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February 14, 2006

Hon. Michael E. Toner
Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463

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Dear Chairman Toner:

We are writing on behalf of the International Association of Machinists and Aerospace Workers ("IAM") and its affiliate, the Transportation Communications International Union/IAM ("TCU/IAM"), to request an advisory opinion concerning the application of the Federal Election Campaign Act ("the Act") to their affiliation.

On July 6, 2005, IAM and the Transportation Communications International Union ("TCU"), the predecessor of TCU/IAM, entered into an affiliation agreement, along with two side letters pertaining to that agreement, copies of which are attached to this request. This affiliation is comprised of two stages: a "transition period" until, at the latest, January 1, 2012, and a completed "full merger." IAM, TCU and TCU/IAM are "labor organizations" within the meaning of 2 U.S.C. § 441b(b)(1). IAM and TCU (now, TCU/IAM) respectively have sponsored two separate segregated funds that are political committees within the meaning of 2 U.S.C. § 431(4)(B), namely, the Machinists Non-Partisan Political League ("MNPL") and the Responsible Citizens Political League, a Project of the Transportation Communications International Union ("RCPL").

As explained below, IAM and TCU/IAM believe that they and their respective political committees are affiliated within the meaning of 2 U.S.C. § 441a(a)(5) during the current transition period,¹ and they seek the Commission's confirmation of that legal relationship for all resulting purposes, including aggregation of contributions received and made; payment of committee administration and solicitation costs; solicitations of contributions and other restricted class communications; and transfers between the committees. TCU/IAM intends to amend the Statement of Organization of RCPL to reflect the name change of its connected organization from "TCU" to "TCU/IAM". If the

¹ IAM and TCU/IAM do not seek an advisory opinion regarding affiliation status during the subsequent full-merger period.

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reflect the name change of its connected organization from "TCU" to "TCU/IAM". If the Commission advises that MNPL and RCPL are affiliated, then their respective Statements of Organization will be amended both to list the other as an affiliated committee and to list both IAM and TCU/IAM as connected organizations. And, IAM and TCU/IAM will conduct the affairs of their respective committees in accordance with their affiliated status under the Act.

FACTUAL STATEMENT

I. The Labor Organizations and Political Committees Involved

IAM is an international labor organization headquartered in Upper Marlboro, Maryland. IAM is a highly diverse union whose 400,000 active members work throughout the United States in many industries, with especially significant concentrations in five sectors: transportation (performing mechanical, passenger service and other services in the airline and railroad industries), aerospace (building and servicing airplanes, aircraft engines, missiles, rockets, satellites, space vehicles and electronic gear), government (pursuing various occupations in federal, state and local government), forest products (engaging in various forms of production work) and automotive (serving as automotive technicians and mechanics). Over the years IAM has merged with numerous national unions operating in various industries. IAM is affiliated with the AFL-CIO.

IAM is organized in an integrated hierarchical structure. Between quadrennial conventions, IAM is governed by an Executive Council comprised of nine international officers. Its various affiliates are administratively assigned to four geographic territories (Eastern, Midwest, Southern and Western), plus a Transportation "territory" that reflects the size and national focus of that occupational sector. IAM includes 62 intermediate district lodges that are comprised of representatives elected by local lodges (the IAM term for a local union) and cover particular railroad and airline systems, other industries and localities. IAM also includes more than 1,200 local lodges that are organized on a locality basis and whose officers are elected by the members they serve.

IAM provides substantial services to, and conducts major programs on behalf of, its affiliates and members in a variety of areas, including collective bargaining, public communications, legislation, political action, organizing, safety and health, legal, women's issues and international labor rights.

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IAM established MNPL in 1947, and it has been registered with the Commission for many years. Pursuant to the Act, IAM and MNPL solicit contributions to MNPL from IAM members and their household family members. IAM solicits these contributions through various means, including by payroll deduction authorization forms, at IAM meetings and in IAM's national member magazine, the *IAM Journal*.

Until its recent affiliation with IAM, TCU was an international labor organization also affiliated with the AFL-CIO, and headquartered in Rockville, Maryland. At the time of its affiliation with IAM, TCU had approximately 46,000 members actively employed primarily in the railroad industry. Over the years TCU had merged with seven other national unions operating primarily or exclusively in this industry.

