



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 12, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-23

Jan Witold Baran
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Baran:

This responds to your letter dated May 17, 1996, as supplemented by letters dated June 5, June 20, and June 26, 1996, requesting an advisory opinion on behalf of ITT Corporation and its separate segregated fund concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the disaffiliation of political committees.

Your request presents the complex situation of a major corporate reorganization involving three companies that each serve as the connected organization of a political action committee. The status of these committees as affiliated or unaffiliated with each other depends largely upon the relationship among the companies. The factual background, legal analysis, and conclusions are discussed below.

You state that, on December 19, 1995, the former ITT Corporation, a Delaware corporation ("Old ITT"), completed a corporate break-up which resulted in three independent, publicly-traded companies. The three companies are (1) ITT Corporation, which is also known as New ITT ("New ITT"), a Nevada corporation, (2) ITT Industries, Inc. ("ITT Industries"), an Indiana corporation, and (3) ITT Hartford Group, Inc. ("ITT Hartford"), a Delaware corporation.

The three companies specialize in "different, non-overlapping" business areas. Specifically, New ITT focuses on the hospitality, gaming, entertainment businesses, and information services businesses. It operates through six entities: ITT Sheraton Corporation; CIGA S.p.A.; Caesar's World, Inc.; Madison Square Garden, L.P.; ITT World Directories, Inc.; and ITT Educational

Services, Inc. ITT Industries consists of three manufacturing businesses: ITT Automotive; ITT Defense & Electronics; and ITT Fluid Technology. Finally, ITT Hartford and its subsidiaries are insurance providers.

None of the three companies has an ownership interest in either of the other two companies.¹ The breakup of Old ITT was accomplished through a stock distribution. On December 19, 1995, Old ITT distributed all of the shares of common stock in two of its wholly-owned subsidiaries, New ITT (formerly known as ITT Destinations) and ITT Hartford, to the shareholders of old ITT. Upon the occurrence of this distribution, Old ITT merged with a newly formed subsidiary, ITT Indiana, to form ITT Industries which was then reincorporated in Indiana. Approximately 56,000 shareholders of Old ITT thus received three separate certificates, one representing a continuing ownership interest in ITT Industries, and one for an ownership interest in each of New ITT and ITT Hartford. Although there was common ownership of the three companies on the date of the distribution, active public trading of these stocks has rapidly diversified the ownership of these shares. You note that during the three month period after the breakup (i.e., up until March 29, 1996), 42.6 percent of ITT Industries stock, 34.2 percent of New ITT stock, and 44.8 percent of ITT Hartford stock were publicly traded. You further note that as of June 25, 1996, 65.7 percent of ITT Industries stock and 57.7 percent of New ITT stock had been publicly traded since the breakup.²

None of the officers of one company is an officer of either of the other two companies. You also assert that "there is no joint management, control or operation of the three companies." There are, however, some overlaps among the members of the companies' Boards of Directors. Presently, the Board of ITT Industries has eight members while the Boards of the other two companies each have 11 members. Two persons sit on all three Boards. One of these is Rand Araskog, the former Chairman, President, and CEO of the former ITT Corporation, and presently the Chairman and CEO of New ITT. The other person is Robert A. Burnett who presently holds no officer position. There are other overlaps. The Boards of New ITT and ITT Hartford share two other members, and New ITT and ITT Industries share one other member. As a result of these overlaps, the eleven-person Board of New ITT shares four members with the eleven-person Board of ITT Hartford and three members with the eight-person Board of ITT Industries. The Board of ITT Industries shares two members with the ITT Hartford Board. Of the 23 individuals who hold the 30 seats on the present Boards, five hold overlapping memberships.

