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FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 7, 1997

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AGENDA ITEM
For Meeting of: 8-14-97

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield *NBL/SJP*
Associate General Counsel

Jonathan M. Levin *JL*
Senior Attorney

Subject: Draft AO 1997-13

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for August 14, 1997.

Attachment

DRAFT

1 ADVISORY OPINION 1997-13

2
3 Timothy W. Jenkins
4 O'Connor & Hannan
5 1919 Pennsylvania Avenue, N.W.
6 Suite 800
7 Washington, D.C. 20006-3483

8
9 Dear Mr. Jenkins:

10
11 This responds to your letter dated July 8, 1997, on behalf of the United Space
12 Alliance Political Action Committee ("USA PAC"), requesting an advisory opinion
13 concerning the application of the Federal Election Campaign Act of 1971, as amended
14 ("the Act"), and Commission regulations to the relationship between USA PAC and other
15 political committees.

16 Your request presents the situation of the establishment of a political committee,
17 USA PAC, by a joint venture limited liability company ("LLC") equally owned by two
18 corporations that are connected organizations of separate segregated funds (SSFs). You
19 ask whether USA PAC would be affiliated with those committees and the effects of any
20 affiliated relationship.

21 *I. Background*

22 United Space Alliance, LLC ("USA") is a Delaware LLC established on
23 November 7, 1995. It was created by a joint venture entered into by Rockwell Space
24 Alliance Company, a wholly-owned subsidiary of Rockwell International Corporation
25 and Lockheed Martin Space Alliance Company, a wholly-owned subsidiary of Lockheed
26 Martin Corporation ("LMC"). On December 6, 1996, The Boeing Company ("Boeing")
27 acquired some of the interests in Rockwell, including all of Rockwell's interest in USA.¹

28 LMC is the connected organization of the Lockheed Martin Employees Political
29 Action Committee ("LMEPAC") and Boeing is the connected organization of The
30 Boeing Company Political Action Committee ("BPAC"). Both SSFs are multicandidate

¹ USA was established to maximize the ability of its corporate owners to respond to NASA's determination to consolidate contracts relating to the NASA Space Flight Operations Program. Under the joint venture agreement, USA is authorized to complete the execution of NASA contracts to which LMC and Boeing are parties, and to perform other contracts for the Space Flight Operations Program.

1 committees. USA PAC's statement of organization, filed on May 1, 1997, denoted that
2 the committee was a non-connected committee affiliated with LMEPAC and BPAC. On
3 May 19, USA PAC amended its statement of organization to indicate that it is an SSF
4 affiliated with LMEPAC and BPAC and that LMC and Boeing are its connected
5 organizations. USA PAC intends to raise funds by soliciting executive and
6 administrative personnel of USA. Employees of LMC and Boeing will not be solicited.

7 You ask five questions pertaining to the relationship between USA and USA
8 PAC, on one hand, and the two corporations and their respective SSFs, on the other.
9 They are re-ordered as follows:

10 (1) Is USA PAC affiliated with LMEPAC and BPAC?

11
12 (2) Are LMC and Boeing both connected organizations of USA PAC?

13
14 (3) May Boeing, LMC, and/or USA pay establishment, administration, and
15 solicitations costs for USA PAC?

16
17 (4) Assuming LMC and Boeing are connected organizations to USA PAC, must
18 the full name of both organizations appear in the name of USA PAC?

19
20 (5) Assuming affiliation with LMEPAC and BPAC, how will contributions by
21 USA PAC be tallied for purposes of the Act's limitations?

22
23 *II. Legal Analysis*

24 *A. Response to Question 1*

25 The Act and Commission regulations provide that committees, including separate
26 segregated funds, that are established, financed, maintained or controlled by the same
27 corporation, person, or group of persons, including any parent, subsidiary, branch,
28 division, department, or local unit thereof, are affiliated. 2 U.S.C. §441a(a)(5); 11 CFR
29 100.5(g)(2). Contributions made to or by such committees shall be considered to have
30 been made to or by a single committee. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2),
31 110.3(a)(1), and 110.3(a)(1)(ii). In addition, a corporation may make communications to
32 and solicit the restricted class (i.e., executive and administrative personnel and
33 stockholders, and the families thereof) of its subsidiaries or other affiliates for
34 contributions to the corporation's separate segregated fund. 2 U.S.C. §441b(b)(2)(A) and

1 (4)(A)(i); 11 CFR 114.3(a)(1) and 114.5(g)(1). The Commission has long held that
2 affiliates may include entities other than corporations, such as partnerships. Advisory
3 Opinions 1996-49, 1994-11, 1992-17, 1989-8, 1987-34, and 1983-48. See also Advisory
4 Opinion 1996-38.