Between quadrennial conventions, TCU's highest governing body was its nine-member Executive Council. TCU had 13 intermediate boards and 254 districts and lodges (TCU's terms for a local union) throughout the United States. TCU provided numerous services to its affiliates and their members, including in the areas of bargaining and industry research, education, leadership training, employee benefits coordination, manpower training, organizing, legislation, political action, legal and international affairs.

TCU established RCPL in 1972, and it has been registered with the Commission for many years. Pursuant to the Act, TCU and RCPL solicited contributions for RCPL from TCU members. TCU solicited these contributions by various means, including by payroll deduction authorization forms, at TCU meetings and in the TCU national member magazine, *Interchange*.

II. The IAM-TCU Affiliation Agreement

The Affiliation Agreement ("the Agreement") commits IAM and TCU to a "full affiliation" and "full merger." Agreement, p. 1. This formal combination is predicated on their "common set of goals," including organizing the unorganized, guaranteeing fair wages and working conditions, and promoting workers' political and legislative influence. *Id.* The Agreement contemplates a "transition period" commencing on July 6, 2005, the "Affiliation Date," and concluding with a "full merger" either on January 1, 2012, the "Merger Date," or earlier if TCU/IAM "finds it advantageous" to accelerate the process and does so "after consultation with" the IAM International President. *Id.*, Sec. 10. The Agreement does not permit either union unilaterally to terminate or change it; accordingly, absent a mutually agreed disaffiliation, completion of the "full merger" is a certainty.

During the current "transition period," the IAM-TCU/IAM relationship includes the following principal arrangements.

First, IAM has chartered TCU as "TCU/IAM," a "new affiliate" of IAM, and IAM will create a "Rail Division" composed of TCU/IAM and IAM District 19. *Id.*, Sec. 5. IAM District 19 is a pre-existing subordinate intermediate body of IAM that engages in collective bargaining in the railroad industry and includes over 100 IAM local lodges. The Rail Division will operate as part of IAM's Transportation Territory.

Second, IAM and TCU have embarked on a process of integrating their governance. The TCU/IAM President is an "advisor" to the IAM President and a "non-voting, unpaid member of the IAM Executive Council." *Id.*, Sec. 9. Subject to the Agreement, TCU/IAM continues to abide by the TCU Constitution, which will become the TCU/IAM Bylaws after full merger, and govern the structure and positions, conventions, elections, and operation of TCU/IAM subordinate bodies. *Id.*, Secs. 6, 11 and 14. Following full merger, TCU/IAM and its subordinate bodies will elect delegates to IAM conventions in accordance with the IAM Constitution's voting strength formula. *Id.*, Sec. 13.

Third, IAM and TCU/IAM have begun to integrate their operations in order to take advantage of the economies of scale available in a unified organization. TCU/IAM has access to IAM's education facility, contract database and research, publications and video studios, and IAM and TCU/IAM engage in joint legislative efforts. *Id.*, Sec. 4.² IAM notifies TCU/IAM of IAM job openings and gives preferential treatment to applicants who are TCU/IAM employees. And, IAM is providing a subsidy to TCU for its assistant legislative director's salary. Side Letter No. 1.³ Meanwhile, a jointly appointed "integration team" is working toward "the full integration of resources" of IAM and TCU/IAM, including TCU/IAM "access to IAM budget and planning tools; full review of accounting methods [,] ... reporting requirements ... [and] future staffing arrangements," and "opportunities for joint bargaining, organizing, communications,

² Upon the full merger, all TCU/IAM members also "will be entitled to all rights and privileges of IAM membership" (and given credit for the length of their TCU and TCU/IAM membership) with access to IAM training and education, national pension and benefit trusts, strike benefits and other IAM resources. *Id.*, Sec. 2.

³ Upon the full merger, IAM also will pay one-half of one business agent per 2,000 TCU/IAM members "plus one," IAM will pay the full cost of one staff person per 5,000 TCU/IAM members (calculated at an IAM Grand Lodge Representative equivalent). *Id.*, Sec. 7.

