



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 18, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-8

Paul E. Suplizio
Executive Director
International Association of
Trade Exchanges
5001 Seminary Road, Suite 310
Alexandria, Virginia 22311

Dear Mr. Suplizio:

This is in response to your letter of February 1, 1982, supplemented by your letters of February 8, 1982 and May 3, 1982, requesting an advisory opinion on behalf of the Barter Political Action Committee ("BARTERPAC") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") to the receipt and making of contributions to and by BARTERPAC in the form of credit units. Your request sets forth the following facts:

BARTERPAC is the separate segregated fund established by the International Association of Trade Exchanges, a trade association incorporated in the District of Columbia as a nonprofit corporation exempt from taxation under Section 501(c)(6) of the Internal Revenue Code. The International Association of Trade Exchanges represents the organized, for-profit, commercial barter firms (variously called trade exchanges, barter exchanges, or barter clubs) in the United States and Canada. You state that in accordance with 11 CFR 110.4(a), Canadian members will not participate in BARTERPAC.

The information attached to your request explains that a barter exchange functions as the organizer of a marketplace where members of the exchange buy and sell products and services among themselves on a barter basis. These barter exchanges use an accounting unit called a "credit unit" to denote a receivable due in a barter transaction. The use of credit units allows a barter transaction to occur between two parties when one party does not have a simultaneous need or desire for the goods and services of the other. Thus, for example, A can sell goods or services to B and receive an IOU for payment denominated in credit units, rather than the goods

or services B has to offer but which A may not at that time need or desire. A may subsequently use his credit units, which are accounted for on the books of the barter exchange of which he is a member, to purchase goods or services from C, provided that C is also a member of the barter exchange.

With regard to determining the value of credit units, you state that the consensus in the trade exchange industry is to value credit units at the fair market value of the goods or services received when the credit units are exchanged. One study regarding the actual dollar value of credit units based on their purchasing power in the marketplace indicated that a credit unit commands less than a dollar's worth of goods and services.¹ If exchanged for cash, credit units are always sold at a discount; the information attached to your request states that no one has ever received a full dollar in exchange for a credit unit.

Your request states that the barter exchanges earn their income from commissions which are expressed as a percentage of the gross value of each transaction. There is also a one-time membership fee plus an annual renewal fee. All barter transactions are recorded. Monthly statements are prepared for each member and all records of transactions are maintained for five years, which is the minimum standard established for members of the International Association of Trade Exchanges.

BARTERPAC proposes to solicit contributions in the form of credit units from the stockholders and executive or administrative personnel of the member corporations of the International Association of Trade Exchanges in accordance with 11 CFR 114.8.² In turn, BARTERPAC proposes to do both of the following: 1) to make contributions of credit units directly to Federal candidates who could use them to purchase through the trade exchange the goods and services of their choice; and 2) to use the credit units to purchase goods and services through the trade exchange which it then contributes to Federal candidates. BARTERPAC believes that for purposes of the Act's reporting requirements and contribution limitations, adherence to the industry's general accounting principle that the value of credit units is the fair market value of goods or services received in exchange would be cumbersome to administer. For this reason, BARTERPAC intends to adopt the accounting convention that a credit unit is equal to one dollar for the purposes of reporting and compliance with the Act.

You state that BARTERPAC will have an account with each trade exchange whose credit units have been contributed. It will account for the credit units of different exchanges separately. It may, however, in the normal course of operations, transfer credit units among exchanges to

¹ In your letter dated May 3, 1982, you state that an audit conducted by the accounting firm of Deloitte, Haskins & Sells found that the actual dollar value of credit units of the barter firm Barter Systems, Inc. for the period June, 1980 to May, 1981 varied from 55 cents to 99 cents for those barter transactions sampled for the audit.

² You state that the stockholders and executive or administrative personnel of barter firms often receive credit units as dividends or compensation.

mobilize its credit unit resources.³ When BARTERPAC makes a contribution or expenditure of credit units, the transaction will be documented on the trade invoice ordinarily used in the industry that reflects the transaction and date, buyer and seller, price, commission, and total amount.

