



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 12, 2007

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-16

Timothy W. Jenkins, Esq.  
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Washington, D.C. 20006-2803

Dear Mr. Jenkins:

We are responding to your advisory opinion request on behalf of the American Kennel Club, Inc. ("AKC"), regarding whether, under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations, AKC and its voting clubs<sup>1</sup> and accredited clubs<sup>2</sup> qualify as membership organizations, and whether they are affiliated with each other so that any prospective separate segregated fund ("SSF") that AKC forms may solicit the individual members of AKC's voting clubs and accredited clubs for contributions.

The Commission concludes that AKC and its voting clubs and accredited clubs are membership organizations and that both the voting clubs and the accredited clubs are affiliated with AKC. Therefore, any SSF established by AKC may solicit contributions from the individual members of AKC's affiliated voting clubs and accredited clubs.

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<sup>1</sup> Although you and AKC employ the term "member clubs" rather than "voting clubs" to designate those clubs within AKC that have voting rights through their ability to appoint delegates (see below), the Commission uses the latter term in order to avoid creating confusion with the term "member" as it occurs in Commission regulations.

<sup>2</sup> AKC actually employs the term "affiliates" to refer to the approximately 4,000 clubs you designate as "accredited." Your request uses the term "accredited" to avoid confusion with the term "affiliates" as it is used in Commission regulations. This advisory opinion adopts your terminology.

## ***Background***

The facts presented in this advisory opinion are based on your letter and attachments received on August 10, 2007, e-mails received on August 20, 2007 and August 27, 2007, and a telephone call of September 13, 2007.

### *1. Purpose and Structure of AKC*

AKC is a non-profit corporation, organized as a social welfare/civic organization pursuant to section 501(c)(4) of the Internal Revenue Code. It is the internationally recognized national kennel club of the United States. Its governing document is its Charter and Bylaws (“AKC Charter”). AKC’s purpose is “generally to do everything to advance the study, breeding, exhibiting, running and maintenance of purebred dogs.” AKC Charter, Art. III. To accomplish this purpose, AKC maintains a registry of over 150 recognized pure breeds of dogs and oversees more than 20,000 AKC-sanctioned dog events conducted annually.

AKC has no individual members, but is instead a “club of clubs.” *How to Form an AKC-Accredited Dog Club*, “About the AKC.” Beneath the level of AKC, there are roughly 600 voting clubs and 4,000 accredited clubs. Voting clubs are clubs that have met AKC’s criteria for qualification to conduct AKC events and have held at least three AKC-licensed events in ten consecutive years. AKC Charter, Art. IV, Sec. 1; *How to Form an AKC-Accredited Dog Club*, Glossary, Def. of “Member.” Accredited clubs are clubs that have also met AKC’s criteria for qualification to conduct AKC events, but have either not held the required number of events or have held the required number of events but elected not to apply for “voting” status. Voting clubs have the right to designate a delegate to vote on the club’s behalf at AKC meetings and are required to pay modest annual dues. AKC Charter, Arts. V, VI. Accredited clubs neither have voting representation nor an obligation to pay dues. Kennel clubs apply for accredited status to obtain AKC sponsorship for their dog shows. You represent that dog shows are the principal source of revenue for dog clubs. You also state that because events that are not sanctioned by AKC are of little interest to exhibitors, AKC sponsorship is crucial to the financial viability of a kennel club.

### *2. AKC Governance*

AKC is governed by a Board of Directors (the “Board”), consisting of 13 directors. AKC Charter, Art. VII, Sec. 1. The members of the Board are elected by the delegates at large. *Id.* Only delegates are eligible to serve as directors on the Board. *Id.* The Board appoints two of its members to serve as its principal officers – the Chairperson and the Vice-Chairperson. AKC Charter, Art. XI, Sec. 2.

