formal or informal practices or procedures; (C) whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees of another sponsoring organization or committee; (E) whether a sponsoring organization or committee has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the organizations; (F) whether a sponsoring organization or committee has any members, officers, or employees who were members, officers, or employees of another sponsoring organization or committee which indicates a formal or

[2] 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.

ongoing relationship or the creation of a successor entity; (G) whether a sponsoring organization or committee provides goods in a significant amount or on an ongoing basis to another sponsoring organization or committee; (H) whether a sponsoring organization or committee causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization or committee; (I) whether a sponsoring organization or committee had an active or significant role in the formation of another sponsoring organization or committee; and (J) whether the sponsoring organizations or committees have similar patterns of contributions or contributors which indicates a formal or ongoing relationship. 11 CFR 100.5(g)(4)(ii) and 110.3(a)(3)(ii). The list of ten circumstantial factors set out at 11 CFR 100.5(g)(4)(ii) and 110.3(a)(3)(ii) is not an exclusive list, and other factors may be considered. *See* Advisory Opinion 1995-36.

Analysis and Conclusions

In addition to information presented in the arbitration decision and determinations in the order, you present further information about the relationship between the sponsoring organizations and between the PACs. As analyzed under the factors, these facts, along with the decision and order, tend to illustrate a lack of affiliation between ACPAC and AAPAC as of August 7, 2000.

Neither partnership owns any financial interest in the other. Each of the partnerships is owned by its individual partners. *See* 11 CFR 100.5(g)(4)(ii)(A), 110.3(a)(3)(ii)(A). Prior to the effective date of the arbitration order, AC and AA were signatories to MFIFAs entered into with the AWSC and were thereby subject to coordination and limited governance by the same body. Such an arrangement may have been, in some way, akin to the relationship of subsidiaries of the same parent entity, although neither partnership was owned by the AWSC. Moreover, because they were participants in that structure, and because there were some member partners who worked directly for AWSC, the two partnerships may also be said to have had some limited role in the governance or decisions of each other's managers. The arbitration order has terminated AC's role within that structure. You also specifically state that no AA partner, nor any Arthur Andersen entity, has the authority or ability to participate in AC's governance; that no partner in AA, nor any Arthur Andersen entity, has personnel authority over any officer of AC; and that AC "has no obligations to any Arthur Andersen entity as of August 7, 2000 under any prior agreement, except to change its name and return certain Andersen Technology." You state that there is no joint management, control, or operation, and that the governance of each of AC and AA is exclusively by its own partners. With respect to PAC activities, you state that no partner in AA nor any Arthur Andersen entity has personnel authority over any officer of ACPAC or the ability to participate in ACPAC.[3] *See* 11 CFR 100.5(g)(4)(ii)(B) and (C), 11 CFR 110.3(a)(3)(ii)(B) and (C).

[3] The Commission also assumes that the same is true with respect to personnel authority and governance by partners in AC or any Andersen Consulting entity with respect to AAPAC.

You represent that, since August 7, there have been no common partners, officers, or employees between AC and AA, and that the PACs do not share any officers or employees. *See* 11 CFR 100.5(g)(4)(ii)(E), 11 CFR 110.3(a)(3)(ii)(E).

From the materials submitted by you, it appears that Andersen Consulting had its origins in Arthur Andersen and, prior to 1989, some current partners of AC were partners in AA. In addition, ACPAC was originally funded by a transfer of $29,670 from AAPAC in 1995, and the two PACs shared a treasurer, an assistant treasurer, and a PAC Board member until January 1999. Moreover, although the two partnerships themselves have not had an overlap in partners since 1995, partners of one of the two business units who performed functions for AWSC may be considered as having constituted an overlap between AC and AA, and the partners of the two firms were also partners in AWSC. You note, however, that the vestiges of the common historical origin have been severed by the arbitration order. You state that there is no formal or ongoing relationship between AC and AA, and that the only ongoing relationship between ACPAC and AAPAC is the monitoring of expenditures so as not to exceed the single contribution limit shared by affiliated committees. *See* 11 CFR 100.5(g)(4)(ii)(F) and (I), 110.3(a)(3)(ii)(F) and (I).