With regard to the payment of the costs incident to the use of credit units to obtain goods or services from the trade exchange, you state that such costs will be borne as follows:

In the case where BARTERPAC contributes credit units directly to a candidate for Federal office, it will establish an account for the recipient committee in one or more trade exchanges, and transfer the credit units from the BARTERPAC account to the recipient committee's account. No commission would be charged or paid on this essentially bookkeeping transaction. As the recipient committee exchanged credit units for goods and services, it would pay to the trade exchange a commission on each transaction. In the case of a "trade commission" (i.e., a commission paid in credit units), such a commission would be paid by deduction from the recipient committee's outstanding balance when the trade draft for the transaction is posted by the exchange. In the case of a cash commission, the amount would become due and payable when the trade exchange renders a statement to the recipient committee (usually monthly). Where BARTERPAC spends the credit units, it would pay the commission.

Neither BARTERPAC nor the candidate who receives a contribution of credit units would be required to join the trade exchange in the same manner that a business firm joins and pays a membership fee. Instead, the exchange would set up an account for BARTERPAC and an account for the candidate, so they may use the credit units within the barter exchange system. You state that normally, the cost of setting up such an account would be absorbed by the trade exchange, which reasons that it will recover this cost when the credit units are spent and the required commission is paid. Thus, this cost is ultimately borne by BARTERPAC or the candidate's committee, depending upon who pays the commission in the specific case, because the opening of an account is one of the services of a trade exchange which the commission is intended to cover. However, you do not exclude the possibility that an exchange could charge a service fee for setting up an account. The fee would then be paid by BARTERPAC in the case of an account set up for BARTERPAC, and by the candidate's committee in the case of an account set up for that committee.

BARTERPAC asks the Commission to conclude that the foregoing activities are lawful under the Act. In addition, BARTERPAC seeks the Commission's guidance as to the proper reporting of credit unit transactions under the Act. The Commission concludes as follows:

As a preliminary matter, the Commission notes that contributions in the form of credit units fall within the purview of the Act. The term "contribution" includes "anything of value" and "the payment by any person of compensation for the personal services of another person which are

³ You state that while the credit units of different trade exchanges are not freely convertible, there exist, within limits, possibilities of shifting credit units among exchanges as a result of the fact that many exchanges trade with other exchanges and therefore have account balances and lines of credit established with those exchanges.

rendered to a political committee without charge for any purpose.” 2 U.S.C. 431(8)(A)(i)-(ii); see also 11 CFR 100.7(a)(1) and (3). Although the value of credit units is realized only once they are exchanged, the fact that credit units may immediately be converted into goods or services clearly renders them a "thing of value". A gift of credit units therefore constitutes a contribution under the Act at the time they are given, even though they are not exchanged until a later date.⁴

Thus, while nothing in the Act or the Commission's regulations would prohibit the making of contributions in the form of credit units, such contributions would be subject to the contribution limitations set forth at 2 U.S.C. 441a. The central question posed by your request, then, is how to characterize and value contributions of credit units for purposes of compliance with the Act's contribution limitations and disclosure requirements. While credit units resemble in-kind contributions under the Act in that their value can be determined with certainty only when they are exchanged, they nevertheless are like cash in that they function as a medium of exchange: that is, they need not first be converted into cash in order to secure goods or services. If the credit units are valued at the fair market value of the goods or services received when the units are exchanged, as is customary in the barter industry, then the amount of a contribution of credit units to or by BARTERPAC could not be determined unless and until they are ultimately used by a candidate. Moreover, Commission regulations provide that the amount of an in-kind contribution shall be equal to the usual and normal value on the date received. See 11 CFR 104.13(a); see also Advisory Opinion 1980-125, copy enclosed.

The Act therefore requires that BARTERPAC devise some reasonable method for valuing a contribution of credit units both at the time the contribution is received by BARTERPAC and, subsequently, by a candidate. Valuing each credit unit as equal to one dollar as proposed in your request, while imprecise, is not unreasonable and does not threaten the integrity of the Act's contribution limitations since both the purchasing power and cash value of credit units is actually less than one dollar. For these reasons, the commission concludes that BARTERPAC may adopt the accounting convention that a credit unit is equal to one dollar for purposes of determining the value of credit unit contributions and complying with the Act's contribution limitations.⁵ The Commission expressly conditions this conclusion upon the fact that, as represented in your request, the value of credit units does not, in fact, exceed one dollar. Should market conditions change such that a credit unit may have a cash value or purchasing power of more than one dollar, then credit units could no longer be valued as equal to one dollar, and the Commission would have to reconsider the proper method of valuing credit units for purposes of the Act's contribution limitations in light of the changed circumstances in the barter industry.

⁴ See also Revenue Ruling 80-52, in which the Internal Revenue Service concluded that "income in the form of a valuable right represented by credit units" is includible as gross income for the taxable year in which the units are credited to the taxpayer's account.