The Board oversees the property and assets of AKC, reviews proposed amendments to the AKC Charter, and has final authority to construe the Rules Applying to Dog Shows (the “Dog Show Rules”) and to decide questions of pedigree and status of dogs and dog breeds. AKC Charter, Art. X. The Board is also empowered to create adjudicatory “trial boards” to rule on charges that any club, association, or person has engaged in conduct allegedly prejudicial to the best interests of purebred dogs, purebred dog events, or AKC. AKC Charter, Art. X, Sec. 14; *see*

*also id.* Arts. XII, XIII. The Board has the power to impose penalties ranging from a reprimand or fine to suspension for life from all privileges of AKC for any such conduct. *Id.* Art. XV.

Clubs applying for membership must enclose a copy of their constitutions and bylaws, as well as their membership lists, for AKC review. AKC Charter, Art. IV, Sec. 2. The club's constitution and bylaws must expressly announce certain purposes prescribed by the AKC Charter. *Id.* Secs. 2, 3. If the Board approves the applicant club for membership, then the question is submitted to the delegates at large for voting. *Id.* Sec. 8. AKC acknowledges its acceptance of membership by sending the new voting club a letter, and by publishing its name in its publication, the Gazette. Once accepted, voting clubs have a continuing duty to submit proposed changes to their governing documents to the Board for approval and to apprise the Executive Secretary of AKC of any changes in their officers. *Id.* Sec. 9. The AKC Charter also prescribes criteria for determining eligibility for the position of delegate and the Board has the authority to approve or disapprove a voting club's designation of a delegate. AKC Charter, Art. VI, Sec. 6; *see generally id.* Secs. 1-11. If the Board disapproves the designation, the question is remitted to the delegates at large for a vote. *Id.* Sec. 7. Delegates have sole authority to prescribe the Dog Show Rules. AKC Charter, Art. XIX (*see discussion, infra*). The Board has the authority to discipline any AKC "club, association or organization" that holds a dog show or event outside of the Dog Show Rules without AKC's express permission. AKC Charter, Art. XV, Sec. 4.

### 3. Dog Show Rules

The delegates of the voting clubs make and modify the Dog Show Rules. The Dog Show Rules provide for comprehensive supervision of every aspect of a dog show. Both voting and accredited clubs must apply to AKC for permission to hold a dog show and must adhere to the Dog Show Rules when staging dog shows. Dog Show Rules, Ch. 1, Secs. 3, 4; *see also* Dog Show Rules, Ch. 2, Secs. 9, 12 (non-member clubs). AKC enforces territorial and temporal limits on clubs seeking to hold dog shows. Dog Show Rules, Ch. 2, Secs. 3, 20. AKC also determines the breeds or varieties of dog that will be recognized as eligible to compete in shows and prescribes the types of awards that must be offered in certain situations. *Id.* Ch. 3. Judges, show superintendents, and show veterinarians must all be licensed or approved by AKC. *Id.* Chs. 7, 9, 10. Finally, AKC sends an Executive Field Representative to most shows. *Rules, Policies and Guidelines for Conformation Dog Show Judges*. This field representative advises the show officials of AKC Dog Show Rules and consults with judges who have questions about which standards to apply. *Id.* The field representative is the final arbiter of all issues relating to the conduct of the show. *Id.*

### 4. Voting and Accredited Clubs

Both voting clubs and accredited clubs have their own constitutions and bylaws. You have furnished a copy of the Constitution and Bylaws of the English Cocker Spaniel Club of America, Inc. (ECSCA) as a typical example of a voting club's organizational documents, and a copy of the constitution and bylaws of the Northern California Bearded Collie Fanciers (NCBCF) as a typical example of an accredited club's organizational documents.

