



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
CHIEF COMMUNICATIONS OFFICER
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: COMMISSION SECRETARY *MWD*

DATE: April 17, 2009

SUBJECT: *Ex Parte* Communication Regarding
Draft Advisory Opinion 2009-03
IntercontinentalExchange, Inc.

Transmitted herewith is an *ex parte* communication received from Andrew J. Surdykowski, Vice President and Associate General Counsel, on behalf of IntercontinentalExchange, Inc. (ICE, Inc.), regarding the above-captioned matter.

Proposed Advisory Opinion 2009-03 is on the agenda for Tuesday, April 21, 2009.

Attachment:



Atlanta Calgary Chicago Houston London New York Singapore

April 16, 2009

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

Re: Comment to Draft Advisory Opinion 2009-03 (IntercontinentalExchange, Inc.)

Ladies and Gentlemen:

We have received the Draft Advisory Opinion 2009-03 ("Draft AO") dated April 9, 2009 prepared by your General Counsel in response to IntercontinentalExchange, Inc.'s ("ICE") Advisory Opinion Request dated February 11, 2009. We note that the hearing for the Draft AO was rescheduled from April 16, 2009 to April 21, 2009 and in light of this delay we are hereby submitting this letter in support of the Draft AO. We have reviewed the Draft AO and respectfully urge you to adopt it for the following reasons:

- Contributors to the IntercontinentalExchange, