

April 26, 2010

**AO DRAFT COMMENT PROCEDURES**

The Commission permits the submission of written public comments on draft advisory opinions when on the agenda for a Commission meeting.

Two Alternative DRAFTS of ADVISORY OPINION 2010-03 are available for public comments under this procedure. It was requested by Marc E. Elias, Esq., and Kate S. Keane, Esq., on behalf of the National Democratic Redistricting Trust (NDRT).

Two alternative Drafts of Advisory Opinion 2010-03 are scheduled to be on the Commission's agenda for its public meeting of Thursday, April 29, 2010.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00pm noon (Eastern Time) on April 28, 2010.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

**CONTACTS**

Press inquiries: Judith Ingram (202) 694-1220

Deputy Commission Secretary: Darlene Harris (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2010-03, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at [www.fec.gov](http://www.fec.gov).

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

**MAILING ADDRESSES**

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April 26, 2010

## AGENDA ITEM

For Meeting of 04-29-10

### MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*  
General Counsel

Rosemary C. Smith *RCS*  
Associate General Counsel

Robert M. Knop *RMK*  
Assistant General Counsel

Anthony Buckley *AB*  
Attorney

Subject: Draft AO 2010-03  
(National Democratic Redistricting Trust)

**SUBMITTED LATE**

Attached are two proposed drafts of the subject advisory opinion. We request that these drafts be placed on the agenda for April 29, 2010.

Attachment

1 ADVISORY OPINION 2010-03

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Marc E. Elias, Esq.  
Kate S. Keane, Esq.  
Perkins Coie LLP  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2003

**DRAFT A**

10 Dear Mr. Elias and Ms. Keane:

11 We are responding to your advisory opinion request on behalf of the National  
12 Democratic Redistricting Trust (“the Trust”), concerning the application of the Federal  
13 Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations to  
14 the solicitation of funds by Members of Congress on behalf of the Trust. The  
15 Commission concludes that the Trust’s proposed activities are not in connection with an  
16 election and therefore Members of Congress may solicit funds on behalf of the Trust that  
17 do not comply with the Act’s amount limitations and source prohibitions.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter dated  
20 February 19, 2010 and your email dated March 2, 2010.

21 The Trust was established by individuals, but not Members of Congress, to raise  
22 funds to pay for the pre-litigation and litigation costs that arise following the next  
23 legislative redistricting process.<sup>1</sup> The Trust is run by a trustee and an executive director,  
24 both of whom are private citizens and neither of whom are Members of Congress. The  
25 Trust is not directly or indirectly established, financed, maintained, or controlled by any  
26 Member of Congress, any authorized candidate committee, or any national, State, district,  
27 or local party committee.

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<sup>1</sup> The Trust will also spend some of its funds on administrative costs (e.g., to pay the executive director’s salary).

1           **Though the Trust may work in concert with like-minded individuals,**  
2 **organizations, and political committees that will attempt to influence elections, the Trust**  
3 **itself will not fund attempts to influence elections. Indeed, the Trust will not use its funds**  
4 **to pay for communications that expressly advocate the election or defeat of any clearly**  
5 **identified candidate for office, nor will any of its solicitations of funds expressly advocate**  
6 **the election or defeat of any clearly identified candidate for office.**

7           **The Trust would like Members of Congress to solicit funds on its behalf. Such**  
8 **solicitations would seek funds that do not comply with the Act’s amount limitations or**  
9 **source prohibitions, and also would not advocate the election or defeat of any candidate**  
10 **for office.**

11 ***Question Presented***

12           ***May Members of Congress solicit on behalf of the Trust funds that do not comply***  
13 ***with the Act’s amount limitations and source prohibitions?***

14 ***Legal Analysis and Conclusions***

15           **Yes, Members of Congress may solicit funds on behalf of the Trust that do not**  
16 **comply with the Act’s amount limitations and source prohibitions because the Trust’s**  
17 **proposed activities are not in connection with any Federal or non-Federal election.**

18           **Federal candidates and officeholders, their agents, and entities directly or**  
19 **indirectly established, financed, maintained, or controlled by them (collectively, “covered**  
20 **persons”) may not solicit, receive, direct, transfer, or spend any “funds in connection with**  
21 **an election for Federal office” or any “funds in connection with an election other than an**  
22 **election for Federal office” unless such funds are “subject to the limitations, prohibitions,**  
23 **and reporting requirements of this Act” or are consistent with FECA’s amount limitations**

1 and source prohibitions, respectively. 2 U.S.C. 441i(e)(1)(A) and (B); 11 CFR 300.61  
2 and 300.62.