Each voting club's bylaws provide that its delegate to AKC is also a member of its own Board of Directors as well as an officer of the club. *See, e.g.* ECSCA By-Laws, Art. IV, Secs. 1, 2. Both bylaws contain provisions for names and purposes, degrees of membership, meetings, voting, and the designation of a board of directors and officers from the at-large membership. Both bylaws announce that their purpose is to conduct AKC-sanctioned dog shows or matches. ECSCA By-Laws, Art. I, Sec. 2(e); NCBCF Constitution, Art. I, Sec. 2(e). Both bylaws require as a condition of membership that the individual be in good standing with AKC and agree to abide by AKC Dog Show Rules. ECSCA By-Laws, Art. II, Secs. 1, 3; NCBCF By-Laws, Art. I, Secs. 1, 3. Both documents prescribe dues for most levels of membership. ECSCA By-Laws, Art. II, Sec. 2; NCBCF By-Laws, Art. I, Sec. 2. Both documents also provide that any member whose AKC privileges have been suspended will automatically be suspended from the privileges of the voting or accredited club for the same period of time. ECSCA By-Laws, Art. VII, Sec. 1; NCBCF By-Laws, Art. VI, Sec. 1. As noted in the AKC Charter, any amendments to a voting club's constitution or bylaws must be approved by the AKC Board before they take effect. AKC Charter, Art. XX, Sec. 3; *see* ECSCA By-Laws, Art. VIII, Sec. 3. The amendments made by an accredited club to its constitution or bylaws become effective upon approval by the club itself and thus technically do not require the prior approval of AKC. *See* [http://www.akc.org/about/dpts/club\\_relations\\_bylaws\\_faqs.cfm](http://www.akc.org/about/dpts/club_relations_bylaws_faqs.cfm) (Bylaw Amendments). However, an accredited club is required to submit its amendments to AKC. If AKC disapproves of an amendment, continuation of the club's accredited status could be jeopardized. Thus, in practice, virtually all accredited clubs submit amendments for prior AKC approval.

The bylaws of voting and accredited clubs throughout AKC have a relatively uniform structure and substance because AKC furnishes applicant clubs with sample constitutions and bylaws, which the clubs in practice substantially follow. *See, e.g., Sample Constitution & Bylaws for All-Breed, Specialty, Obedience, Tracking and Group Clubs; Sample Constitution & Bylaws for a Specialty Club with Nationwide Membership.*

### ***Questions Presented***

- 1. Do AKC and its voting clubs and accredited clubs qualify as membership organizations?*
- 2. If the answer to question 1 is "yes," then are AKC and its voting clubs and accredited clubs affiliated with each other such that any SSF that AKC forms may solicit the individual members of the voting and accredited clubs for contributions?*

### ***Legal Analysis and Conclusions***

- 1. Do AKC and its voting clubs and accredited clubs qualify as membership organizations?*

Yes, AKC and its voting and accredited clubs are all membership organizations.

A corporation without capital stock qualifies as a membership organization if it meets six enumerated requirements and is composed of persons who qualify as members under Commission regulations. *See* 11 CFR 114.1(e)(1) (definition of membership organization); 11 CFR 114.1(e)(2) (definition of member). *See also* 11 CFR 100.134(e) and (f). AKC and the vast majority of its voting and accredited clubs are non-profit corporations without capital stock.<sup>3</sup>

#### **a. AKC**

AKC meets the six enumerated requirements. First, AKC is composed partly of voting clubs vested with the power and authority to operate or administer the organization pursuant to the AKC Charter, as required by 11 CFR 114.1(e)(1)(i), by designating voting delegates, a subset of whom in turn operate and administer the organization as the Board of Directors. Second, the AKC Charter expressly states the requirements and qualifications for membership as required by 11 CFR 114.1(e)(1)(ii). Third, AKC makes its Charter and Bylaws available to its members on its website and upon request, as required by 11 CFR 114.1(e)(1)(iii). Fourth, AKC expressly solicits membership as required by 11 CFR 114.1(e)(1)(iv), by advertising the benefits of AKC registration on its website, where it also provides guidance on how to form a new club and how to contact its club services division for more information. Fifth, AKC formally acknowledges the fact of membership by sending a letter to the voting club, and also by publishing the names of new voting clubs in its publication, the Gazette. This satisfies the requirement of acknowledgement of acceptance of membership by membership card or by publication of the member's name in a newsletter list as required by 11 CFR 114.1(e)(1)(v). Finally, the AKC Charter shows that it is not organized primarily for the purpose of influencing Federal elections, as required by 11 CFR 114.1(e)(1)(vi), but rather for the purpose of ensuring the purity of specific breeds of dogs, of improving these dog breeds, and of promoting the fitness of the dogs.