The list of old and new Boards sent by you indicates that there is also some continuity between the Boards of Old ITT (11 members) and the pre-distribution ITT Hartford Board (14 members), on the one hand, and the new Boards of the three companies.³ Of the five present overlapping members, all were on the Old ITT Board and all but one served on the Hartford Board. The Proxy Statement of August 31, 1995, sent by you, which discusses the impending breakup, indicates that the four overlapping members who served on the old Hartford Board (and who still do) were placed there after August 31. Of the eight present members of the ITT Industries Board, six were members of the old Boards; five were members of the Old ITT Board and three were members of the Hartford Board. Of the 11 present members of the New ITT Board, nine were members of the old Boards; eight were members of the Old ITT Board, and five were members of the Hartford Board. Of the 11 present members of the ITT Hartford Board, ten were members

of the old Boards; nine were members of the pre-distribution Hartford Board and four were members of the Old ITT Board.⁴

The Proxy Statement indicates that all of the executive officers of the three companies were officers of Old ITT or its subsidiaries prior to the distribution. If, prior to the distribution, an executive officer was with a subsidiary in a particular sector associated with the three present companies, e.g., manufacturing, entertainment/hospitality, or insurance, the officers, with one exception, remained with the corresponding sector.

Prior to the distribution, the first post-distribution Boards of both New ITT and ITT Hartford were elected by Old ITT as the sole shareholder. The entire New ITT Board, however, was reelected by the shareholders on May 14, 1996, at their annual meeting. The entire seven-member ITT Industries Board was reelected by the shareholders at their annual meeting on May 21, 1996, and the Board added a new eighth, non-overlapping, member on June 25, 1996. In addition, on May 16, 1996, at the annual shareholders meeting of ITT Hartford, the shareholders reelected the 10-member Board and elected an additional eleventh, non-overlapping, member. You assert that there are no provisions in the Certificates of Incorporation, the Bylaws, or the Proxy Statement that permit the former parent to retain control over the Boards of New ITT or ITT Hartford.

You note that, since the breakup, the three corporations have operated as separate entities and operate in separate business sectors. The Proxy Statement discusses agreements entered into by the three companies governing their relationship after the distribution. These include a Distribution Agreement which would govern the distribution of financial responsibilities and liabilities in accordance with the different business sectors in which the companies are engaged and the allocation of debt. The Distribution Agreement also provides that none of the three companies will take any action that would jeopardize the intended tax consequences of the distribution, but none of the companies anticipate that this limitation will inhibit its financing or other activities or its ability to respond to unanticipated developments. There are other agreements allocating tax liabilities, pertaining to intellectual property rights, including the licensing and use of the "ITT" name, and pertaining to employee benefit and retirement plans. The Proxy Statement states that these agreements are comparable to those that would have been reached by unaffiliated parties in arms-length negotiations.

You state that the separate segregated funds of the three corporations operate as separate entities. Prior to the breakup, three PACs existed. Old ITT's PAC was the ITT Corporate Citizenship Committee. That committee is now the PAC of ITT Industries and is now called ITT Industries Corporate Citizenship Committee. Second, Caesars World, Inc., which is now one of the six businesses of New ITT, previously sponsored a PAC. Immediately after the breakup, the Caesars World PAC was designated as New ITT's SSF and is now known as the ITT Corporation Political Action Council. Finally, both before and after the breakup, ITT Hartford supported its own PAC, the ITT Hartford Advocates Fund, which solicited only ITT Hartford employees.

Since the breakup, there have been no transfers of funds among the PACs and no PAC has contributed to the other. Prior to the breakup, the resources of Old ITT's PAC were divided between itself and the Caesars World PAC so that, after the breakup, the PACs of ITT Industries

and New ITT would reflect the approximate funds attributable to the employees that would be associated with each post-breakup company. ITT Hartford's PAC was not included in this distribution because its funds consisted only of the contributions of ITT Hartford employees and Old ITT's PAC had not solicited ITT Hartford's employees. You state, at the time of the breakup, "each PAC was in a position to and did move forward, as an unaffiliated entity, carrying the funds associated with its respective employees." You note that, within ten days of the breakup, the New ITT PAC amended its Statement of Organization to reflect the change in relationship among the companies and the PACs.

You ask whether the New ITT PAC is presently disaffiliated from the ITT Industries Corporate Citizenship Committee and the ITT Hartford Advocates Fund.