3 In analyzing the application of 2 U.S.C. 441i(e), the threshold question is whether  
4 the Federal candidate or officeholder is soliciting funds in connection with a Federal or  
5 non-Federal election under subsection (e)(1). See Advisory Opinion 2003-20. If so, then  
6 the analysis proceeds to whether the exceptions to subsection (e)(1) in subsections (e)(2)  
7 or (e)(4) apply. If the funds are not raised or spent in connection with an election, then  
8 the funds do not fall within the scope of section 441i(e).

9 Before 2 U.S.C. 441i(e) became law, the Commission approved proposals by  
10 Federal candidates or officeholders to establish and solicit funds for separate entities that  
11 were engaged exclusively in activities related to redistricting, including the defrayal of  
12 reapportionment-related legal expenses. Such entities were permitted to receive and  
13 spend funds that were not subject to the limitations and prohibitions of the Act. In  
14 approving such proposals, the Commission stated that the influencing of reapportionment  
15 decisions, although a political process, is not considered election-influencing activity  
16 subject to the requirements of the Act. Advisory Opinions 1982-37 (Edwards) and  
17 1981-35 (Thomas). Because they were not considered to be “for the purpose of  
18 influencing any election for Federal office,” the Commission determined that funds  
19 received and spent solely for reapportionment-related activities were not contributions or  
20 expenditures under the Act. *Id.*

21 Similarly, in Advisory Opinion 1990-23 (Frost), the Commission concluded that,  
22 although Congressman Frost could not set up a separate account within his own  
23 authorized committee to accept funds outside of the Act’s limitations and prohibitions for

1 redistricting and reapportionment activities, “Nothing in this opinion should be construed  
2 to prohibit Mr. Frost from setting up a fund or entity, independent of the Frost  
3 Committee, for the purposes of paying expenses related to redistricting or  
4 reapportionment.” The Commission added that even “a reference to Congressman Frost  
5 in the name of [such an independent] fund *would not by itself indicate a purpose of*  
6 *influencing or a connection with a Federal campaign,*” but that “references to his  
7 candidacy would be viewed as something of value to his Federal campaign, and other  
8 references to him may or may not result in a contribution to his campaign, depending on  
9 all the facts and circumstances in a given situation.” Advisory Opinion 1990-23 (Frost)  
10 at n.4 (emphasis added).<sup>2</sup>

11 The Commission concludes that 2 U.S.C. 441i(e)(1)(A) and (B) do not change  
12 this result. There is no indication in BCRA’s legislative history that Congress intended  
13 sections 441i(e)(1)(A) or (B) to affect reapportionment or redistricting activities -- an  
14 area that is both familiar to Members of Congress and the subject of longstanding  
15 interpretation through Commission advisory opinions. The Commission’s post-BCRA  
16 advisory opinions pertaining to whether certain activities are in connection with an  
17 election further support this conclusion. For example:

- 18 ○ In Advisory Opinion 2003-12 (Flake), the Commission concluded that the  
19 activities of a ballot measure committee that is not ‘established, financed,  
20 maintained or controlled’ by a Federal candidate . . . are not ‘in connection with  
21 an[] election . . . prior to the committee qualifying an initiative or ballot measure

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<sup>2</sup> Under the reasoning in Advisory Opinion 1990-23 (Frost), if a reference to a Federal candidate in the name of an independent redistricting fund is not in connection with a Federal campaign or election, then the redistricting fund itself also is not in connection with an election.