AKC is composed of persons that are "members" under Commission regulations at 11 CFR 114.1(e)(2). The voting clubs are members because they: (1) satisfy the membership requirements set forth in the AKC Charter; (2) affirmatively accept invitations to become members; and (3) pay annual dues of a predetermined amount as specified in Art. V, Sec. 2 of the AKC Charter. 11 CFR 114.1(e)(2)(ii). Accredited clubs, in contrast, are not "members" of AKC under Commission regulations.

#### **b. Voting Clubs and Accredited Clubs**

Both the voting clubs and the accredited clubs meet all six requirements for being a membership organization. First, the voting and accredited clubs have organizational structures similar to AKC's, with the Board of Directors and the officers being comprised of persons from the membership at large, as required by 11 CFR 114.1(e)(1)(i). Second, the club constitutions expressly state the requirements for membership, as required by 11 CFR 114.1(e)(1)(ii). Third, the voting and accredited clubs expressly solicit membership, as required by 11 CFR 114.1(e)(1)(iii). Fourth, the clubs make their governing documents available to their members

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<sup>3</sup> In a telephone conversation on September 13, 2007, you indicated that a small minority of voting and/or accredited clubs that were formed before 1947 might be for-profit corporations. To the extent that is the case, these individual clubs would not qualify as member organizations under the Commission's rules.

via website or by request, as required by 11 CFR 114.1(e)(1)(iv). Fifth, the voting and accredited clubs formally acknowledge the fact of membership by membership card or by publication of the member's name in a newsletter list, as required by 11 CFR 114.1(e)(1)(v). Finally, the club constitutions show that these entities are not organized primarily for the purpose of influencing Federal elections, a requirement of 11 CFR 114.1(e)(1)(vi), but instead for the purpose of ensuring the purity of specific breeds of dogs, of improving these dog breeds, and of promoting the fitness of the dogs.

The voting and accredited clubs are composed of persons who are "members" under Commission regulations at 11 CFR 114.1(e)(2). These persons are members of the voting and accredited clubs because they: (1) satisfy membership requirements set forth in the bylaws of the voting and accredited clubs; (2) affirmatively accept invitations to become members; and (3) pay annual dues of a predetermined amount as specified in the clubs' bylaws. *See, e.g., ECSCA By-Laws, Art. II, Sec. 2; NCBCF By-Laws, Art. I, Sec. 2.*

*2. If the answer to question 1 is "yes," then are AKC and its voting clubs and accredited clubs affiliated with each other such that any SSF that AKC forms may solicit the individual members of the voting clubs and accredited clubs for contributions?*

Yes, AKC and its voting clubs and accredited clubs are affiliated with each other. Therefore, AKC or any SSF it forms may solicit the individual members of the voting clubs and accredited clubs for contributions to the SSF.

#### **a. Solicitation**

The Act and Commission regulations provide that a membership organization or its SSF may solicit its individual members for contributions to the SSF. 2 U.S.C. 441b(b)(4)(C); 11 CFR 114.7(a). When a membership organization has several levels, including, for example, national, regional, state and/or local affiliates, then a member of any entity or affiliate within the multi-level structure automatically qualifies as a member of all affiliates. 11 CFR 114.1(e)(5). In addition, a membership organization or its SSF may solicit the individual members of the membership organization's affiliates. *See Advisory Opinion 2005-03 (ACOG).*

AKC is an organization consisting of several levels. Two of these levels are relevant to this request. The first level is AKC itself. The second level is comprised of the voting and accredited clubs. Thus, to determine whether an SSF formed by AKC may solicit the individual members of the voting clubs and the accredited clubs, the Commission must ascertain whether these clubs are affiliates of AKC.