The Act and Commission regulations provide that committees, including separate segregated funds, that are established, financed, maintained or controlled by the same corporation, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. Contributions made to or by such committees shall be considered to have been made to or by a single committee. 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1), and 110.3(a)(1)(ii). In addition, a corporation may make communications to and solicit the restricted class (i.e., executive and administrative personnel and stockholders, and the families thereof) of its subsidiaries for contributions to the corporation's separate segregated fund. 2 U.S.C. 441b(b)(2)(A) and (4)(A)(i); 11 CFR 114.3(a)(1) and 114.5(g)(1).

Where an entity is not an acknowledged subsidiary of another entity, as in 11 CFR 110.3(a)(2)(i), Commission regulations provide for an examination of various factors in the context of an overall relationship to determine whether one company is an affiliate of another and, hence, whether their respective SSFs are affiliated with each other. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J).⁵ The relevant factors in the situation you have presented are as follows: (A) the ownership by one sponsoring organization of a controlling interest in the voting stock or securities of another sponsoring organization; (B) the authority or ability of one sponsoring organization to direct or participate in the governance of another sponsoring organization through provisions of constitutions, by-laws, contracts or other rules, or through formal or informal practices or procedures; (C) the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees of another sponsoring organization; (E) common or overlapping officers or employees which indicates a formal or ongoing relationship between the sponsoring organizations; (F) members, officers, or employees of one sponsoring organization who were members, officers, or employees of another organization which indicates a formal or ongoing relationship or the creation of a successor entity; and (I) an active or significant role by one sponsoring organization in the formation of another. 11 CFR 110.3(a)(3)(ii)(A), (B), (C), (E), (F), and (I). In addition, most of the factors set out at 11 CFR 110.3(a)(3)(ii) are applicable to the relationship between committees. The relevant factors here are: (G) whether a committee provides funds or goods in a significant amount or on an ongoing basis to another committee, such as through direct or indirect payments for administrative, fundraising, or other costs; and (H) whether a committee causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another committee. 11 CFR 110.3(a)(3)(ii)(G) and (H). The list of ten circumstantial factors set out at 11 CFR

110.3(a)(3)(ii) is not an exclusive list, and other factors may be considered. See Advisory Opinion 1995-36.

In analyzing the significance of these factors when presented with a request for the disaffiliation of companies, the Commission does not have a formula whereby the presence of a specific number of factors is sufficient or insufficient for continued affiliation. In proposed disaffiliation situations, the historic background of the relationships provides a context for assessing these factors. See Advisory Opinions 1995-36 and 1994-9.

With respect to the proposed disaffiliation of the ITT companies, the Commission notes that none of the companies owns any stock in either of the other companies. 11 CFR 110.3(a)(3)(ii)(A). As a related matter, the common shareholder base of the companies appears to be reducing rapidly. Although shareholders of each company were the same right after the distribution, there has been vigorous public trading of stock in all three companies since then. The Commission further assumes that no single group of shareholders from one company will own a controlling interest of the stock of one of the other companies. (See footnote 1.) See Advisory Opinions 1994-9 and 1993-23. See also Advisory Opinion 1989-17.

As stated above, you assert that there is no joint management, control, or operation of the three companies. You also assert that neither ITT Industries nor ITT Hartford may participate in the governance of New ITT through provisions of governing documents, contracts, other rules, or practices, nor do those companies have the right to hire, demote or otherwise control the decisionmakers of New ITT. You also state that New ITT does not have this kind of authority over ITT Industries or ITT Hartford. See 11 CFR 110.3(a)(3)(ii)(B) and (C).⁶ In connection with this, there are contractual agreements among the three companies governing the relationships after the distribution. Although the Commission does not have materials to fully determine the effect of these agreements, they appear, from the description in the Proxy Statement, to be aimed at sorting out liabilities and obligations that exist as an outgrowth of their previous relationship, and do not appear to be aimed at continuing one company's control over another. See Advisory Opinions 1994-9 and 1993-23.