5 Where an entity is not an acknowledged subsidiary of another entity, as in 11 CFR
6 110.3(a)(2)(i),² Commission regulations provide for an examination of various factors in
7 the context of an overall relationship to determine whether one company is an affiliate of
8 another and, hence, whether their respective SSFs are affiliated with each other. 11 CFR
9 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J).³ The relevant factors in
10 the situation you have presented are as follows: (A) whether a sponsoring organization
11 owns a controlling interest in the voting stock or securities of another sponsoring
12 organization; (B) whether a sponsoring organization has the authority or ability to direct
13 or participate in the governance of another sponsoring organization through provisions of
14 constitutions, by-laws, contracts or other rules, or through formal or informal practices or
15 procedures; (C) whether a sponsoring organization has the authority or ability to hire,
16 appoint, demote or otherwise control the officers, or other decisionmaking employees of
17 another sponsoring organization; and (I) whether a sponsoring organization had an active
18 or significant role in the formation of another sponsoring organization. 11 CFR
19 110.3(a)(3)(ii)(A), (B), (C), and (I).

20 You state that, based on the presence of factors set out in the Commission
21 regulations, USA PAC "concedes affiliation." You note that the initial operating budget
22 of USA derives from capital contributions made equally from LMC and Boeing. Thus,
23 each of the corporations (whose wholly-owned subsidiaries are the LLC's members)
24 owns a 50 percent interest in USA. The approval of LMC and Boeing is required for
25 significant policy determinations of USA, including entering into contracts valued in

² According to Commission regulations, committees established by a single corporation and its subsidiaries are affiliated *per se*. 11 CFR 110.3(a)(2)(i).

³ Specifically, the regulations, at 11 CFR 110.3(a)(3)(ii), state in part:

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.

1 excess of \$250 million, approving single transactions in excess of \$10 million, and
2 settling litigation claims in excess of \$10 million. The chief executive officer, chief
3 operating officer, chief financial officer, and comptroller are selected by LMC and
4 Boeing officials. These officers are vested with responsibility for managing and
5 supervising day-to-day operations of the company, including most hiring decisions and
6 approving contracts and business transactions below the above-referenced dollar
7 thresholds. The operations of USA are overseen by a seven-member advisory board
8 composed of two individuals appointed by Boeing, two individuals appointed by LMC,
9 and three individuals appointed jointly by LMC and Boeing (but who shall not be
10 employees of either company).

11 Although neither LMC nor Boeing has the predominant position in owning or
12 controlling the company, the above information indicates that the assent of each of the
13 two companies is necessary for certain major hiring and governance decisions of USA.⁴
14 The Commission concludes therefore that USA is an affiliate of each of those companies.
15 This is consistent with prior advisory opinions involving the relationship of a joint
16 venture entity owned 50-50 by two corporations where the Commission concluded that
17 the parent corporations' PACs were affiliated with the joint venture entity's PAC, but not
18 with each other. Advisory Opinions 1992-17 and 1979-56.

19 Although the Act does not specifically provide for the establishment of SSFs by
20 non-corporate entities other than labor organizations, the Commission has concluded that
21 a PAC established and sponsored by a partnership is affiliated with the SSF of an
22 affiliated corporation. Advisory Opinions 1996-49, 1994-9, and 1992-17. The
23 Commission does not see any material distinction in the situation presented here where a
24 PAC is established and sponsored by an LLC, and concludes, therefore, that USA PAC is
25 affiliated with LMEPAC and BPAC. See Advisory Opinion 1996-13, n.7.

26 *B. Response to Questions 2 and 3*

27 Under 2 U.S.C. §441b(b)(2)(C), a corporation may use its general treasury funds
28 to pay for the costs of establishing, administering, or soliciting contributions to its SSF,

⁴ The Commission also notes, with respect to factor (I), that LMC was one of the creators of USA.