#### **b. Affiliation**

Commission regulations identify organizations that are *per se* affiliated. These include organizations that are established, financed, maintained, or controlled by a single corporation and/or its subsidiaries, or by the same person or group of persons. 11 CFR 100.5(g)(3)(i) and (v). Neither AKC, nor the voting clubs and accredited clubs, owns any portion of the others, and thus none of them is a subsidiary of either of the others. Moreover, AKC and the voting clubs

and accredited clubs are not established, financed, maintained, or controlled by the same person or group of persons. Finally, organizations established by a membership organization, including related State and local entities of the organization, are *per se* affiliated. 11 CFR 100.5(g)(3)(iv). AKC and its voting clubs and accredited clubs, however, do not appear to have a typical multi-tier federated structure or have sufficient structural aspects of the type that would fall within 11 CFR 100.5(g)(3)(iv) because the voting and accredited clubs are not State or local chapters or entities within AKC. Therefore, AKC and its voting clubs and accredited clubs are not *per se* affiliated.

In the absence of *per se* affiliation, Commission regulations provide for an examination of various factors in the context of the overall relationship to determine whether one sponsoring organization has established, financed, maintained, or controlled the other sponsoring organization. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J). These ten circumstantial factors do not constitute an exhaustive list and other factors may be considered. *See* Advisory Opinion 2004-41 (CUNA Mutual). Three of these factors are relevant to your request and are discussed below. In addition, the Commission discusses another fact relevant to this affiliation analysis.

*1. Affiliation Factor (B): Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts or other rules, or through formal or informal practices or procedures. 11 CFR 100.5(g)(4)(ii)(B).*

AKC and the voting clubs exercise reciprocal rights of participation in the governance of the other. The voting clubs exercise rights of participation in the governance of AKC primarily through the delegates appointed by the member clubs to represent them. The delegates establish AKC's policy by voting on amendments to the AKC Charter and on the Dog Show Rules, which are central to AKC's mission. AKC, in turn, exercises rights of participation in the governance of the voting clubs. AKC has the authority to review and approve the voting club's organizational documents and any proposed amendments to them before they may take effect. Moreover, AKC has the authority to discipline voting clubs and their individual members for conduct prejudicial to the best interests of purebred dogs, purebred dog events, or AKC. The AKC Board also has the authority to approve or disapprove a voting club's designation of a delegate. Finally, through the Dog Show Rules, AKC governs all aspects of voting clubs' dog shows and sets geographic boundaries within which clubs may hold their shows. AKC field representatives are generally present at voting club exhibitions to ensure compliance with the Dog Show Rules.

Although the accredited clubs do not satisfy AKC's requirements for membership, do not have voting delegates and therefore do not participate in the governance of AKC as a whole, and are therefore not "members" of AKC under the Commission's regulations, individuals who are members of the accredited club need not have rights and obligations with respect to AKC in order for the accredited club to be affiliated with AKC. *See* Advisory Opinion 1999-40 (NRECA) (a member of any entity or affiliate within a multi-level structure automatically qualifies as a member of all affiliates even if members of a lower-level affiliate may not have rights and obligations with respect to the highest level). Moreover, AKC participates in the governance and operations of the accredited clubs. As with voting clubs, AKC has the authority

to discipline accredited clubs and their individual members for conduct prejudicial to the best interests of purebred dogs, purebred dog events, or AKC. In addition, AKC governs all aspects of an accredited clubs' dog shows, sets geographic boundaries within which clubs may hold their shows, and dispatches field representatives to ensure compliance with the Dog Show Rules.

Further, AKC furnishes both voting and accredited clubs with prototype constitutions and bylaws that both voting clubs and accredited clubs, in practice, follow substantially. The voting club constitution and bylaws must also recite specific purposes specified in the AKC Charter. Finally, the voting club must submit its organizational documents and its membership list to AKC before it is accepted for membership. In addition, AKC reviews and approves the organizational documents and membership lists of both voting and accredited clubs to determine whether the clubs are eligible for membership or accreditation. Once a club's organizational documents are approved, AKC has effective veto power over any proposed amendments. Consequently, this factor points toward a conclusion of affiliation between AKC and both the voting clubs and accredited clubs.