- 1 for the ballot, but are ‘in connection with an[] election . . .’ after the committee  
2 qualifies an initiative or ballot measure for the ballot.”
- 3 ○ In Advisory Opinion 2003-15 (Majette), the Commission concluded that  
4 Representative Majette’s costs of defending against a lawsuit seeking a special  
5 primary and special general election—which, if successful, would have  
6 essentially overturned the primary and general elections that Representative  
7 Majette had won—were not “in connection with” any election.
  - 8 ○ In Advisory Opinion 2003-20 (Reyes), the Commission concluded that funds  
9 raised and spent by a scholarship organization are not in connection with an  
10 election.
  - 11 ○ In Advisory Opinion 2005-10 (Berman-Doolittle), the Commission concluded  
12 that section 441i(e) does not prohibit Federal candidates and officeholders from  
13 raising funds for committees that have been formed solely to support or oppose  
14 ballot measures, provided such committees were not established, financed,  
15 maintained or controlled by a Federal candidate, officeholder, or anyone acting on  
16 their behalf, or by any party committee. In a concurring opinion, Vice Chairman  
17 Toner and Commissioner Mason explained that “ballot initiatives and referenda  
18 are not elections for office as a matter of law under Section 441i(e) and, therefore,  
19 the statute’s soft-money fundraising restrictions do not apply to ballot measure  
20 activities.” Similarly, Commissioners Weintraub and McDonald stated in a  
21 separate concurrence that, “where a federal candidate seeks to raise funds for a  
22 ballot measure committee that he or she does not establish, maintain, finance, or



1 control” and “where no federal candidate appears on the same ballot,” the  
2 activities are not in connection with an election.

3 Here, the Trust will not seek to put any matters on the same ballot as a Federal  
4 candidate, or on any ballot whatsoever. See Advisory Opinion 2005-10  
5 (Berman-Doolittle) (Concurring Statement of Commissioners Weintraub and McDonald);  
6 see also Advisory Opinion 2003-12 (Flake). Rather, the Trust’s redistricting activities  
7 concern decisions by State legislatures and courts. Moreover, while the outcome of the  
8 Trust’s activities may incidentally affect elections occurring subsequent to redistricting—  
9 for example, an individual’s decision whether and where to run may depend on how a  
10 particular district is drawn—those strategic considerations can be impacted by any  
11 number of factors, such as: changes to campaign finance law, campaign issues that arise  
12 and fade with the vicissitudes of current events and pending legislation, changes in the  
13 electorate caused by migration, or the effect of State ballot measures on the general  
14 political climate, to name a few. The nexus between such considerations, like  
15 redistricting, and an individual’s decision to run for office are far too attenuated to be  
16 considered *in connection with* an election.

17 Moreover, although the Supreme Court, in *McConnell v. FEC*, 540 U.S. 93, 182  
18 (2003), noted that “Large soft-money donations at a candidate’s or officeholder’s behest  
19 give rise to all of the same corruption concerns posed by contributions made directly to  
20 the candidate or officeholder,” the Court was addressing Section 441i(e)’s solicitation  
21 restrictions on contributions to the party committees—organizations whose very purpose  
22 is to advocate for the election of their candidates. The Court’s reasoning did not extend  
23 to Federal candidates’ and officeholders’ solicitation of funds outside the Act’s limits and

1 prohibitions for other purposes, such as the State ballot measures, election litigation, or  
2 scholarship funds at issue in Advisory Opinions 2003-12 (Flake), 2003-15 (Majette),  
3 2003-20 (Reyes), and 2005-10 (Berman-Doolittle).

4       Therefore, the Commission concludes that donations to the Trust for the sole  
5 purpose of paying the pre-litigation and litigations costs associated with reapportionment  
6 and redistricting legal matters and related issues are neither “in connection with an  
7 election for Federal office” nor “in connection with any election other than an election for  
8 Federal office” for purposes of 2 U.S.C. 441i(e)(1)(A) and (B). As such, the funds are  
9 not subject to the limitations and prohibitions of the Act. Accordingly, a Member of  
10 Congress may solicit unlimited funds on behalf of the Trust to defray the legal expenses  
11 associated with the Trust’s redistricting efforts.

