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March 31, 2017

Lisa J. Stevenson, Esq.  
Acting General Counsel  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463  
**VIA FACSIMILE: (202) 219-3923**

**Re: Advisory Opinion Request**

Dear Ms. Stevenson:

Pursuant to 52 U.S.C. § 30108, we request an advisory opinion on behalf of War Chest, LLC (“War Chest”) seeking confirmation of the permissibility of its business plan under the Federal Election Campaign Act of 1971, as amended (the “Act”), and the Federal Election Commission’s (the “Commission”) regulations.

**I. Factual Background**

Since the financial crisis and subsequent reforms, the financial and banking landscape continues to evolve. This resulting uncertainty has aided in the growing desire to ensure the safety and security of deposits without sacrificing yield or liquidity. Many political committees registered with the Commission have deposit balances at a single bank well above the \$250,000 Federal Deposit Insurance Corporation (“FDIC”) insurance limit, such that the deposit above the \$250,000 limit is not FDIC-insured and subject to financial risk, even though the institution and the account itself are FDIC-insured.

War Chest is a solution that offers committees a bank deposit program (i.e., a War Chest) that is an investment option with the safety of 100% FDIC insurance on deposits up to \$50 million, plus next-day liquidity, and a competitive yield. War Chest is a web-based product (the “Program”) that automatically transfers money for investment purposes from a committee’s “War Chest Account” into money market deposit accounts at hundreds of FDIC-insured sub-custodian banks, mostly community banks, via the convenience of a single account. A committee can deposit contributions directly into, and draw expenditures directly out of, the committee’s War Chest Account.

A committee's War Chest Account is held at a non-depository Trust Company chartered in the state of Colorado and regulated by the State of Colorado's Division of Banking (the "Custodian"). Colorado's financial institution laws give the Custodian the power to receive and maintain savings deposits, time deposits and certificates of deposit, however, the Custodian cannot receive and maintain transaction deposit accounts (i.e., checking accounts). Each committee's War Chest Account is a segregated, non-depository custody account that has a unique account number and uses the Custodian's ABA routing number assigned by the Federal Reserve Bank, the same as every other bank in the United States. Further, a War Chest Account has the same functionality and detailed recordkeeping as any typical checking account. The Custodian is eligible to apply for FDIC insurance, but has not elected to apply for coverage at this time. By law, the Custodian adheres to the highest standard of fiduciary duty. Further, in the unlikely event that the cut-off is missed for sending funds to the sub-custodian banks, any funds held at the Custodian are bankruptcy remote and are not available to the Custodian's creditors.

Once a committee makes a deposit into its War Chest Account, the Program advisor directs the Custodian to immediately transfer money from the War Chest Account to an intermediary sub-custodian, U.S. Bank Trust National Association, a National Banking Association chartered, regulated and supervised by the Comptroller of the Currency ("Intermediary Sub-Custodian"), which immediately transfers the money to money market deposit accounts at hundreds of FDIC-insured sub-custodian banks. Each committee also has its own unique account number at the Intermediary Sub-Custodian. A committee's funds can only be transferred to the sub-custodian banks via the committee's account at the Intermediary Sub-Custodian and vice versa. There is no minimum amount that a committee must invest in the War Chest Program.

A committee can request a redemption of funds from its War Chest Account on any business day and the funds will be available the morning of the next business day. However, the Program expects to implement same-day Automated Clearing House (ACH) transactions, which will soon allow a committee to redeem funds the same business day as the redemption request. The cut-off time for processing a redemption is noon Eastern Time. There are no limitations on the frequency or amount that a committee can withdraw from its War Chest Account. A committee can process a withdrawal through the secure web portal by submitting a form signed by an authorized signer or over the telephone by an authorized person on a list of previously-approved persons.