⁵ Thus, the Act would permit an individual to contribute no more than 5,000 credit units to BARTERPAC. 2 U.S.C. 441a(a)(1)(C). In turn, BARTERPAC could contribute no more than 1,000 credit units to a candidate with respect to any election. 2 U.S.C. 441a(a)(1)(A). If BARTERPAC qualifies as a multicandidate political committee under 2 U.S.C. 441a(a)(4), then it could make contributions of up to 5,000 credit units per election, per candidate. See 2 U.S.C. 441a(a)(2)(A).

However, to avoid making an in-kind contribution, the vendor who provides goods or services to BARTERPAC or a candidate in exchange for credit units may not provide goods or services whose value exceeds the fair market value of goods or services that would otherwise have been provided in exchange for those credit units. Commission regulations provide that where goods or services are provided at a charge which is less than the usual and normal charge for such goods or services, then the provider thereof is deemed to have made an in-kind contribution in the amount of the difference between the usual and normal charge for those goods and services at the time of the contribution and the amount charged the political committee. See 11 CFR 100.7(a)(1)(iii)(A).⁶ The vendor must, therefore, charge the usual and normal charge of credit units for the goods or services he provides. If the fair market value of the goods and services provided to BARTERPAC or a candidate in exchange for the credit units exceeds the value that those credit units would command in the marketplace at the time they are exchanged, then the provider for those goods and services has made an in-kind contribution in the amount of the excess value provided. See Advisory Opinion 1977-45, copy enclosed.

In the situation where BARTERPAC uses credit units to purchase goods or services which it in turn contributes to a candidate, it is no longer necessary nor appropriate to rely on the accounting convention that each credit unit equals one dollar. Rather, such a transaction constitutes a typical in-kind contribution under the Act. Thus, under 11 CFR 104.13(a)(1), the amount of the contribution by BARTERPAC in such circumstances is the fair market value of the goods or services contributed to the candidate. As discussed above, however, the value of the goods or services provided in exchange for the units may not exceed the fair market value of the goods or services that those credit units would otherwise command at the time they are exchanged. Any amounts provided in excess would constitute an in-kind contribution to BARTERPAC by the provider of the goods or services. See 11 CFR 100.7(a)(1)(iii)(A)-(B).

With respect to the payment of commissions to the trade exchange, the Commission concludes that the party who actually exchanges the credit units, be it BARTERPAC or the recipient candidate, should pay the required commission just as that party would ordinarily pay the costs of engaging in any marketplace transaction. A contribution by BARTERPAC of goods or services purchased with credit units would be neither increased nor decreased by the amount of the commission paid by BARTERPAC. Similarly, a contribution to or by BARTERPAC of credit units would not be increased or decreased by the amount of the commission that would have to be paid in order to secure goods or services with those credit units. However, if the commission charged by the trade exchange is less than the usual and normal charge for a given transaction, then the trade exchange will be deemed to have made an in-kind contribution in the amount of the difference between the usual and normal charge and the amount charged to BARTERPAC or the candidate. See 11 CFR 100.7(a)(1)(iii). Similarly, BARTERPAC and a candidate who receives credit units must pay the usual and normal charge for all other fees

⁶ The term "usual and normal charge" for goods means the price of those goods in the market from which they would ordinarily have been purchased at the time of the contribution. For services, the term "usual and normal charge" means, the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. See 11 CFR 100.7(a)(1)(iii)(B).

ordinarily required to be paid by participants in barter transactions in like circumstances. See also Advisory Opinion 1978-68, copy enclosed.

With regard to the reporting of credit unit transactions, all contributions and expenditures in the form of credit units should be reported in the same fashion as ordinary cash transactions in accordance with the requirements of 2 U.S.C. 434 and 11 CFR Part 104. Credit unit contributions to BARTERPAC should be reported as receipts by BARTERPAC valued at one dollar per credit unit. See 11 CFR 104.3(a). A credit unit contribution by BARTERPAC would be reported by BARTERPAC as a disbursement with a value of one dollar for each credit unit contributed and as a corresponding receipt by the recipient candidate or committee. Such receipts and disbursements must be itemized when appropriate pursuant to 11 CFR 104.3(a)(4) and (b)(3). So as to apprise the public fully of financial activities in the form of credit units, all credit unit transactions should be included in the amount of net contributions, expenditures and cash on hand on the summary pages, reported at their appropriate dollar value. However, the fact that a particular contribution or expenditure is comprised of credit units should be made clear on the face of the reports, and a brief explanation of credit units and the barter industry should accompany all reports filed that include credit unit transactions.