12       The Commission expresses no opinion regarding the possible applicability of any  
13 Federal or State tax laws or other laws, or the rules of the Senate or House of  
14 Representatives, to the matters presented in your request, as those issues are outside its  
15 jurisdiction.

16       This response constitutes an advisory opinion concerning the application of the  
17 Act and Commission regulations to the specific transaction or activity set forth in your  
18 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
19 of the facts or assumptions presented and such facts or assumptions are material to a  
20 conclusion presented in this advisory opinion, then the requester may not rely on that  
21 conclusion as support for its proposed activity. Any person involved in any specific  
22 transaction or activity which is indistinguishable in all its material aspects from the  
23 transaction or activity with respect to which this advisory opinion is rendered may rely on

1 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or  
2 conclusions in this advisory opinion may be affected by subsequent developments in the  
3 law including, but not limited to, statutes, regulations, advisory opinions and case law.  
4 The cited advisory opinions are available on the Commission's website at  
5 <http://saos.nictusa.com/saos/searchao>.

6 On behalf of the Commission,  
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Matthew S. Petersen  
Chairman

1 ADVISORY OPINION 2010-03

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Marc E. Elias, Esq.  
Kate S. Keane, Esq.  
Perkins Coie LLP  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2003

**DRAFT B**

11 Dear Mr. Elias and Ms. Keane:

12 We are responding to your advisory opinion request on behalf of the National  
13 Democratic Redistricting Trust (“the Trust”), concerning the application of the Federal  
14 Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations to  
15 the solicitation of funds by Members of Congress on behalf of the Trust. The  
16 Commission concludes that the Trust’s proposed activities are in connection with a  
17 Federal election and therefore Members of Congress may only solicit funds on behalf of  
18 the Trust that comply with the Act’s amount limitations and source prohibitions.

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter dated  
21 February 19, 2010 and your email dated March 2, 2010.

22 The Trust was established by individuals, but not Members of Congress, to raise  
23 funds to pay for the pre-litigation and litigation costs that arise following the next  
24 legislative redistricting process.<sup>1</sup> The Trust is run by a trustee and an executive director,  
25 both of whom are private citizens and neither of whom are Members of Congress. The  
26 Trust is not directly or indirectly established, financed, maintained, or controlled by any

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<sup>1</sup> The Trust will also spend some of its funds on administrative costs (e.g., to pay the executive director’s salary).

1 Member of Congress, any authorized candidate committee, or any national, State, district,  
2 or local party committee.

3       Though the Trust may work in concert with like-minded individuals,  
4 organizations, and political committees that will attempt to influence elections, the Trust  
5 itself will not fund attempts to influence elections. Indeed, the Trust will not use its funds  
6 to pay for communications that expressly advocate the election or defeat of any clearly  
7 identified candidate for office, nor will any of its solicitations of funds expressly advocate  
8 the election or defeat of any clearly identified candidate for office.

9       The Trust would like Members of Congress to solicit funds on its behalf. Such  
10 solicitations would seek funds that do not comply with the Act's amount limitations or  
11 source prohibitions, and also would not advocate the election or defeat of any candidate  
12 for office.

13 ***Question Presented***

14       *May Members of Congress solicit on behalf of the Trust funds that do not comply*  
15 *with the Act's amount limitations and source prohibitions?*

16 ***Legal Analysis and Conclusions***

17       No, the Trust's proposed activities are in connection with Federal elections and  
18 therefore Members of Congress may only solicit funds on behalf of the Trust that comply  
19 with the Act's amount limitations and source prohibitions.