At the sub-custodian level, a committee's money will be commingled with other Program participants' money in the omnibus Program account at each sub-custodian bank. The Intermediary Sub-Custodian keeps daily records of each beneficial owner of the funds in the omnibus Program account at each sub-custodian bank. The Program advisor provides a statement via the web portal on the first business day of each month showing the aggregate amount of accrued interest, calculated on the sum of each day's balance at the Program's interest rate. The Intermediary Sub-Custodian provides to each Program participant monthly statements via the web portal approximately ten business days into the new month that identify the participant's allocable amount of the omnibus Program account balance from each sub-custodian bank. The

March 31, 2017

Page 3

amount on deposit at any single sub-custodian bank that is allocable to a single Program participant will not exceed the FDIC insurance limit of \$250,000. A Program participant also receives a Program statement identifying the total amount of the Participant's money in the Program, the ratable amount of funds held in each underlying sub-custodian bank and the total amount of interest earned by the participant from the Program during a certain period. The statements do not identify the amount of interest earned at each sub-custodian bank. All statements remain available on the web portal back to the opening of the account. Interest earned on the Program is automatically reinvested.

Transfers made to the War Chest Program sub-custodians are for investment purposes only and the Program has built-in, hard-wired security and compliance safeguards that restrict transfers from a sub-custodian bank omnibus account to only War Chest Accounts via the Intermediary Sub-Custodian. Therefore, a committee can only deposit money into the Program's sub-custodian banks via the Intermediary Sub-Custodian from the committee's War Chest Account. Additionally, funds must be transferred from each of the Program's sub-custodian banks to the committee's War Chest Account via the Intermediary Sub-Custodian before a committee can expend the money.

A participating committee would have contractual relationships with War Chest, LLC, the Program advisor, and the Intermediary Sub-Custodian. The Program advisor has contractual relationships with each of the Custodian, the Intermediary Sub-Custodian and each sub-custodian bank.

The Program advisor is a Registered Investment Advisor with the Securities and Exchange Commission ("SEC") and owes a fiduciary duty to all Program participants, including committees. The Program is well established, as the Program advisor currently administers over \$6 billion of funds for over 1,200 customers, including government entities, in over 30 states. The Program advisor uses sophisticated algorithms to optimize the allocation of money across the Program's network of banks. A committee cannot direct its money to be deposited with any particular sub-custodian bank, as that decision is made solely by the Program advisor. However, a committee may exclude a bank from receiving the committee's funds through the Program to ensure that there is no overlap of FDIC insurance coverage at a bank where the committee already has deposits.

The Program advisor is StoneCastle Cash Management, LLC, a Delaware limited liability Company. War Chest, LLC is an Ohio limited liability company and is taxed as a partnership for federal income tax purposes.

## **II. Questions Presented**

*Question 1: Does the War Chest Program comply with the Act and the Commission's regulations?*

*Question 2: If the answer to question 1 is "yes," may War Chest allow a participating committee to deposit contributions directly into, and draw expenditures directly on, the committee's War Chest Account?*

*Question 3: If the answer to question 1 is "yes," would War Chest's sub-custodian banks be considered "depositories" that need to be listed on a participating committee's amended Form 1 Statement of Organization?*

## **III. Legal Discussion**

### ***a. The Commission's Depository Requirements***

The Act and Commission regulations require that each political committee designate at least one State bank, federally chartered depository institution, or depository institution the accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, as its campaign depository. All funds received by a political committee must be deposited in the checking account or other accounts maintained in its campaign depository. 52 U.S.C. § 30102(h)(1); 11 CFR §§ 103.2 and 103.3(a). No disbursements, other than petty cash, may be made by such committee except by check or similar draft drawn on those accounts. 52 U.S.C. §§ 30102(h)(1) and (2); 11 CFR §§ 102.10 and 102.11.

### ***b. Rules Regarding Investment of Committee Funds***

Commission regulations specifically provide that political committees may transfer funds from the depository for investment purposes. 11 CFR § 103.3(a). Moreover, the regulations contemplate a variety of such investments in describing cash on hand to include "certificates of deposits, treasury bills and any other committee investments valued at cost," and in requiring that committees report other receipts "such as dividends and interest." 11 CFR §§ 104.3(a)(1), (a)(3)(x), and (a)(4)(vi); *see also* 52 U.S.C. §§ 30104(b)(2)(J) and 434(b)(3)(G). In advisory opinions, the Commission has also permitted the investment of political committee funds in a variety of investment vehicles. In Advisory Opinion 1986-18 (Bevill) the Commission permitted a campaign committee to transfer funds to a federally-insured money market deposit account program within a brokerage account held by a non-bank entity. Additionally, the Commission has also permitted government securities and money market funds (AO 1997-6 (Hutchison)); a cash management account maintained by an investment and brokerage firm (which could contain

money market funds, U.S. Government obligations, or other securities) (AO 1986-18 (Bevill)); and “an open-end, diversified investment trust which is a professionally managed money market fund” (AO 1980-39 (Fluor Public Affairs Committee)).<sup>1</sup>