*2. Affiliation Factor (C): Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or committee. 11 CFR 100.5(g)(4)(ii)(C).*

AKC and the voting clubs each exercise some authority to hire, appoint, demote, or otherwise control the officers or other decisionmaking employees of the other. The voting clubs' delegates appoint the Board of Directors of AKC. These directors must themselves be voting club delegates. The Board, in turn, appoints AKC's officers. Furthermore, AKC reviews the membership lists submitted by clubs applying for membership as a condition for becoming a voting club. AKC also has the authority to strip any person, including officers and directors of the voting and accredited clubs, of the privileges of association with AKC. Thus, this factor as well points toward a conclusion of affiliation between AKC and both the voting clubs and accredited clubs.

*3. Affiliation Factor (I): Whether a sponsoring organization or committee or its agent had an active or significant role in the formation of another sponsoring organization or committee. 11 CFR 100.5(g)(4)(ii)(I).*

AKC takes an active role in the formation of voting clubs and accredited clubs by establishing the requirements a club must satisfy to attain the status of voting club or accredited club. As the discussion of Affiliation Factor (B) indicates, both voting clubs and accredited clubs substantially follow prototype constitutions and bylaws provided by AKC. In addition, AKC reviews and approves the organizational documents and membership lists of both voting clubs and accredited clubs to determine whether the clubs are eligible for membership or accreditation. For these reasons, Affiliation Factor (I) also points toward a conclusion of affiliation between AKC and both the voting clubs and accredited clubs.

4. *Intent of Individual Members of Voting and Accredited Clubs to Join the AKC*

The Commission noted in its Explanation and Justification for its final rules regarding the Definition of “Member” of a Membership Organization that “a person who joins one tier of a multi-tiered organization clearly demonstrates an intention to associate with the entire organization.” 64 FR 41266, 41271 (July 30, 1999). Such intent is evident here as well. The principal reason for groups seeking to become voting or accredited clubs of AKC is that association with AKC allows them to conduct AKC-approved dog shows and to enjoy the prestige that the sponsorship of AKC confers on an event. Without that AKC sponsorship, the voting and accredited clubs would be deprived of substantial revenue from exhibitors. It is this reason that also motivates clubs to subordinate practically all aspects of their dog shows to the direction of AKC. In this sense, the individual’s primary purpose in joining voting or accredited clubs of AKC is to be associated with AKC as a whole.

5. *Conclusion to Affiliation Analysis*

The application of the relevant factors establishes that AKC and the voting clubs are affiliated because AKC and the voting clubs exercise reciprocal rights of participation in the governance of each other. Moreover, AKC assumes a significant role in the formation of the voting clubs and the individual’s primary purpose in joining a voting club is to be associated with AKC.

With respect to affiliation between AKC and the accredited clubs, the Commission concludes that the fact that AKC participates in the governance of the accredited clubs and has a significant role in the formation of the accredited clubs, coupled with the fact that the individual’s primary purpose in joining an accredited club is to be associated with AKC, outweighs the absence of influence or control over AKC through voting rights. *See, e.g.,* Advisory Opinion 1995-12 (Independent Bankers) (concluding that the right of one sponsoring organization, or a collection of organizations, to vote on the affairs or on the officers of the other, is not a *sine qua non* of affiliation if other indications of a close and ongoing relationship are present).

Because the Commission has concluded that the voting clubs and accredited clubs are affiliates of AKC, AKC or any SSF it forms may solicit all of the individual members of its voting clubs and accredited clubs for contributions to such an SSF.

The Commission expresses no opinion regarding any tax ramifications of the proposed activity because this question is not within the Commission’s jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. All cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

Sincerely,

(signed)  
Robert D. Lenhard  
Chairman