1 without a resultant contribution or expenditure. See also 2 U.S.C. §§431(8)(B)(vi) and
2 (9)(B)(v). A corporation that directly or indirectly establishes, administers, or financially
3 supports a political committee is the connected organization of that committee. 2 U.S.C.
4 §431(7) and 11 CFR 100.6(a). In applying this law in the context of affiliation, the
5 Commission has permitted a corporation that is affiliated with another corporation to pay
6 the administration and solicitation costs of the latter corporation's SSF. Advisory
7 Opinions 1996-26 and 1983-19. Similarly, it has permitted incorporated entities to pay
8 such costs for the political committees of its affiliated entities that are not incorporated.
9 Advisory Opinions 1996-49, 1996-38 and 1992-17. Therefore, Boeing and LMC may
10 pay for the establishment, administration, and solicitation costs for USA PAC.

11 With respect to the ability of USA itself to establish an SSF, the Commission
12 notes that the Act does not extend to a partnership the ability granted to a corporation at 2
13 U.S.C. §441b(b)(2)(C) to conduct itself as a connected organization and avail itself of the
14 exemptions. Advisory Opinions 1991-1 and 1990-20. See also *California Medical*
15 *Association v. Federal Election Commission*, 453 U.S. 182 (1981). Nevertheless, the
16 Commission has treated joint venture partnerships differently as a result of the
17 partnership's ownership by, and affiliation with, corporations. Advisory Opinions 1996-
18 49, 1994-11, 1994-9, 1992-17, and 1987-34, n.2. If a partnership is owned entirely by
19 corporations and affiliated with at least one of them, it may perform the functions of a
20 connected organization for its PAC. Advisory Opinions 1996-49, 1994-11, 1994-9, and
21 1992-17.

22 The conclusion does not differ because of the fact that USA is an LLC. In
23 Advisory Opinion 1992-17, the Commission noted that its conclusion was compatible
24 with the dual attribution principle for partnership contributions at 11 CFR 110.1(e).
25 Contributions by partnerships are not only attributed to the partnership as a whole but are
26 also attributed to the partners. The Commission stated that the administrative and
27 solicitation support may be construed as coming from the affiliated corporations.
28 Advisory Opinion 1992-17. In past advisory opinions, the Commission has not applied
29 this same dual attribution principle to LLCs. Advisory Opinions 1997-4, 1996-13, and
30 1995-11. Nevertheless, in concluding in those opinions that the LLC could make

1 contributions, the Commission stated that it was assuming that none of the LLC's
2 members were corporations (because no support may come from a corporation outside
3 exceptions such as 2 U.S.C. §441b(b)(2)(C)). This is similar to the analysis made with
4 respect to partnerships as to ownership and control resting with the corporations. In this
5 situation, USA, as a joint venture of two corporations, is in a similar posture to that of a
6 joint venture partnership of two corporations. USA is entirely owned by corporations,
7 whose control over USA is essentially the same as corporate joint venture partners, and
8 USA is affiliated with at least one of the corporations. Therefore, USA may pay the
9 establishment, administration, and solicitation costs of USA PAC without a resulting
10 contribution from USA.

11 Even though the Commission has concluded that an LLC can perform the
12 functions of a connected organization under the above-described circumstances,
13 Commission regulations defining "connected organization" do not include LLCs. 11
14 CFR 100.6(a). LMC and Boeing would be the connected organizations of USA PAC and
15 would pay for the exempt costs either by themselves or through USA. In other words, if
16 such support is provided by USA itself, the support is still deemed to be from LMC and
17 Boeing by virtue of their relationship to USA. Advisory Opinions 1996-49, 1994-11 and
18 1992-17.⁵

19 *C. Response to Question 4*

20 According to 2 U.S.C. §432(e)(5) and 11 CFR 102.14(c), the name of an SSF
21 shall include the full name of its connected organization. This full name must appear on
22 the SSF's statement of organization, on all reports filed by the SSF, and in all notices
23 required by 11 CFR 109.3 and 110.11 (i.e., non-authorization notices for independent
24 expenditures and disclaimer notices). 11 CFR 102.14(c). The regulation further
25 provides, however, that an SSF established by a corporation that has subsidiaries need not
26 include the name of each subsidiary in its name and that an SSF established by a
27 subsidiary need not include the name of its parent or another subsidiary of the parent. *Id.*

⁵ USA's amended statement of organization, as described above, is therefore correct in its characterization of USA PAC as an SSF and its indication that LMC and Boeing are connected organizations. See 2 U.S.C. §433(b)(2); 11 CFR 102.2(b)(2).