The ability of a committee to transfer funds to other investment accounts is conditioned, however, by the requirement that these funds must be returned to the campaign depository account before they can be used to make expenditures. 11 CFR § 103.3(a); *see* AOs 1997-6, 1986-18, and 1980-39. The Commission has narrowly modified this requirement with respect to interest or other income earned by and credited to a committee’s investment accounts with a securities firm that is automatically and directly reinvested in the investments held in the account. As explained further below, although such income should be reported as an “other receipt” by a committee to reflect when it is credited, the amounts do not need to be deposited in the campaign depository account in view of the fact that the reinvestment of funds is merely a conversion of one form of cash on hand to another, and not an expenditure. AO 1997-6.

### *c. Reporting Committee Investments and Additional Depositories*

A committee that has invested its funds, including in a savings account, money market fund, certificate of deposit, or other financial product, must include the total amount invested in its cash on hand on its periodic reports. Since investment money is not actually spent, it is considered a committee asset and should not be reported as a disbursement. 11 CFR § 104.3(a)(1). If a committee invests the funds in a bank that was not previously identified as a campaign depository on the Form 1 Statement of Organization, the committee must file an amended Statement of Organization disclosing the name and address of the new depository. The amendment must be filed within ten (10) days of making the investment. 11 CFR § 102.2(a)(2).

In Advisory Opinion 1976-25, the Commission concluded that Representative Bevill’s committee could transfer excess funds “to a savings and loan association which is not a national or State bank if that association is identified as an additional repository used by the Committee.” AO 1976-25, at 1. Further, if committee funds are invested in a vehicle that is not operated by a bank (such as a money market fund operated by a brokerage firm), no amendment to the Form 1 Statement of Organization is required. As mentioned above, before using the funds (principal or interest) to make expenditures, the committee must first transfer them to a designated campaign depository. 11 CFR § 103.3(a). *See* AO 1986-18. Importantly, interest or other income earned on these investment accounts need not be placed in the campaign depository account before they are reinvested. As previously noted, investments are not expenditures—they are simply a conversion of assets from one form to another. The committee must report the reinvested income from investments following the rules explained below. *See* AO 1997-06.

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<sup>1</sup> *See also* AO 1975-41 (Shuster for Congress), in which the Commission permitted the investment of campaign funds in Government treasury notes.

A committee must report investment income received or lost during a reporting period in the “Other Receipts” category of its reports. If investment income from one source aggregates over \$200 during an election cycle (in the case of a candidate committee), or calendar year (in the case of a nonconnected committee), the committee must itemize the interest on Schedule A. *See* 11 CFR § 104.3(a)(4)(vi). Losses are indicated by negative entries. As for reporting income tax, a committee must report, as an operating expenditure, income tax paid on investment income. Income tax payments must be itemized as operating expenditures on Schedule B only if the payments aggregate over \$200 during an election cycle or calendar year to the same payee (i.e., the local, state or federal government).

#### **IV. Application of the Act and the Commission’s Regulations to the War Chest Program**

*Question 1: Does the War Chest Program comply with the Act and the Commission’s regulations?*

All aspects of the War Chest Program are consistent with the Act and the Commission’s regulations and should be approved by the Commission. The War Chest Program simply provides a service to committees to enable them to conveniently invest in a diversified portfolio of money market accounts at an array of FDIC-insured sub-custodians. The War Chest Program furthers the interests of the Act and the Commission’s regulations by protecting committee assets from financial risk, misappropriation and hacking.

