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COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2009 FEB 23 P 12: 14

February 20, 2009

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

ADR 2009-03

Re: Request for Advisory Opinion

Ladies and Gentlemen:

On behalf of IntercontinentalExchange, Inc. ("ICE"), a Delaware Corporation, we are requesting an advisory opinion from the Federal Election Commission (the "Commission") pursuant to 2 U.S.C. §437f of the Federal Election Campaign Act of 1971, as amended (the "Act"), and 11 CFR, Part 112. ICE has an established separate segregated fund ("SSF"), the IntercontinentalExchange, Inc. Political Action Committee ("ICE PAC"). ICE offers a charitable matching program ("match program") in connection with administering ICE PAC.

ICE and ICE PAC seek an advisory opinion from the Commission regarding a proposed change to the ICE PAC match program. ICE is considering this change to encourage a higher level of participation in ICE PAC by its contributors and to provide additional funds to charities. Presently, ICE matches each contribution made by an individual contributor to ICE PAC with a dollar for dollar contribution to a §501(c)(3) charity of the contributor's choice up to the maximum amount an individual can contribute to a SSF in a calendar year under §441a(2)(c) of the Act. It is ICE PAC's understanding that these matching contributions are allowable and the Commission has issued a number of advisory opinions approving similar matching contribution plans. See Advisory Opinions Nos. 1989-9, 1989-07, 1988-48, 1987-18 and 1986-44.

The Campaign Guide for Corporations and Labor Organizations states in Section 6 of Chapter 3 that "a connected organization may encourage contributions to the SSF by pledging to match *all or a portion* of a contributor's gift to the SSF with a donation to charity." We request clarification as to whether it is permissible for ICE to increase the matching amount donated to charities from dollar to dollar to up to two dollars for every one dollar contributed to ICE PAC. The charitable match amount may be tiered but will not exceed two dollars for every one dollar contributed to ICE PAC (for example, for contributions to ICE PAC up to \$1000.00, a \$1.50 charitable match for every one dollar contributed may be provided to a charity, and for contributions over \$1000.00, a two

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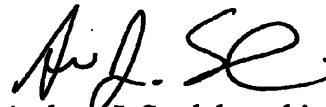
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dollar charitable match for every one dollar contributed over \$1000.00 may be provided to charity). ICE PAC believes that this additional incentive will help it receive larger contributions from individual contributors and will provide much needed additional funds to charitable entities. Further, since contributions to ICE PAC and contributions to charities by ICE as part of the matching program are not tax deductible for the individual contributors, the additional funds for charities through the match program may provide an additional incentive for individuals to contribute to ICE PAC while still fulfilling their desire to help fund charitable entities.

ICE and ICE PAC seek clarification of the ability to provide this additional charitable contribution since it technically would provide a match that is greater than the "all or a portion of a contributor's gift to the SSF" as quoted above. We believe that that this proposed enhancement to the charitable match program is allowable within the spirit of past advisory opinions issued by the Commission approving charitable matching programs. See Advisory Opinions Nos. 2003-04, 1994-07, 1994-03 and 1990-06.

Thank you in advance for your attention to this matter. Please do not hesitate to contact me should you have any questions at 770-738-2106.

Sincerely,



Andrew J. Surdykowski  
Vice President & Associate General Counsel

cc: Randy Nuckolls, Esq. McKenna, Long & Aldridge LLP  
Scott A. Hill, Senior Vice President, Chief Financial Officer, ICE  
Johnathan H. Short, Senior Vice President, General Counsel, ICE

AJS/cmd



Atlanta Calgary Chicago Houston London New York Singapore

February 16, 2009

Charity

\_\_\_\_\_  
\_\_\_\_\_

To Whom It May Concern,

Enclosed please find a check in the amount of \_\_\_\_\_ hundred dollars (\$\_00.00). This donation is being made by IntercontinentalExchange, Inc. on behalf of one of its employees \_\_\_\_\_.

Please note that the person in whose name the contribution has been made cannot receive any tangible benefit in exchange for the contribution.