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research and legislative activities.” Agreement, Sec. 4. Likewise, a jointly established “transition team” “is seek[ing] the consolidation of the various operating departments of TCU/IAM and the IAM.” Side Letter No. 1.

Fourth, IAM and TCU/IAM have undertaken a combined communications program. The TCU membership magazine has been “consolidated” with the IAM membership magazine, and the latter has begun to be sent to all TCU/IAM members as well as all IAM members. At least two pages of each issue are now devoted to TCU/IAM news. IAM provides a monthly subsidy equal to half the salary of TCU/IAM’s executive director of publications to work with the IAM communications department on a “strategic communications plan,” and has hired the secretary from TCU/IAM’s Publications Department. See *id.*

Fifth, IAM and TCU/IAM have merged the TCU Staff Retirement Plan with the IAM Grand Lodge Pension Plan, with the IAM plan holding the assets of both plans as the surviving successor plan, and various conversions being made for purposes of calculating plan participants’ service credits and benefits. The respective plans’ participants are the officers and employees of IAM and TCU/IAM. See Agreement, Sec. 3.

Sixth, effective August 1, 2005, TCU/IAM began paying IAM a full monthly per capita tax of \$7.00/member.⁴ TCU/IAM paid IAM per capita tax of \$1,489,338 for the months of August to December 2005. (The portion pertaining to the last calendar quarter will be subject to a final reconciliation reflecting TCU/IAM’s actual membership for that quarter.) TCU/IAM’s monthly per capita tax increases each year by the rate of increase in per capita taxes paid by IAM local lodges to IAM. *Id.*, Sec. 10. On January 1, 2006, the TCU/IAM full monthly per capita tax increased to \$7.60 per member. TCU/IAM estimates that it will pay IAM \$3.86 million in per capita taxes in 2006. Regular IAM local lodge per capita is \$20.86 per member, and, upon the full merger, TCU/IAM will pay per capita tax to IAM at the full regular local lodge rate. *Id.*, Sec. 10.

Finally, and significantly, this advisory opinion request is predicated in part on the intention of IAM and TCU/IAM to operate MNPL and RCPL in accordance with a proposed Side Letter No. 3 (draft attached) if the Commission responds to this request in the affirmative. Under that proposed arrangement, IAM and TCU/IAM may, but will not necessarily, merge MNPL and RCPL into a single committee. Absent merging, the two

⁴ Certain TCU members employed outside the rail industry historically have paid a dues rate less than rail industry dues, and for these members TCU pays less than its full per capita tax to IAM.

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committees will be closely coordinated: IAM will administer RCPL using IAM funds and staff; IAM and TCU/IAM will consult in advance of either committee making any contribution or independent expenditure in order to ensure that all such spending furthers the interests of both IAM and TCU/IAM; the two committees will not contribute to or undertake independent expenditures on behalf of opposing candidates; and contributions by and to the committees will be monitored so they comply with the limits they share under the Act.

Moreover, under this proposed side letter, and in deference to historical membership loyalties and self-identifications, IAM and MNPL intend to solicit only IAM members for contributions, and TCU/IAM and RCPL intend to solicit only TCU/IAM members. These respective solicitations will occur by various means, including by payroll deduction authorizations and at local lodge meetings. Solicitations may also be made in the unified magazine, the *IAM Journal*, that is sent to all IAM and TCU/IAM members, and, if so, they necessarily will be received by all IAM and TCU/IAM members. Other such "cross"-solicitations may occur as well upon prior consultation between the IAM International President and the TCU/IAM President. IAM and TCU/IAM also anticipate undertaking partisan political communications regarding federal candidates, including some in the *IAM Journal* that -- while principally directed at the respective historical restricted class of each -- will also be received by that of the other, and the procedures for such communications would be the same as for solicitations of contributions.

