



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 26, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-2

Terry Claassen
Peper, Martin, Jensen, Maichel and Hetlage
Suite 400
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-4706

Dear Mr. Claassen:

This responds to your January 20, 1988, letter requesting an advisory opinion on behalf of the Chicago Board Options Exchange, Inc., concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the bulletin board posting of receipt and disbursement reports filed with the Commission.

The Chicago Board Options Exchange, Inc. ("CBOE"), incorporated under Delaware law, operates as a securities exchange and sponsors the separate segregated fund, Chicago Board Options Exchange Political Action Committee ("CBOEPAC"). You indicate that CBOE officials have received numerous inquiries from CBOE members¹ and CBOE executive or administrative personnel concerning the nature and amounts of both receipts and disbursements of CBOEPAC, as well as those of separate segregated funds of other exchanges. CBOE proposes to respond to these inquiries by posting receipt and disbursement reports filed with the Commission by CBOEPAC and other separate segregated funds. The reports on FEC Form 3-X would be displayed on bulletin boards located in an access-restricted area used by CBOE to post miscellaneous notices to its members. You also indicate that CBOE proposes to post these reports without comment or embellishment unless the Commission requires a notice warning the reader that information contained in the reports cannot be used for commercial purposes.

You ask whether the Act and regulations permit CBOE to display the FEC reports in the described manner and location.

The principal issue raised by your question is whether the statutory prohibition on sale or use of information copied from reports filed with the Commission applies to the restricted display by CBOE of copies of reports filed by CBOEPAC and by other political committees. The Act provides that the Commission shall make reports and statements filed with it available to the public for inspection and copying within 48 hours after receipt. 2 U.S.C. 438(a)(4). No person, however, may use or sell information copied from reports for soliciting contributions or for other commercial purposes. 2 U.S.C. 438(a)(4), 11 CFR 104.15(a); see Advisory Opinions 1986-25, 1985-16, 1984-2, 1981-38, and 1981-5.

The Commission has declared that the purpose of this restriction is to protect individuals who make contributions to campaigns from being victimized by list-broking. Advisory Opinions 1984-2, 1981-38, 1981-5, 1980-78, and opinions cited therein. The Commission has held that where a publisher proposed to use data from FEC disclosure documents in a newsletter regarding campaign practices, but did not seek to use the names of contributors, this use was permissible. Advisory Opinion 1981-38. Where a candidate proposed to obtain expenditure data submitted by his opponents, to be included in the candidate's solicitation letters, this use was permissible provided the letter did not contain information on the identity of individual contributors. Advisory Opinion 1980-78.

By contrast, the Commission has permitted the use of individual contributor information only in narrow circumstances not related to solicitation or commercial purposes. A candidate who proposed to use reports filed with the Commission to contact contributors to an unauthorized campaign committee to tell those contributors that the committee was unauthorized was permitted to do so, but was not permitted to solicit contributions to the authorized committee. Advisory Opinion 1984-2. And, where a candidate proposed to send a letter to contributors to his opponent's campaign to correct allegedly defamatory statements made by the opponent, this use was permissible provided there was no solicitation or commercial purpose. Advisory Opinion 1981-5.

Accordingly, the Commission concludes that CBOE's posting of receipt and disbursement reports of CBOEPAC, or of other separate segregated funds, would not be a prohibited use of contributor information under 2 U.S.C. 438(a)(4) or Commission regulations at 11 CFR 104.15. Moreover, the Commission concludes that although the Act and regulations do not require CBOE to attach a notice to the posted reports warning that information in the reports cannot be used for commercial purposes, such a warning is suggested because it informs readers of the restrictions on the use of certain information contained in FEC reports.²

In addition to the question you asked in your letter, your request also raises the issue whether CBOE's posting of receipt and disbursement reports filed with the Commission constitutes a prohibited contribution solicitation under the Act and regulations.

The Act allows a corporation, or a separate segregated fund established by a corporation, to solicit generally the corporation's stockholders and executive or administrative personnel and to make two written solicitations per year to nonexecutive employees. 2 U.S.C. 441b(b)(4). An incorporated membership organization is also allowed to solicit contributions from its individual members. 2 U.S.C. 441b(b)(4)(C), 11 CFR 114.7(a). The Commission has previously concluded

that a communication regarding a separate segregated fund's activity is not a solicitation under section 441b where the information provided would neither encourage readers to support a separate segregated fund's activities nor facilitate making contributions to it. Advisory Opinions 1983-38, 1982-65, 1980-65, and 1979-66.

CBOE's proposed posting of reports filed with the Commission is only informational. By displaying a copy of the FEC reports on its bulletin board, CBOE is a passive conduit of information. The reports, therefore, merely inform the reader and in no way encourage support of CBOEPAC or facilitate contributions to it. Accordingly, the Commission concludes that CBOE's posting of receipt and disbursement reports filed with the Commission would not constitute a solicitation under 2 U.S.C. 441b(b)(4). Because the report posting is not a contribution solicitation, it is immaterial that persons outside the solicitable class of CBOE may read the posted FEC reports.

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

Sincerely yours,

(signed)

Thomas J. Josefiak
Chairman for the Federal Election Commission

Enclosures (AOs 1986-25, 1985-16, 1984-2, 1983-38, 1982-65, 1981-38, 1981-5, 1980-65, and 1979-66)

1/ In Advisory Opinion 1987-31 the Commission reviewed the status of several groups of CBOE personnel and concluded that some groups qualified as members for purposes of the Act, but that other groups did not.

2/ Those restrictions apply regardless of where the FEC report is displayed.