The trade exchanges may not serve as campaign depositories since a trade exchange is not among the entities enumerated at 2 U.S.C. 432(h)(1) as qualified to serve as a campaign depository. See 11 CFR 103.2 and Advisory Opinions 1980-39, 1976-25, copies enclosed. Rather, BARTERPAC must, in accordance with 432(h)(1), “designate one or more state banks, federally chartered depository institutions, or depository institutions the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, as its campaign depository or depositories.” All transactions which can be accomplished by check or similar draft must pass through such depository(ies). See 11 CFR 103.3.⁷

The foregoing principles are illustrated by the following examples:

- 1.) Smith contributes 201 credit units to BARTERPAC.

Smith's contribution should be reported by BARTERPAC as a contribution with a value of \$201. Because the contribution exceeds \$200, the contributor's name,

⁷ Finally, the Commission notes that in your request, as well as in the Statement of Organization filed with the Commission, you identify the committee only as "BARTERPAC". However, the Act and Commission regulations require that the name of a separate segregated fund include the full name of its connected organization. 2 U.S.C. 432(e); 11 CFR 102.14(c). While such a fund may also use a clearly recognized abbreviation or acronym by which the connected organization is known (or intends to be known), both the full name and the abbreviation or acronym must be included on the fund's Statement of Organization and all reports and notices. See 11 CFR 102.14(c) and Explanation and Justification thereto, 45 Fed. Reg. 15085 (March 7, 1980). Thus, the committee may use the name “BARTERPAC” but must also identify itself as the “International Association of Trade Exchanges Political Action Committee” as required by the Act and regulations.

mailing address, occupation and name of employer must be reported. The credit units should be continuously reported as cash on hand valued at \$201 until such time as they are contributed to a candidate or exchanged.

- 2.) BARTERPAC contributes 1000 credit units to candidate Jones.

BARTERPAC should report its contribution as an expenditure with a value of \$1,000. Candidate Jones should report receipt of a contribution of \$1,000 and include this amount in reporting cash on hand until the credit units are exchanged.

- 3.) Candidate Jones uses 400 credit units to purchase printing services from ABC Printer which have a fair market value of \$500. On the date of that purchase, the usual and normal charge of credit units for those printing services would have been 600 credit units.

As indicated by the available information on the date of exchange of the credit units, one credit unit could purchase approximately \$.83 worth of printing services.⁸ Thus, candidate Jones must report an expenditure of 400 credit units with a total value of \$332.00. However, since the printer provided services with a fair market value of \$500, candidate Jones must report receipt of an in-kind contribution of \$168 from ABC Printer. If ABC Printer is a corporation, this would constitute a prohibited contribution under 2 U.S.C. 441b, and Jones would have to pay the printer \$168 to avoid the contribution.

- 4.) BARTERPAC uses 1200 credit units to purchase through XYZ Trade Exchange advertising space from the Herald newspaper and contributes it to candidate Jones. The fair market value of the advertising space is \$1,000. The usual and normal charge in credit units for that advertising space in that market at that time is 1200 credit units. XYZ Trade Exchange does not charge BARTERPAC a commission on this transaction.

As reflected by the available information on the date of purchase, one credit unit could purchase approximately \$.83 worth of advertising space.⁹ Thus, BARTERPAC must report this in-kind contribution of advertising as an expenditure of 1200 credit units with a value of \$1,000, and candidate Jones must report receipt of an in-kind contribution of \$1,000. Because BARTERPAC paid the usual and normal charge of 1200 credit units for that amount of advertising space, the Herald did not make any in-kind contribution to candidate Jones. However, XYZ Trade Exchange has made an in-kind contribution to BARTERPAC in the amount of the usual and normal charge for its commission in the transaction. If XYZ Trade Exchange is a corporation, such a contribution would be prohibited pursuant to 2 U.S.C. 441b, and BARTERPAC would have to pay XYZ an amount equal to the usual and normal commission charged to avoid the contribution.

⁸ 500/600: .83/1.00

⁹ 1000/1200: .83/1.00

The Commission expresses no opinion regarding the income tax ramifications of the proposed activities since those issues are outside its jurisdiction.

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

Sincerely,

(signed)

Frank P. Reiche
Chairman for the
Federal Election Commission

Enclosures (AOs 1976-25, 1977-45, 1978-68, 1980-39, and 1980-125)