Meanwhile, other aspects of IAM and TCU/IAM governance and operations will remain relatively autonomous during and, in substantial part, after the transition period. With few exceptions, that autonomy is typical of traditional structures of national unions and their affiliates. Thus, TCU/IAM holds TCU's funds, assets, property, contracts and leases, and TCU/IAM continues as the U.S. Department of Labor's contracting party for TCU's Manpower Training Program and as the AFL-CIO's contracting party for the Union Privilege benefits program. Agreement, Secs. 5 and 12. TCU/IAM also holds TCU's jurisdiction over currently and later-represented crafts and classes, *id.*, Sec. 19, as well as TCU's bargaining rights and contract administration responsibilities, and TCU/IAM follows TCU's contract ratification procedures (until the full-merger period, when contract ratification also will be governed by the IAM Constitution). *Id.*, Sec. 20. TCU/IAM also directs policy concerning dues increases in TCU/IAM, the "per capita tax split among the TCU/IAM components" and internal appeals. *Id.*, Sec. 6.⁵

⁵ TCU/IAM cannot be dissolved or otherwise merged with any other IAM body or have its "authority, jurisdiction, functions or bylaws...altered or impeded without TCU/IAM consent," *id.*, Sec. 17,

QUESTIONS PRESENTED

IAM and TCU/IAM ask the Commission to respond to the following questions in the affirmative:

1. Are IAM, TCU/IAM, MNPL and RCPL affiliated within the meaning of the Act?
2. If the answer to the first question is yes, then (a) must contributions to and by MNPL and RCPL be aggregated for purposes of the Act's limits; (b) may IAM pay the administration and solicitation costs of RCPL; (c) may IAM and MNPL solicit contributions to MNPL from TCU/IAM members, executive and administrative personnel, and their families, and may TCU/IAM and RCPL solicit contributions to RCPL from IAM members, executive and administrative personnel, and their families; (d) may IAM pay for express advocacy communications to TCU/IAM members, executive and administrative personnel, and their families, and may TCU/IAM pay for express advocacy communications to IAM members, executive and administrative personnel, and their families; and (e) may MNPL and RCPL be merged into a single committee?

ANALYSIS

The Act requires aggregation, for contribution limit purposes, of all contributions to and by all political committees that are "established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person." 2 U.S.C. § 441a(a)(5). *See also* 11 C.F.R. §§ 100.5(g)(2)(ii), 110.3(a)(1)(ii). Likewise, "[i]n any case in which a corporation, and any of its subsidiaries, branches, divisions, departments, or local units, or a labor organization and any of its subsidiaries, branches, divisions, departments or local units establish or finance or maintain or control more than one separate segregated fund, all such separate segregated funds shall be treated as a single separate segregated fund for purposes of the

and former TCU subordinate bodies within TCU/IAM cannot be merged with "other IAM subordinate bodies" absent agreement between the TCU/IAM and IAM presidents. *Id.*, Sec. 18. Such arrangements are common when significant independent unions affiliate with larger national unions. Upon the full merger, with the exceptions of what the Agreement addresses and certain enumerated aspects of TCU/IAM governance and operations, all matters between IAM and TCU/IAM "will come into full compliance with the terms of the IAM Constitution, its policies and procedures." Secs. 6 and 11.

[contribution] limitations.” 2 U.S.C. § 441a(a)(5). *See also* 11 C.F.R. §§ 100.5(g)(3), 110.3(a)(2).

The Act and the Commission’s regulations permit labor organizations (and corporations, including membership organizations), to establish and pay the administration and solicitation costs of separate segregated funds, and to solicit contributions for those funds from, and communicate “on any subject” with, their members (or stockholders), executive and administrative personnel, and their families. See 2 U.S.C. §§ 441b(b)(2) and (4)(A); 11 C.F.R. §§ 114.3 and 114.5. And, “members of a local union are considered to be members of any national or international union of which the local union is a part,” 11 C.F.R. §§ 100.134(h) and 114.1(e)(4), and “[i]n the case of a membership organization” - - including a labor organization, see 11 C.F.R. §§ 100.134(e) and 114.1(e)(1) - - “that...has several levels, including, for example, national, state, regional and/or local affiliates, a person who qualifies as a member...of any affiliate...shall also qualify as a member of all affiliates for purposes of [11 C.F.R. §§ 100.134(d)-(i) and Part 114].” 11 C.F.R. §§ 100.134(i) and 114.1(e)(5).