20       On November 6, 2002, the Bipartisan Campaign Reform Act of 2002, Pub. L.  
21 107-155, 116 Stat. 81 (2002) ("BCRA") took effect. As amended by BCRA, the Act  
22 regulates certain actions of Federal candidates and officeholders ("covered persons")  
23 when they raise or spend funds "in connection with" either Federal or non-Federal

1 elections. 2 U.S.C. 441i(e)(1). Both BCRA and the Commission’s regulations  
2 implementing BCRA prohibit covered persons from soliciting, receiving, directing,  
3 transferring, or spending any “funds in connection with an election for Federal office”  
4 unless such funds are “subject to the limitations, prohibitions, and reporting requirements  
5 of this Act.” 2 U.S.C. 441i(e)(1)(A); 11 CFR 300.61. BCRA and the Commission’s  
6 regulations also prohibit covered persons from soliciting, receiving, directing,  
7 transferring or spending any “funds in connection with an election other than an election  
8 for Federal office” unless the funds are consistent with FECA’s amount limitations and  
9 source prohibitions. 2 U.S.C. 441i(e)(1)(A); 11 CFR 300.62.

10       The solicitation restrictions in 2 U.S.C. 441i(e) were challenged as part of  
11 *McConnell v. FEC*, 540 U.S. 93 (2003). The Supreme Court upheld the provisions  
12 against a facial challenge, stating that “[l]arge soft-money donations at a candidate’s or  
13 officeholder’s behest give rise to all of the same corruption concerns posed by  
14 contributions made directly to the candidate or officeholder.” *Id.* ; *see also Republican*  
15 *National Committee v. FEC*, slip op. at 6 (D.D.C. Mar. 26, 2010); *cf Citizens United v.*  
16 *FEC* 558 U.S. \_\_\_, 130 S.Ct. 876, 910 (2010) (distinguishing independent expenditures,  
17 which do not pose a threat of *quid pro quo* corruption, from unlimited “soft money”  
18 donations such as those addressed by BCRA, which, as the BCRA record established, do  
19 pose such a risk). The Court went on to state in *McConnell* that a donation’s value to a  
20 candidate or officeholder “is evident from the fact of the solicitation itself” regardless of  
21 whether the candidate or officeholder ultimately controls how the donated funds are  
22 spent. *McConnell*, 540 U.S. at 182. The corruption concerns addressed by the Court in  
23 *McConnell* and *Citizens United* are directly implicated in redistricting activity, as the

1 redistricting process is of considerable importance to elected officials. *McConnell v.*  
2 *FEC*, 251 F. Supp. 2d 462, 462 (D.D.C. 2003) (Kollar-Kotelly, J.) (noting that  
3 redistricting efforts “are of value to Members of Congress because the changes in the  
4 composition of a Member’s district can mean the difference between reelection and  
5 defeat.”).

6 As the Supreme Court has observed, “it requires no special genius to recognize  
7 the political consequences of drawing a district line along one street rather than another.”  
8 *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973). This line-drawing process creates clear  
9 winners and losers. Redistricting “may pit incumbents against one another or make very  
10 difficult the election of the most experienced legislator.” *Id.* Districts may be designed  
11 with a particular incumbent or party in mind, and the beneficiaries of such ‘designer  
12 districts’ may have a potentially decisive advantage over challengers over the course of  
13 several election cycles. The advantages of such districts may even prevent well-qualified  
14 challengers from emerging, allowing the officeholder to retain his or her ‘designated’ seat  
15 at a relatively low cost. This clear nexus between redistricting and electoral outcomes  
16 creates the potential for the reality or appearance of *quid pro quo* corruption. Indeed, in  
17 *Republican National Committee v. FEC*, a three judge panel of the U.S. District Court for  
18 the District of Columbia recently reaffirmed the constitutionality of BCRA’s soft money  
19 limitations against an as-applied challenge by a national party committee seeking to raise  
20 and spend unlimited soft money in order to support State parties’ redistricting efforts  
21 following the 2010 census. *RNC v. FEC*, Slip Op. at 6 (D.D.C. March 26, 2010).

22 In analyzing the application of 2 U.S.C. 441i(e), the threshold question is whether  
23 the funds involved are in connection with an election under subsection (e)(1). *See*

1 Advisory Opinion 2003-20 (Reyes). If the funds are not raised or spent in connection  
2 with an election, then the funds do not fall within the scope of section 441i(e).

