



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 30, 1989

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-8

Grant A. Billingsley
Manager, Public Affairs
Wagner & Brown
P.O. Box 1714
Midland, TX 79702

Dear Mr. Billingsley:

This responds to your letter dated May 3, 1989, as supplemented by your letter and materials sent on May 29, requesting an advisory opinion on behalf of Cyril Wagner, Jr., and Jack E. Brown concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proposed establishment of a separate segregated fund by Insilco Corporation ("Insilco") and Messrs. Wagner and Brown.

According to your letter and an Insilco prospectus sent with the May 29 letter, Mr. Wagner and Mr. Brown are the sole partners of Wagner & Brown, a Texas general partnership. Mr. Wagner also owns all of Cy-64, Inc. and Mr. Brown owns all of Jack-64, Inc. These two corporations are the sole partners of INR Partners, a Texas general partnership, which has a majority interest (as to both stock ownership and voting rights) in Insilco.

Insilco and Mr. Wagner and Mr. Brown wish to establish a single separate segregated fund that will solicit contributions from the executive and administrative personnel (and their families) of Insilco, Wagner & Brown, and their respective subsidiaries and affiliates. You state that Insilco intends to pay all of the establishment, administration, and solicitation costs associated with the separate segregated fund. Attached to your letter is a list of corporate subsidiaries and affiliates of Insilco and of the partnership of Wagner & Brown. This list contains a total of 27 "subsidiaries and divisions" of Insilco.

All but one of these entities is wholly owned by Insilco.¹ The list also contains three corporate "affiliates" of the partnership of Wagner & Brown, all wholly owned by the partnership.

You inquire whether it is permissible for the proposed fund to be named "Insilco Corporation/Wagner & Brown Political Action Committee" and whether the name of "Wagner & Brown" must appear in the name of the fund. You also inquire whether a separate segregated fund established by Insilco would be permitted to solicit the executive and administrative personnel (and their families) of Wagner & Brown and the executive and administrative personnel (and their families) of Wagner & Brown's corporate affiliates.

You have stated that Insilco Corporation will be paying all of the establishment, administration, and solicitation costs of the proposed separate segregated fund. As such it will be the connected organization of the proposed fund. See 2 U.S.C. 431(7), 441b(b)(2)(C), and 11 CFR 100.6(a). The principal issue presented in your request is the class of personnel who may be solicited. A corporation, or a separate segregated fund established by a corporation, may solicit contributions to such a fund from its executive and administrative personnel, its stockholders, and the families of such persons. 2 U.S.C. 441b(b)(4)(A)(i). Commission regulations provide that a corporation's solicitable class extends to the executive and administrative personnel of its "subsidiaries, branches, divisions, and affiliates and their families." 11 CFR 114.5(g)(1). The term "affiliates" is not defined in the regulations. The Commission, however, has explained that affiliate status applies to entities that are wholly owned or controlled by the same corporation or individuals.^{2/} Advisory Opinions 1983-48, 1982-18, and 1980-18. The Commission has also concluded that the term "affiliates" may include entities other than corporations, including partnerships. Advisory Opinions 1987-34 and 1983-48.

The executive and administrative personnel of the twenty-seven corporate subsidiaries and divisions of Insilco and the families of such personnel may be solicited by Insilco for contributions to its separate segregated fund. The partnership of Wagner & Brown, as an entity owned by the same two individuals that control Insilco, is an affiliate of the Insilco Corporation. In past opinions, the Commission has concluded that the executive and administrative personnel of a partnership affiliated with the connected organization of a separate segregated fund may be solicited for contributions to that fund. Advisory Opinions 1987-34 and 1983-48. Similarly, the executive and administrative personnel (and the families thereof) of Wagner & Brown may be solicited for contributions to Insilco's fund. In addition, since the partnership's corporate affiliates are owned by the same two individuals who own a controlling interest in Insilco, the executive and administrative personnel (and the families thereof) of such corporations are solicitable for contributions to the proposed fund.