It appears that the factors related to the PACs themselves are not present. Prior to the breakup, there were transfers of funds to prepare for the post-distribution separation of operations. Since the breakup, it appears that there have been no transfers or contributions between the PACs, and there is no indication that one PAC will solicit contributions to be made to another PAC. See 11 CFR 110.3(a)(3)(ii)(G) and (H).

On the other hand, there is some continuity between the Board of Old ITT, which was reincorporated as ITT Industries, and the Boards of New ITT and ITT Hartford. It is expected that companies that are spun off from another company would include, on their Boards, some persons who were members of the older company's Board. Standing by itself, such a succession may not be particularly significant. However, when this is coupled with the fact that these Boards retain old Board members who have stayed on as overlapping members, i.e., members who will not be associated just with the company of one business sector, then an ongoing relationship between the companies may be indicated. See 11 CFR 110.3(a)(3)(ii)(E) and (F).

With respect to the active or significant role of one sponsoring entity in the creation of another, Old ITT still survives in reincorporated form as ITT Industries, and thus ITT Industries was responsible for the formation of the other two companies as publicly-held entities. See 11 CFR 110.3(a)(3)(ii)(I). However, it also may be posited that these three entities were newly constituted out of the events related to the distribution and that none of the entities formed each other. In addition, all three entities existed in some form prior to the distribution.

The Commission considers the three previous factors, those relating to overlaps and continuity, to be significant in reaching its conclusion. See Advisory Opinions 1995-36, 1994-9, 1987-21, and 1986-42. There is, however, a significant countervailing consideration directly related to these factors. Each company has held a shareholder election of the Boards in May 1996. See Advisory Opinion 1995-36. Thus, not only were the Boards of New ITT and ITT Hartford (originally chosen by Old ITT) now selected by the companies' new shareholders, but the Boards of the three companies were reelected at a time when there had been substantial divergence from the original common ownership of the companies. See Advisory Opinion 1993-23. In addition, as indicated above, the ITT Hartford Board and the ITT Industries Board were each enlarged by one non-overlapping member since the distribution.

Accompanying these events is the fact that the overlap that presently exists is substantially outweighed by the presence of non-overlapping members. The eight-person ITT Industries Board has five members who are not on the New ITT Board and six who are not on the ITT Hartford Board. On the 11-person New ITT Board, there are eight who do not overlap with ITT Industries and seven who do not overlap with ITT Hartford. On the 11-person Hartford Board, nine do not overlap with ITT Industries.

In view of the events and circumstances surrounding the composition of the Boards and the absence of other factors, discussed above, which pertain to the ownership and management of the companies and to involvement in PAC activities, the Commission concludes that the three companies are no longer affiliates of each other. The PACs of the three companies are therefore not affiliated.

This response constitutes an advisory opinion concerning the 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)

Lee Ann Elliott
Chairman

Enclosures (AOs 1995-36, 1994-9, 1993-23, 1989-17, 1987-21, and 1986-42)

1 You note that, although New ITT owns no percentage of either of the other companies, its employees who participate in the New ITT 401(k) plan have funds invested in the other companies' common stock.

2 You did not present June figures for ITT Hartford.

3 In attachments to your request, you list the Boards of Old ITT and the pre-distribution Board of ITT Hartford. You do not, however, list the Board members of ITT Destinations, Inc. which was the name of New ITT before the distribution. It appears from your submission that you consider the Old ITT Board to be the predecessor of the New ITT Board.

4 You note that two members of the New ITT Board who were not members of the Old ITT Board were (and currently are) members of the Board of ITT Educational Services, now a subsidiary of New ITT. The Proxy Statement indicates that all six of the present Board members of ITT Industries or New ITT that you list as serving on the Old Hartford Board (the four present overlaps plus two others no longer on the Hartford Board) were placed there after August 1995.

5 Specifically, the regulations state:

The Commission will examine these factors in the context of the overall relationship between committees or sponsoring organizations to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained or controlled by another committee or sponsoring organization.

11 CFR 110.3(a)(3)(ii).

6 The Commission assumes that these representations as to New ITT's relationship with ITT Industries and ITT Hartford would also apply to the relationship of each company with each of the other two.