You state that, since August 7, there is no significant transfer of funds, services, or goods between AC and AA, and that "all such non-significant transfers are at arms-length." You also state that there is no significant transfer of funds on an ongoing basis among AC, AA, and any particular third party. Commission records indicate that, other than the above-mentioned transfer from AAPAC to ACPAC in January 1995 and a $336 transfer from ACPAC to AAPAC in March 1995, there have been no transfers between the PACs. The arbitration order mandates substantial payments between the Andersen Consulting business unit, the Arthur Andersen business unit, and AWSC including expenses in connection with the arbitration such as court administrative costs, arbitrator's fees and expenses, and costs of the three parties. In a certain respect, some of these payments will be made by and to AC and AA. Nevertheless, these are payments that are made pursuant to the equivalent of a court order that separates AC from AWSC and AA, and are pursuant to the separation process. *See* Advisory Opinion 1996-42 (where the Commission concluded that PACs were disaffiliated even though there were agreements involving the distribution of assets and liabilities and the continuation of a customer-supplier relationship for a specified amount of goods and services); *see also* Advisory Opinions 1996-23 and 1993-23. *See* 11 CFR 100.5(g)(4)(ii)(G) and (H), 110.3(a)(3)(ii)(G) and (H).

As indicated above, the two PACs have, in some instances, contributed to the same candidates and have monitored such contributions for the purpose of staying within the contribution limits. You also indicate that, since 1998, ACPAC has solicited only AC partners for contributions and AAPAC has solicited only AA partners for contributions.[4] From the circumstances presented, the Commission assumes that the PACs have been

[4] You indicate that, during the years 1995 to 1997, there were 15 partners among the two firms who made contributions in excess of $200 per year (and therefore, itemized) to both PACs. There have been no itemized common contributors since then.

administered independently of each other since August 7 and will be in the future, and any similar patterns in the contributions made since that date and in the future are the result of independent judgment. *See* 11 CFR 100.5(g)(4)(J), 110.3(a)(3)(ii)(J).

Based on the facts and representations submitted in this request, the application of Commission regulations to them, and the above assumptions, the Commission concludes that ACPAC and AAPAC were no longer affiliated as of August 7, 2000.

As multicandidate committees, ACPAC and AAPAC are subject to the limits of 2 U.S.C. §441a(a)(2), rather than §441a(a)(1), thus enabling then to contribute $5,000, rather than $1,000, to a Federal candidate with respect to an election.[5] As indicated above, contributions by affiliated committees are aggregated with each other for the purposes of the limits. As a result of the disaffiliation on August 7, 2000, ACPAC and AAPAC will operate under separate limits after that date. Nevertheless, because of their affiliated status before that date, the two committees cannot disregard the other's pre-August 7 contributions for the purpose of complying with the limitations. *See* Advisory Opinions 1997-25 and 1993-23. In determining the amount that a committee may have given (or may give in the event of debt retirement by the recipient candidate) from August 7 on, the committees must add the amounts given for a particular election before that date and subtract that amount from the limit. For example, if before August 7, ACPAC gave $1,000 to House Candidate X for the 2000 general election and AAPAC gave $2,000 to X for the same election, it would follow that, from August 7 on, each can contribute $2,000 to X for that election. This result stems from the required attribution of a combined $3,000 contribution to both PACs as a consequence of their affiliation. Post-disaffiliation contributions by each PAC would only be attributed to the committee making the contribution.

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

Sincerely,

(signed)

Darryl R. Wold
Chairman

Enclosures (AOs 1997-25, 1996-42, 1996-23, 1995-36, and 1993-23)

[5] 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)(1)(B) and (2)(B).