IAM and TCU/IAM request confirmation that they and their committees, MNPL and RCPL, are affiliated under the multi-factor test for affiliation set forth in the Commission’s regulations.⁶ These factors include the following eight (using the regulatory lettering):

(B) whether one entity has the authority or ability to direct or participate in the governance of the other entity through provisions of constitutions, bylaws, contracts or other rules, or through formal or informal practices or procedures;

(C) whether one entity has the authority or ability to hire, appoint, demote or otherwise control the officers or other decision-making employees of the other entity;

(D) whether one entity has a common or overlapping membership with the other entity that indicates a formal or ongoing relationship between them;

⁶ The Commission’s regulations separately describe relationships between certain kinds of entities, including labor organizations, that involve what are ordinarily termed “*per se*” affiliations. See 11 C.F.R. §§ 100.5(g)(3), 110.3(a)(2); *Walther v. FEC*, 468 F. Supp. 1235, 1239 (D.D.C. 1979); AO 1985-6. Where the relationship between two such entities “does not precisely” fit under these regulations, see AO 2003-36; AO 1999-15, fn. 6, or where a formal or acknowledged parent-subsidiary relationship is lacking with respect to two entities, see, e.g., AO 2004-23; AO 2002-15; AO 1999-16; AO 1996-26; AO 1995-36, then the multi-factor test is applied. We do not seek an advisory opinion that IAM, TCU/IAM, MNPL and RCPL are affiliated *per se* during the transition period before full merger.

(E) whether one entity has common or overlapping officers or employees with the other entity that indicates a formal or ongoing relationship between them;

(F) whether one entity has any members, officers or employees who were members, officers or employees of the other entity that indicates either a formal or ongoing relationship or the creation of a successor entity;

(G) and (H) whether one entity either provides, or causes or arranges for the provision of, funds or goods in a significant amount or on an ongoing basis to the other entity, such as through direct or indirect payments for administrative, fundraising or other costs; and

(I) whether one entity had an active or significant role in the formation of the other entity.

11 C.F.R §§ 100.5(g)(4)(ii)(B)-(I), 110.3(a)(3)(ii)(B)-(I).

This list of factors is not exclusive, and the Commission considers others as appropriate. AO 2002-12. In applying the affiliation factors, the Commission "may examine the relationship between organizations that sponsor committees, between the committees themselves, or between one sponsoring organization and a committee established by another organization," AO 1996-38; AO 1992-17, and the Commission weighs the factors "in the context of [the] overall relationship" between the organizations involved. AO 2004-23. In its advisory opinions that address affiliation issues, the Commission consistently has taken a pragmatic approach and found affiliations where the entities involved were interdependent in fact even if certain of the regulatory factors were not satisfied and the entities maintained some degree of autonomy from each other. *See, e.g.*, AO 2004-23; AO 2002-15; AO 1999-16; AO 1999-15; AO 1996-50; AO 1996-38; AO 1996-26; AO 1995-17; AO 1995-12; AO 1994-19; AO 1992-7; AO 1988-14; AO 1986-13; AO 1983-46.

Considered in the context of the overall relationships among IAM, TCU/IAM, MNPL and RCPL, the following significant aspects of the transition period support the conclusion that MNPL and RCPL are now affiliated:

- The joint establishment of TCU/IAM by IAM and TCU, and IAM's chartering of TCU/IAM as an affiliate.

- The immediate combination of or close collaboration between IAM and TCU/IAM administrative operations, legislative efforts, organizing, membership communications, research and staff pension plans, and their progressively greater integration over time.
- The corresponding integration of IAM and TCU/IAM employees, the movement of other employees from TCU/IAM to IAM, and, more generally, the performance by IAM employees of services for TCU/IAM formerly performed by TCU/IAM employees.
- IAM's administration of RCPL, the close coordination between IAM and TCU/IAM of all contributions and independent expenditures by RCPL and MNPL, and their mutual acknowledgement that solicitations of contributions and partisan political communications may be received by the other's historical restricted class.
- The regular, substantial and increasing per capita tax payments from TCU/IAM to IAM.