3 Redistricting litigation is “in connection” with a Federal or non-Federal election  
4 because that litigation determines the boundaries and composition of the districts for  
5 which elections are held. The outcome of redistricting litigation affects decisions by  
6 individuals as to whether to become candidates and where to run for office and,  
7 ultimately, dictates the makeup of the electorate. Moreover, redistricting litigation has  
8 the potential to influence which party’s candidates are more likely to win election in  
9 particular districts, and may even alter the balance of political power among parties. *See*  
10 *McConnell v. FEC*, 251 F. Supp. 2d 176, 468 (D.D.C. 2003) (Kollar-Kotelly, J.). For  
11 these reasons, “[re]districting inevitably has and is intended to have substantial political  
12 consequences.” *Gaffney* at 753. Therefore, the Commission concludes that donations to  
13 the Trust are in connection with an election for Federal office under 2 U.S.C.  
14 441i(e)(1)(A).<sup>2</sup> Accordingly, Members of Congress may only raise and spend funds on  
15 behalf of the Trust that are subject to the amount limitations, source prohibitions, and  
16 reporting requirements of the Act.

17 Prior to the enactment of BCRA, the Commission considered several proposals by  
18 candidates and officeholders to establish separate entities exclusively for activity related  
19 to redistricting, including the defrayal of reapportionment-related legal expenses. *See,*  
20 *e.g.*, Advisory Opinions 1990-23 (Frost), 1982-37 (Edwards), and 1981-35 (Thomas).  
21 Such entities were permitted to receive and spend funds that were not subject to the  
22 limitations and prohibitions of the Act. In approving such proposals, the Commission has

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<sup>2</sup> The Commission also concludes that none of the exceptions to section 441i(e)(1)’s solicitation restrictions, in subsections (e)(2) or (e)(4), applies.



1 repeatedly concluded that funds donated for activity related to redistricting, including  
2 efforts to influence reapportionment decisions, are not for the purpose of influencing a  
3 Federal election and therefore are not contributions or expenditures subject to the  
4 requirements of the Act. Advisory Opinion 1982-37 (Edwards).

5 This advisory opinion does nothing to change the fundamental conclusion that  
6 activity related to redistricting and reapportionment decisions is not “for the purpose of  
7 influencing an election” under the Act. BCRA, however, introduced additional  
8 limitations on the fundraising activities of Federal candidates and officeholders that are  
9 broader than the standard for determining contributions and expenditures. Activity that is  
10 not considered “election influencing activity subject to the requirements of the Act,” *see*  
11 Advisory Opinion 1981-35 (Thomas), may nonetheless be sufficiently connected to an  
12 election to be covered by the fundraising limitations applicable to candidates and office  
13 holders. *See* Advisory Opinions 2006-24 (Republican and Democratic Senatorial  
14 Campaign Committees) (concluding that a recount fund is “in connection with” Federal  
15 elections even though donations to such a fund would not become a contribution “for the  
16 purpose of influencing an election” under 2 U.S.C. 441a).

17 The Commission expresses no opinion regarding the possible applicability of any  
18 Federal or State tax laws or other laws, or the rules of the Senate or House of  
19 Representatives, to the matters presented in your request, as those issues are outside its  
20 jurisdiction.

21 This response constitutes an advisory opinion concerning the application of the  
22 Act and Commission regulations to the specific transaction or activity set forth in your  
23 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any

1 of the facts or assumptions presented and such facts or assumptions are material to a  
2 conclusion presented in this advisory opinion, then the requester may not rely on that  
3 conclusion as support for its proposed activity. Any person involved in any specific  
4 transaction or activity which is indistinguishable in all its material aspects from the  
5 transaction or activity with respect to which this advisory opinion is rendered may rely on  
6 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or  
7 conclusions in this advisory opinion may be affected by subsequent developments in the  
8 law including, but not limited to, statutes, regulations, advisory opinions and case law.  
9 The cited advisory opinions are available on the Commission's website at  
10 <http://saos.nictusa.com/saos/searchao>.

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On behalf of the Commission,

Matthew S. Petersen  
Chairman