The War Chest Program protects a committee from financial risk. Unlike a single depository account, where the FDIC only insures up to \$250,000 of a committee’s funds, the Program protects up to \$50 million of a committee’s assets by enabling all funds within the Program to be FDIC-insured. Many committees have deposit balances at a single bank well above the \$250,000 FDIC insurance limit. The amount of the deposit above the \$250,000 limit is not FDIC-insured and is subject to financial risk, even though the institution and the account itself are FDIC-insured. While the Act does not require that the full balance of a committee’s deposit be FDIC-insured, the Act’s explicit identification of certain qualified insurers suggests a concern about the financial security of committee assets (*See* AO 1986-18, n.3; *see also* AO 1984-6). A committee can manually secure complete FDIC insurance by opening individual accounts at many separate banks and monitoring the account balance at each bank to stay below \$250,000, but this manual method is time consuming, inefficient and poses significant operational risk. The War Chest Program allows a committee to instantly obtain FDIC insurance on up to \$50 million through a single, secure and convenient War Chest Account. Moreover, the War Chest Program provides a committee additional financial protection because the War Chest Program advisor is a Registered Investment Advisor with the SEC. Thus, the War Chest Program advisor owes a fiduciary duty to all Program participants.

The War Chest Program guards against misappropriation through enhanced committee management capabilities by providing hard-wired controls and centralized, convenient

monitoring and administration. The War Chest Program provides centralized monitoring and administration through a single web portal. Alternatively, a committee could choose to manually spread its deposits across several banks to achieve full FDIC insurance coverage of its deposits. This manual practice is time-consuming and inconvenient because it requires the committee to establish and administer a separate relationship with each bank, including opening separate accounts, receiving separate statements, executing individual transfers between the committee's primary depository and each separate bank, and imposing on the committee the responsibility of managing the user names, passwords and security tokens for each separate bank. Additionally, because the resources of many treasurers and committee staff are stretched thin, the inconvenience and inefficiency of administering and monitoring numerous depository relationships can result in a delegation of authority without appropriate segregation of duties and infrequent monitoring of deposit balances. Further, for cash-on-hand reporting purposes, a committee must separately account for and total the balances and income from each separate bank deposit. In contrast, the War Chest Program allows a committee to instantly monitor balances and interest at both an individual and aggregate level for both the committee's War Chest Account and all sub-custodian banks through a single, convenient and secure web portal.

In a world where outside interests have made efforts to hack into our election systems, and potentially the banking systems of candidates and other committees, it is critical that political committees protect their funds from such bad actors. The War Chest Program has built-in, hard-wired security and compliance safeguards that restrict transfers from the sub-custodian bank accounts to only War Chest Accounts. This prevents the transfer of committee funds to accounts other than the committee's War Chest Account. Further, because the Program advisor alone directs transfers to and from the sub-custodian banks, there is greater consistency and minimal turnover in individuals authorized to make transfers, whereas many committees see more frequent turnover of authorized individuals. Finally, the War Chest Program's enhanced and convenient deposit monitoring, discussed above, provides a committee with superior monitoring capabilities and peace of mind. The Program's security is trusted by over 1,200 clients, including many Fortune 500 companies and state and local governments. The War Chest Program's hard-wired security and superior monitoring allow a committee to better protect against both hacking and the misappropriation of committee funds.

In practice, the War Chest Program is analogous to investment practices and vehicles which the Commission has already expressly approved in past advisory opinions. In Advisory Opinion 1999-08 (Specter), the Commission permitted Senator Arlen Specter's campaign committee to invest its excess campaign funds in the Vanguard Group's family of mutual and bond funds. In doing so, the Commission made clear that the Specter committee would need to comply with the disclosure and other relevant provisions of the Act and the Commission's regulations, including the requirement that the income from each of those investments, such as interest and dividends, would need to be disclosed in a timely manner, even if such income was directly reinvested as described above. *See* AO 1997-6. The Commission concluded that, "in view of the fact that the specific funds in the Vanguard investment account (e.g., the United States Growth Fund, the Selected Value Fund) will be the payers of the dividends, interest, or other income, those are the entities that should be identified for itemization purposes." AO 1999-08, at 3. The Commission

also stated, in accordance with the Commission's regulations, that "no Committee disbursements may be made directly from the Vanguard account; the funds to be used must first be transferred to a Committee depository account," and that "neither the transfer of Committee funds to Vanguard nor the transfer of funds back to the depository account needs to be reported." *Id.*

In this case, once a committee has deposited funds into its War Chest Account, the War Chest Program advisor will invest those funds in an array of money market accounts at various sub-custodian banks. Participating committees may not draw funds from any of these investment accounts for purposes of making expenditures. Instead, all monies invested with the Program's sub-custodian banks will be transferred back to each committee's War Chest Account before a committee can use those funds to make expenditures. Such an arrangement is squarely in line with the Specter advisory opinion and in full compliance with the Act, the Commission's regulations, and Commission precedent.