That IAM has chartered TCU/IAM is itself strongly indicative of an affiliation under the Act, for "the chartering of an organization is a vital element of its formulation and relationship to the charter-issuing body...." AO 1994-19. *See also* AO 2005-3 (establishment of one organization by another indicates affiliation). It is also significant that decisions regarding MNPL's and RCPL's contributions and independent expenditures are closely coordinated. *Cf.* AO 2004-41 (finding no affiliation in part by "assuming" that the two organizations' political committees in fact will operate independently of each other). And, the essential elements of the IAM-TCU/IAM relationship are their integration of operations and joint pursuit of common goals, demonstrating "an ongoing commitment to joint endeavors" that indicates an affiliation. *See* AO 2002-15.

Just as importantly, the joinder of IAM and TCU/IAM will become even greater over time. In *disaffiliation* situations, the Commission has reasoned that significant indicia of current separateness, combined with an anticipated further lessening of ties over time, support a finding that organizations already are no longer affiliated. *See, e.g.*, AO 1996-42; AO 1996-23; AO 1993-23. By the same token, significant indicia of current *affiliation*, combined with an anticipated further *integration* of operations over

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time -- as with IAM and TCU/IAM -- support a finding that organizations already are affiliated.

In several analogous circumstances, the Commission has reviewed the overall relationships between two organizations and concluded that they were affiliated.

For example, in AO 1986-13, the Commission recognized an affiliation between a national trade association and its state and regional associations, which were not represented on the national group's 110-member board but whose members could vote for at least one director. While each state and regional association devised its own bylaws and maintained control over its own membership and dues, each entered into an affiliation agreement with the national association that "memorialize[d] a formal relationship between [them] and provide[d] for mutual support and coordination of activities to promote their common interests." The Commission held that the state and regional groups accordingly were affiliated with the national association.

In AO 1996-26, the Commission examined the relationship between a trade association and a for-profit corporation in the floral industry that previously comprised a single organization. After they separated and distinctly incorporated, the association performed typical trade association functions and the corporation functioned as an orders clearinghouse for florists. Each entity could appoint up to 20% of the other's directors but they were precluded from having common officers. The corporation owned an industry logo that the association exclusively licensed, and under a mutual support agreement the corporation paid the association a tiny percentage (.125%) of all the floral orders it cleared (which added up to about 10% of the association's revenue), and the association provided quality control and other services to the corporation. They shared numerous employees, an electronic data base and building facilities. The Commission found that despite there being no parent-subsidary relationship between them, they were affiliated.

More recently, in AO 2004-23, the Commission examined a corporation engaged by cancer care medical practices to provide them with comprehensive practice management and administrative services, including billing, hiring, training, technology and marketing. Two of the corporation's ten directors were doctors from contracting practices, but no such board composition was required. The corporation and the medical practices also established a national policy board that generated mutual, non-binding recommendations. The Commission concluded that the ongoing relationships sufficed to render the corporation and the medical practices affiliated.

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In each of these advisory opinions, the Commission considered the overall relationships of the organizations involved in light of the regulatory affiliation factors and determined that, on balance, their ties were such that they should be treated as affiliated under the Act. It would be most appropriate for the Commission to reach a similar conclusion with respect to IAM, TCU/IAM, MNPL and RCPL. And, if it does so, then it also follows, and we ask the Commission to confirm, that contributions to and from MNPL and RCPL must be aggregated for purposes of the Act's limits; IAM may pay the administration and solicitation costs of RCPL, as set forth in proposed Side Letter No. 3; IAM and MNPL may solicit contributions from, and IAM may pay for express advocacy communications to, TCU/IAM members, executive and administrative personnel, and their families; TCU/IAM and RCPL may do the same in turn with respect to IAM members, executive and administrative personnel, and their families; and MNPL and RCPL may be merged into a single committee.

CONCLUSION

Accordingly, for the reasons explained above, IAM and TCU/IAM request that the Commission issue an advisory opinion answering the questions we have presented in the affirmative. Please contact us if the Commission needs any additional information in

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order to consider this request. Thank you for the Commission's consideration of this matter.

Yours truly,



Laurence E. Gold



Michael B. Trister

cc: Hon. Robert D. Lenhard, Vice Chairman
Hon. David M. Mason, Commissioner
Hon. Ellen L. Weintraub, Commissioner
Hon. Hans Von Spakovsky, Commissioner
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