Sincerely,

Andrew J. Surdykowski  
Vice President, Associate General Counsel

AJS/cmd  
Enclosure



## **ICE-PAC OPERATING GUIDELINES**

IntercontinentalExchange, Inc. (ICE) has approved the creation of its Political Action Committee (ICE-PAC). A statement of organization for ICE-PAC was filed with the Federal Election Commission (FEC) in January 2008. The Treasurer of ICE-PAC is Dean Mathison and the Assistant Treasurer is Andrew Surdykowski. ICE-PAC operates under the following guidelines:

The primary purpose of ICE-PAC is to compliment and support the federal governmental affairs initiatives of ICE. The goal of ICE-PAC is to support candidates for office who are supportive of programs and legislation of importance and beneficial to ICE.

ICE-PAC will solicit contributions from executives, directors and employees of ICE and their families. An employee, director or their family member must be a U.S. citizen to contribute to ICE-PAC.

Under federal law the maximum contribution that an ICE employee may make to ICE-PAC is \$5,000 per year. The spouse of an ICE employee may also give up to \$5,000 per year. Contributions made to ICE-PAC are NOT tax deductible.

ICE will match \$1 for \$1 any contributions of \$100 or more made by employees, directors or their families to ICE-PAC with a charitable contribution to an approved charity designated by the employee. For example, if an employee contributes \$200 to the ICE-PAC, the employee could designate the American Red Cross as the eligible charity to receive a \$200 contribution in the employees name from ICE. To designate a charity, please complete the attached form entitled "Charitable Contribution Form." The charitable contribution must be made to a qualified charitable organization as defined by the Internal Revenue Code and must be a contribution that is eligible for a deduction as charitable contributions under the Internal Revenue Code. In addition, the charitable contribution must receive approval by ICE as an acceptable recipient of the matching contribution. Religious organizations are not approved as recipients of charitable contributions under the ICE-PAC matching program. The IRS list of qualified charitable organizations (Pub. 78) does not distinguish which charities are organized for religious reasons; therefore, aside from deducing the organization's purpose from its name, the employee's representation regarding the organization's purpose is the only other information available to make this determination. Under FEC regulations, the employee may not receive any financial or tangible benefit from the matching charitable contribution made by ICE. Further, contributions to the ICE-PAC are not eligible for deduction as a charitable contribution. The employee, director or family member will be responsible for providing the applicable information to determine that the charity is a qualified charitable organization. If the charity selected by the employee is not approved by ICE, the employee, director or family member will be afforded the opportunity to select a different charity.

Decisions about campaign contributions made by ICE-PAC will be made by the ICE's Chief Financial Officer, or if he is unavailable, by his designee, in consultation with other ICE

**executives involved with ICE's federal governmental affairs activities. Priority will be given to those Members of Congress and candidates for federal office who are in key positions of importance to ICE and who have been supportive on federal issues of importance to ICE**

**Initially, the maximum contribution that ICE-PAC may make to a federal candidate is \$2,300 per election (primary and general elections are separate elections). Once ICE-PAC has achieved Multicandidate Status (by being in operation for six months, making at least five contributions to candidates and receiving donations to the PAC from at least 51 contributors), then the maximum amount that ICE-PAC may give to a federal candidate increases to \$5,000 per election.**

**ICE-PAC must report to the FEC, the date of receipt, name, address, and occupation of each donor giving more than \$200 per year. ICE-PAC must also report each contribution made to a candidate and any other expenses incurred by ICE-PAC in operating the PAC. Copies of checks and other records will be kept for a minimum of three years.**

**(Adopted February 26, 2008)**



**CHARITABLE CONTRIBUTION FORM**

Your Name: \_\_\_\_\_

Your Address: \_\_\_\_\_

\_\_\_\_\_

Your Phone: \_\_\_\_\_

Your Title \_\_\_\_\_

Name of Charity: \_\_\_\_\_

Address of Charity: \_\_\_\_\_

\_\_\_\_\_

Phone for Charity: \_\_\_\_\_

Website Address for

Charity (if known): \_\_\_\_\_

Is the charity listed in IRS Publication No. 78 (you can search for the charity at [www.irs.gov](http://www.irs.gov); keyword search "Pub 78") (if you need assistance in making this determination, please contact Karen Lynn or Rob Russell in the tax department)? \_\_\_\_\_

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**Company use only:**

Legal \_\_\_\_\_

Tax \_\_\_\_\_

Amount \_\_\_\_\_

Date Rcvd. \_\_\_\_\_

Date Sent \_\_\_\_\_