In addition, the fact that the War Chest Program may commingle a committee's funds with those of other participating committees in an omnibus Program account—using both federal and nonfederal funds—does not jeopardize the legality of the War Chest Program. In fact, while some of the Commission's past precedents disallowed vendors from commingling permissible and impermissible funds, those opinions were overruled in Advisory Opinion 2012-17 (m-Qube I). In that opinion, the Commission did not require the requestor to establish a separate account, in part because the requestor established a sufficient tracking system to "ensure[] that political contributions are properly accounted for." *Id.* at 11. Further, the Commission found that commingled investments were permissible. AO 1986-18 (Bevill) (permitting investment in three money market mutual funds); AO 1980-39 (Fluor Public Affairs Committee) (permitting investment in an open-end, diversified investment trust which is a professionally managed money market fund). In this case, the War Chest Program has a comprehensive tracking system that properly accounts for all funds from committees subject to the Commission's contribution limits and those that are not. Accordingly, all funds will be accurately accounted for under the Program's investment process.

The Commission has not permitted the commingling of funds for investment purposes where the committee would receive a prohibited corporate contribution. AO 1981-20 (Sunkist Growers) (not permitting a commingled investment of committee funds together with those of a state political action committee that accepted corporate contributions where the large investment could be made only when combining permissible and impermissible funds). Here, there is no prohibited corporate contribution because the War Chest Program has no minimum participation amounts.



March 31, 2017

Page 9

*Question 2: If the answer to question 1 is “yes,” may War Chest allow a participating committee to deposit contributions directly into, and draw expenditures directly on, the committee’s War Chest Account?*

The Act and the Commission’s regulations provide that an entity is a qualified depository where it is a State bank, federally chartered depository institution, or depository institution the accounts of which are insured by the FDIC or the National Credit Union Administration. A state-chartered organization regulated by a state’s banking regulator constitutes a “State bank” for purposes of the Act. *See* AO 1984-6 (Cooperative Central Bank) (determining that a state-chartered cooperative that is regulated under the state’s banking regulations constitutes a “State bank” under the Act and, therefore, is a qualified depository). Here, the Custodian is state-chartered and regulated by the State of Colorado’s Division of Banking.

The Custodian’s state-law label as “non-depository” still allows it to be a “State bank” for purposes of qualifying under Federal law as a campaign depository under the Act. First, the label “non-depository” is a misnomer in that Colorado’s financial institution laws give the Custodian the power to receive and maintain savings deposits, time deposits and certificates of deposit. The Custodian, is however, not allowed to receive and maintain transaction deposit accounts (i.e., checking accounts). *See* C.R.S. § 11-109-201. The Commission has previously determined that a state-chartered financial institution offering savings accounts (i.e., non-checking accounts) should be identified as a campaign depository. *See* AO 1976-25 (Bevill) (concerning a non-checking, interest bearing account). Further, the Act doesn’t require that a State bank offer checking accounts and acknowledges that “other” accounts are permissible at a campaign depository. 52 U.S.C. § 30102(h)(1); 11 CFR §§ 103.2, 103.3(a). Most importantly, from a compliance and transparency standpoint, a War Chest Account has the same detailed recordkeeping as any typical checking account. The Custodian has the power to receive and maintain savings deposits, time deposits and certificates of deposits and is regulated by the state’s banking regulator. Therefore, the Custodian qualifies as a “State bank” for purposes of the Act under Federal law irrespective of its misnomer state-law title.

A campaign depository that is a State bank is not required to be FDIC-insured. AO 1984-6 (Cooperative Central Bank) (determining that a state-chartered cooperative is a qualified depository even though the state cooperative was not insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration). Here, while the Custodian is eligible to apply for FDIC insurance coverage, it has not elected to do so at this time. Thus, the Custodian is not required to be an FDIC-insured institution to be a qualified depository under the Act.

