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September 13, 2002

VIA E-MAIL
& FIRST CLASS MAIL

Ms. Mai T. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Notice of Proposed Rulemaking on Contribution Limitations and Prohibitions

Dear Ms. Dinh:

I am submitting this letter on behalf of the American Insurance Association (AIA), a national trade association representing 410 companies writing property and casualty insurance in every state and jurisdiction of the United States. Among AIA's members are United States corporations that are subsidiaries and affiliates of foreign corporations.

The Commission is asking for comment on whether its regulations should prohibit foreign-controlled U.S. corporations, including U.S. subsidiaries of foreign corporations, from participating in the political process by making corporate donations or contributions from their political action committees. For the reasons described below, AIA opposes any regulations that would prohibit U.S. corporations from making otherwise lawful donations and contributions solely because of their corporate affiliation.

Given the extremely short comment period, we thought it most important to highlight the issues of concern. AIA urges the Commission to hold hearings where these issues can be more fully explored.

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Letter to Ms. Mai T. Dinh
September 13, 2002
Page 2 of 3

In considering such a regulation, the Commission is asserting regulatory authority that it does not have. There is nothing within the statutory language of the Bipartisan Campaign Reform Act (BCRA) that would justify an across-the-board prohibition on donations or PAC contributions from U.S. subsidiaries or affiliates of foreign corporations. Nothing intrinsic in the statute permits the assertion that corporations incorporated in the U.S., subject to U.S. tax laws, and which are in all respects U.S. corporate citizens, should be precluded from participating in the political process like any other U.S. corporations.

Not only does the statutory language preclude such a rule, but a previous Congress rejected it. In 1990 a bill in Congress would have established such a prohibition with respect to foreign-controlled U.S. corporations, including a U.S. subsidiary of a foreign corporation. As Congress rejected this legislation, the Commission cannot administratively impose it. Administrative agencies cannot create a legal prohibition that Congress itself refused to mandate. To attempt to do so would clearly be beyond the Commission's constitutional authority. The Commission's lawful role is to carry out, not create, the law.

Moreover, if the Commission chooses to create the prohibition contemplated in the notice -- despite the absence of statutory authority to do so -- the rule will raise serious constitutional questions. To create different burdens among similarly situated companies solely because some have corporate relationships of some type with foreign corporations would raise very significant constitutional due process issues.

An across-the-board ban is not necessary to achieve the legislative goal of prohibiting any foreign national from funneling money into the U.S. political system. The issue whether a donation or contribution is "indirectly" made on behalf of a foreign national is intensely fact-based and the Commission has the authority to address this issue on a case-by-case, not wholesale, basis. The Commission should not broadly preclude a corporation from political participation otherwise permitted by the BCRA absent specific facts demonstrating that the particular corporation's decision to participate in the political process was directed by a foreign entity not legally authorized to make political contributions.

In sum, the Commission has not offered a sufficient rationale -- statutory or factual -- to justify why certain American companies should be singled out for exclusion from the political process merely because they are related to non-U.S. entities. Therefore, the Commission should not issue a rule prohibiting foreign-

Letter to Ms. Mai T. Dinh
September 13, 2002
Page 3 of 3

controlled corporations, including U.S. subsidiaries of foreign corporations, from making lawful corporate donations or contributions from their political action committees.

Sincerely,

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