1 Although USA is not technically a subsidiary of LME or Boeing, it is owned 50
2 percent by each company and the assent of each company is necessary for certain major
3 decisions of USA. USA is therefore in virtually the same position as a subsidiary of each
4 of the two companies. Moreover, disclosure of the names of all the connected
5 organizations is required on USA's statement of organization, and the information is thus
6 available to the public. 2 U.S.C. §433(b)(2); 11-CFR 102.2(a)(1)(ii). The Commission
7 concludes therefore that USA PAC need not include the names of LME or Boeing in its
8 name. To the extent that Advisory Opinion 1996-49 requires the inclusion, in the name
9 of a joint venture partnership PAC's name, of the full name of an incorporated joint
10 venture partner in a similar position to that of LME or Boeing, that opinion is hereby
11 superseded.

12 *D. Response to Question 5*

13 Because USA PAC is affiliated with LMEPAC and BPAC, both of which are
14 multicandidate committees, USA PAC qualifies as a multicandidate committee. See
15 Advisory Opinions 1995-12, n.12, 1993-23, and 1991-13. Multicandidate committees are
16 subject to the limits of 2 U.S.C. §441a(a)(2), i.e., \$5,000 to a candidate per election,
17 \$15,000 to a national party committee in any calendar year, and \$5,000 to any other
18 political committee in a calendar year. 2 U.S.C. §441a(a)(2)(A), (B), and (C). However,
19 as indicated above, contributions by affiliated political committees are treated as
20 contributions by one committee and cannot exceed the limits when aggregated with each
21 other. 2 U.S.C. §441a(a)(5); 110.3(a)(1).

22 In advisory opinions addressing contributions by PACs of joint ventures owned
23 and controlled on a 50-50 basis, the limit of the joint venture PAC was apportioned half
24 to the limit shared with one corporation's SSF and half to the limit shared with another
25 corporation's SSF. Advisory Opinions 1992-17 and 1987-34. This was based on an
26 analogy to the dual attribution concept of 11 CFR 110.1(e) discussed above which
27 includes the apportionment of each contribution on a *pro rata* basis to the partners. See
28 11 CFR 110.1(e)(1). Although, as indicated above, LLCs are not subject to the same dual
29 attribution treatment as partnerships, USA is still similarly situated to the partnerships in

1 those opinions with respect to corporate ownership and control.⁶ Therefore, contributions
2 by USA PAC should be apportioned half to the limit of LMEPAC and half to the limit of
3 BPAC.⁷ Such apportioned contributions are only permitted to the extent the aggregate
4 §441a(a) limits shared with LMEPAC and BPAC are not exceeded by virtue of USA
5 PAC's contributions.

6 This modification of the usual manner for aggregating contributions by affiliated
7 committees means that, as among all three committees, there will be two sets of
8 contribution limits available. Thus, the aggregate contributions to the same candidate
9 may not exceed \$10,000 per election from all three committees, and may not exceed
10 \$5,000 from any one of the committees. Advisory Opinion 1987-34, n.3. The
11 contributions made by LMEPAC or Boeing will not be aggregated with those of USA
12 PAC for the purposes of USA PAC's \$5,000 limit, but USA PAC's contributions will be
13 aggregated with each of the corporate PAC's contributions on a half and half basis for the
14 purposes of the corporate PACs' \$5,000 limits; thus, USA PAC's contributions may be
15 held under \$5,000 because of a need to avoid the exceeding of the limits by the corporate
16 PACs.

17 For example, if USA PAC made a \$2,000 contribution to Federal candidate X,
18 \$1,000 would count toward the limit shared with LMEPAC and \$1,000 would count
19 toward the limit shared with BPAC. If LMEPAC subsequently made a \$3,000
20 contribution to Federal candidate X for the same election, USA PAC could only
21 contribute an additional \$2,000 to X for that election, because \$1,000 of that would be
22 attributed to LMEPAC, bringing the latter up to its \$5,000 limit. Assuming BPAC had
23 not made any contributions to X at that point, BPAC could only contribute \$3,000
24 because \$2,000 of USA PAC's contributions have already been attributed to BPAC.⁸

⁶ The Commission also gave similar treatment to a labor union that was a local unit of two international unions. Advisory Opinion 1991-13.

⁷ In referring to the contributions made by each of the corporate PACs, the amount considered also includes the amounts contributed by other PACs affiliated with the corporate PAC.

⁸ The Commission notes that, under this scenario, a combined total of \$10,000 has been contributed (\$4,000 from USA PAC and \$3,000 each from LMEPAC and BPAC) with no PAC exceeding the \$5,000 limit.