The Act and the Commission’s regulations state that all funds received by a political committee must be deposited in the checking account or other accounts maintained in its campaign depository, 52 U.S.C. § 30102(h)(1); 11 CFR §§ 103.2 and 103.3(a), and go on to require that no disbursements, other than petty cash, may be made by such committee except by check or similar draft drawn on those accounts. 52 U.S.C. § 30102(h)(1) and (2); 11 CFR §§ 102.10 and 102.11. In other words, the Act and the Commission’s regulations require only that a committee have at

least one checking account at a campaign depository and that a Committee may have “other” accounts at a campaign depository. There is nothing excluding custody accounts from the “other” accounts that a committee may have at a campaign depository.

The Commission’s advisory opinions have evolved from requiring that deposits and expenditures be made only from a “checking account” to simply requiring that deposits and expenditures be made from an “account” at a designated depository. This evolution is consistent with the plain language of the Act. In the 1970s, the Commission’s advisory opinions permitted a committee to deposit contributions into, and draw expenditures on, only a checking account. *See* AO 1975-10 (McFall); AO 1975-41 (Schuster); AO 1976-25 (Bevill); AO 1976-33 (8th Congressional District Democratic Party of Michigan). However, since the 1980s, the Commission’s advisory opinions ceased mentioning a “checking account” and, instead, tracked the language of the Act in recognizing that contributions and expenditures can be made from any account at a qualified campaign depository. *See* AO 1980-39 (Fluor Public Affairs Committee) (finding that transfers to an investment trust and the earnings thereon must first be transferred back from the investment trust to the campaign depository prior to being expended); AO 1986-18 (Bevill) (finding that “all committee disbursements . . . [must be] . . . drawn on an account at its designated campaign depository”); AO 1997-6 (Hutchison) (finding that “[a]ll receipts received by the committee shall be deposited in *the checking account or accounts maintained in its campaign depository*” in determining that interest and dividends do not need to be deposited in the campaign depository prior to being reinvested and can, instead, simply be reinvested into the investment account) (emphasis added). The Commission continued in Advisory Opinion 1997-06 to address expenditures: “In addition, all funds in its investment accounts must be transferred to *a campaign depository account* before they are disbursed for a Committee operating expenditure or other non-investment purpose.” (emphasis added). AO 1997-06, at 3. Accordingly, for the last 35 years, the Commission’s advisory opinions have recognized, although without explicitly acknowledging, that it is not necessary for contributions and expenditures to pass through a checking account. Here, the War Chest Account is a custody account at the Custodian. Most importantly from a compliance and transparency standpoint, a War Chest Account has the same functionality and detailed recordkeeping as any typical checking account.

While the Commission did find that expenditures could not be made from a brokerage account held at a non-bank, the Commission later clarified that the basis for this determination was that the institution holding the account was not a qualified depository, as opposed to the reason being that the account was not a checking account. *See* AO 1986-18 (Bevill) (addressing an institution regulated by the Securities and Exchange Commission); AO 1993-4 (Cox) (clarifying Bevill).

In light of these facts, and the structure of the War Chest Account, we respectfully request that the Commission conclude that participating committees can deposit contributions directly into and draw expenditures directly on a committee’s War Chest Account where the committee also has a checking account at an identified campaign depository.

March 31, 2017

Page 11

*Question 3: If the answer to question 1 is “yes,” would War Chest’s sub-custodian banks be considered “depositories” that need to be listed on a participating committee’s amended Form 1 Statement of Organization?*

As stated above, if a committee invests its funds in a bank that was not previously identified as a campaign depository on its Form 1 Statement of Organization, the committee must file an amended Statement of Organization disclosing the name and address of the new depository. 11 CFR § 102.2(a)(2). In contrast, if a committee’s funds are invested in a fund that is not operated by a bank, no amendment to the Form 1 Statement of Organization is required.

