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counsel's July 28 request, and renewed
per his fax received October 3, 2000.

July 13, 2000

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

8 10 30 AM '00

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

AOR 2000-30

Re: *pac.com -- Request for Advisory Opinion**

Dear Sir or Madam:

We represent pac.com, FEC Identification Number C00358978. pac.com requests an Advisory Opinion from the Federal Election Commission (the "FEC") pursuant to §437f of the Federal Election Campaign Act of 1971, as amended (the "FECA"). pac.com seeks advice in order to answer a question or questions relating to the application of the FECA to a specific factual situation involving pac.com and activities that pac.com intends to undertake in the future. pac.com seeks advice concerning the method of determining the value of in-kind contributions pac.com intends to solicit and it anticipates receiving, as discussed below.

I. Factual Background.

pac.com is a nonconnected committee. pac.com anticipates soliciting and receiving contributions from individuals who are otherwise lawfully permitted to make contributions in the form of stock owned by those individuals. The stock will be stock of domestic corporations formed under the laws of various states in the United States and that operate for profit in the United States.

pac.com will maintain a securities account to hold all such stock received from individual contributions through a brokerage service that offers such accounts generally to the public. pac.com will pay the brokerage service its ordinary fee for such accounts. All contributions of stock received by pac.com will be deposited in that securities account within 10 days of receipt by the treasurer. pac.com will then sell the stock at times that it deems appropriate in its discretion. When shares of stock are sold, the proceeds of the sale will be transferred to a checking account maintained by pac.com at one of its depositories for purposes of making disbursements.

It is anticipated that some of the stock that will be received by pac.com will be stock that is publicly traded on markets such as the New York Stock Exchange ("NYSE"), the American Stock Exchange ("AMEX"), or NASDAQ. It is also anticipated that some of the stock received by pac.com will be stock that is not traded on the NYSE, the AMEX, NASDAQ, or any other public exchange at the time the in-kind contribution is made.

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II. Legal Background.

The FEC has recognized that it is proper for a committee to accept contributions of stock. For example, 11 C.F.R. §100.7(a)(1)(iii)(A), which defines "contribution," specifically includes "securities" in the list of examples of goods and services that would constitute a contribution if given. Moreover, 11 C.F.R. §104.13 provides instructions concerning how the contributions of stocks, bonds, art objects, and other similar items to be liquidated are to be reported. In Advisory Opinion 1989-6, the FEC wrote that the "donation of stock owned by an individual" in a company "is not prohibited by 2 U.S.C. §441b(a)." The same Advisory Opinion states that the contribution limitations of the FECA apply to the donation of stock since they are a thing of value and specifically included in the contribution definition. AO 1989-6.

For reporting purposes, 11 C.F.R. §104.13 states that, if the item has not been liquidated at the close of the reporting period, the committee shall record as a memo entry, not as cash, the item's fair market value on the date received, including the name and mailing address of the contributor, and, if the contribution is in excess of \$200, the contributor's occupation and name of his or her employer. The regulation also provides that, when the item is sold, and the item is purchased directly from the committee, the purchaser will be treated as having made a contribution, and the name and mailing address (as well as the occupation and name of employer if over \$200) of the purchaser must also be disclosed, as well as the identification of the original contributor. *Id.* If the committee sells the stock through an established market mechanism whereby it does not know the identity of the purchaser, then the purchaser will not be deemed to be a contributor and the purchaser's identity need not be disclosed. AO 1989-6. The purchase price is to be included in the "other receipts" portion of the report. *Id.*

In terms of the valuation of the stock, the regulations generally provide that the amount of an in-kind contribution shall be equal to the usual and normal value *on the date received*. 11 C.F.R. §104.13(a)(1) (italics added). With respect to the value of stock received, the regulation states that the stock's fair market value on the date received is to be reported. 11 C.F.R. §104.13(b)(1).

III. Question Presented.

May pac.com determine the fair market value of the stock that it will solicit and anticipates receiving for contribution limitation and reporting purposes using the methods described below?

IV. Discussion.

As discussed above, the FEC generally has stated that the amount of an in-kind contribution shall be equal to the usual and normal value on the date received. 11 C.F.R. §104.13(a)(1). As also discussed above, the FEC generally has written that the stock's fair market

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value on the date it was received is to be reported. 11 C.F.R. §104.13(b)(1). We are not aware of the FEC stating, however, how the fair market value of stock received as a contribution is to be determined. Thus, pac.com seeks confirmation from the FEC that the actions described below would be appropriate in connection with pac.com's proposed determination of fair market value.

With respect to publicly traded stock, in order to make the determination of the fair market value of the stock, pac.com will determine the amount of the contribution based upon the published value of the stock at the close of trading on the day of receipt. In other words, pac.com will consult publicly available publications or online listings for the NYSE, the AMEX, or NASDAQ showing the value of the stock on the public market at the close of the trading day for the particular stock.

With respect to stock that pac.com will receive that is not traded on the NYSE, the AMEX, NASDAQ, or on any other public exchange at the time the in-kind contribution is made, pac.com intends to determine the fair market value of the stock and thus the amount of the contribution by using the price per share of such stock for which its purchase was offered to investors at the most recent round of financing, subject to appropriate discounts, premiums or other adjustments regularly recognized in determining the value of non-public securities. These adjustments would include, among others, premiums or discounts with respect to voting rights, liquidation or dividend preferences and controlling interests. pac.com believes this is the most accurate and practical way of determining the fair market value of stock that is not yet publicly traded and thus pac.com intends to use this method.

pac.com is at the point where it believes that such in-kind contributions of stock will be received. pac.com does not want to accept the contribution of any such stock until it receives an advisory opinion from the FEC stating that the above methods of valuation of the stock for purposes of determining the amount of the contribution are appropriate under applicable law. pac.com thereby seeks this advisory opinion from the FEC stating that pac.com may value the receipt of the stock from individuals in the above fashion.

We look forward to receiving your advice. Thank you for your cooperation.

Very truly yours,



Ronald B. Turovsky
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