Your request suggests that the foregoing conclusion could be reached based upon the Commission's analysis in Advisory Opinion 1979-77. In that opinion, the Commission concluded that a political committee sponsored by a limited partnership and a separate segregated fund of a corporation owned by the partnership were affiliated. The Commission also stated that a "political committee established by the partnership" may solicit any individual who could lawfully contribute and permitted such a committee to solicit from a broad range of individuals and entities. The opinion thus implied that the affiliated status of the two committees would not restrict the class of personnel that could be solicited for contributions to the committee sponsored by the partnership. Later opinions indicate, however, that when a separate segregated fund is established by a corporation having affiliated partnerships and corporations, the class of

solicitable personnel within that mixed group of affiliates is restricted to the categories specified in Commission regulations at 11 CFR 114.5(g)(1). Advisory Opinions 1987-34 and 1983-48.

In Advisory Opinion 1983-48, for example, the Commission considered a situation in which a corporation with a separate segregated fund wished to solicit a broad range of persons associated with partnerships owned or controlled by the person who owned the corporation. In holding that the partnerships were affiliates of the corporation, the Commission also concluded that the executive and administrative personnel of the affiliated partnerships "may be solicited by the PAC to the same extent and under the same conditions as executive or administrative personnel of the corporation are solicitable." The opinion thus excluded other persons from the group that the requestor wished to solicit. Therefore, to the extent that Advisory Opinion 1979-77 goes beyond the basic proposition that a partnership and a corporation with common ownership may be affiliated, and allows unlimited solicitation by a partnership-sponsored committee irrespective of its affiliation with the separate segregated fund of a corporation, Advisory Opinion 1979-77 is hereby superseded.³

You have posed two questions as to the use of the partnership name Wagner & Brown, along with Insilco's name, in the name of the separate segregated fund. Under the Act and regulations, the name of any separate segregated fund established by a corporation must include the full name of the connected organization. 2 U.S.C. 432(e)(5); 11 CFR 102.14(c). The regulations clarify the limits of this requirement by stating that a fund established by a corporation which has a number of subsidiaries need not include the name of each subsidiary in the fund and a fund established by a subsidiary need not include the name of its parent or another subsidiary. 11 CFR 102.14(c). Similarly, although the name of Insilco Corporation must appear in the name of the fund, the name of Wagner & Brown, an affiliate of Insilco, need not appear. There is nothing in the Act or regulations, however, to preclude the inclusion of an affiliate's name, such as "Wagner & Brown," in the name of the fund. It should be clear from the fund's Statement of Organization (FEC Form 1), however, that the connected organization of this fund is Insilco Corporation. Since Wagner & Brown is not a connected organization of the fund, its name should not be listed as such. See 11 CFR 102.2(a)(1)(ii) and (b)(2). Compare Advisory Opinion 1988- 14.

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 in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Danny L. McDonald
Chairman for the Federal Election Commission

Enclosures (AOs 1988-14, 1987-34, 1983-48, 1982-63, 1982-18, 1981-54, 1980-18, and 1979-77)

1/ According to the Insilco prospectus, the other corporation, DAC Software, is "95.1% owned indirectly" by Insilco.

2/ According to the Explanation and Justification of 11 CFR 114.5(g), "[t]he Commission's rationale for the solicitation right is that all of the political committees set up by the corporation, its subsidiaries, branches, divisions and affiliates will, under the anti-proliferation provisions of the Act, be subject to a single contribution limitation." Communication from the Chairman, House Doc. No. 95-44, 95th Cong., 1st Sess. (Jan. 12, 1977), p. 108. In implementing the anti-proliferation provisions at 2 U.S.C. 441a(a)(5), the Commission has referred to such indicia as ownership of controlling interest in voting shares or securities provisions in governing documents giving one entity authority, power or ability to direct another entity and the authority or power to appoint, discipline or remove or otherwise influence the decision of an entity's officers. 11 CFR 100.5(g)(2) and 110.3(a)(1). See also Advisory Opinions 1987-34, 1983-48, 1982-18 and 1980-18. Compare Advisory Opinion 1981-54.

3/ The Commission notes that its partial overruling of Advisory Opinion 1979-77 does not limit the class of persons who may be solicited for lawful contributions to a political committee sponsored by a partnership if such a committee is not affiliated with any separate segregated fund of a corporation or labor organization. See, e.g., Advisory Opinion 1982-63.