The sub-custodian omnibus accounts should be distinguished from a committee’s War Chest Account. The function and operation of a committee’s War Chest Account and the various sub-custodian omnibus accounts are different. A committee’s War Chest Account is set up to receive contributions and make expenditures at the committee’s discretion and includes all the functionality of a checking account. In contrast, the War Chest Program advisor alone directs the Custodian to transfer funds between a committee’s War Chest Account and the Program’s various omnibus sub-custodian accounts via the Intermediary Sub-Custodian. Additionally, the Program’s omnibus sub-custodian accounts have significant operational restrictions, such as limited withdrawals, and hard-wired restrictions that limit transfers only via War Chest Accounts.

The Commission has not permitted a committee to commingle funds in a campaign depository account. *See* AO 1986-33 (Metropolitan Mortgage). Here, in contrast, monies at each sub-custodian omnibus account are commingled with funds from other Program participants. The sub-custodial deposits are for investment purposes only and no contributions or expenditures can be made to or from the Program’s sub-custodian accounts. Additionally, only the Program advisor can transfer money to and from the sub-custodian accounts. Therefore, even though a sub-custodian could be a qualified depository, it would not be appropriate for the Commission to require a committee to identify the sub-custodians as campaign depositories because the committee’s funds are commingled at the sub-custodian banks.

It would also frustrate the intentions of the Act and the Commission’s regulations to require a committee to disclose the names and addresses of all the Program’s sub-custodian banks on amendments to the committee’s Form 1 Statement of Organization. Identifying literally hundreds of sub-custodian names and addresses would obfuscate the actual depositories chosen by the committee to receive contributions and make expenditures. Further, the Commission’s reporting does not distinguish between those banks used primarily by a committee to receive contributions and draw expenditures, and those banks that merely hold certificates of deposits, savings accounts or money market demand deposit accounts.

Treating sub-custodians as campaign depositories would impose a burdensome and frequent reporting obligation on a committee participating in the Program. Until recently, the current campaign depository identification regime has arguably been sufficient given the slow pace of change in the banking industry. The ten (10) day amendment requirement to identify a new

campaign depository arguably did not present a significant or unmanageable burden because it is generally an infrequent and cumbersome process to change or add depositories. However, advances in technology have allowed significant innovations in how banks can be utilized, even though banks themselves are changing slowly. Here, the Program advisor uses sophisticated algorithms to optimize the allocation of money across the Program's network of banks, all of which can be altered at any time to increase investment yield. Such quick investment allocation decisions could require participating committees to regularly amend their Statements of Organization, creating unnecessary administrative overhead and paperwork.

A good illustration of changes over the last 35 years can be seen in Advisory Opinion 1986-18 (Bevill). In this Advisory Opinion, the Commission permitted Representative Bevill's campaign committee to transfer funds from the committee to a federally-insured money market deposit account program. The War Chest Program is similarly a federally-insured money market deposit account program. However, the deposit program used by Representative Bevill's committee in 1986 likely utilized a couple dozen banks in an orderly, simplistic fashion in which an incremental campaign depository was added only when the committee had neared the FDIC insurance limit at each of its existing campaign depositories. This static, predictable process enabled a committee to know well in advance when a new campaign depository would be added and allowed for disclosure. However, it also prevented the reallocation of deposits to higher-paying banks, imposed operational burdens on the participating banks when the committee rapidly withdrew their deposits close to an election, and provided a comparatively small amount of FDIC insurance coverage.

In contrast with the 1980s bank-deposit program discussed in Bevill, the War Chest Program has harnessed state-of-the-art technology to enable the fractional utilization of hundreds of banks. The Program's technology allows the Program's advisor to instantly allocate fractional deposits among hundreds of banks on a daily basis to ensure 100% FDIC insurance coverage, maximize return, and provide next-day liquidity to Program participants. Moreover, a committee cannot direct its money to be deposited with any particular sub-custodian bank, as that decision is made solely by the Program advisor.

In light of these facts, and the structure of War Chest's investment Program, we respectfully request that the Commission conclude that participating committees not be required to amend their Statements of Organization when the Program advisor moves the committee's funds to a comingled sub-custodian omnibus investment account.

**V. Conclusion**

War Chest requests the Commission's confirmation that all aspects of its business plan described above comply with federal campaign finance law. We appreciate the Commission's consideration of this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Spies". The signature is fluid and cursive, with the first name "Chris" written in a larger, more prominent script than the last name "Spies".

Charles R. Spies  
James E. Tyrrell III

*Counsel to War Chest LLC*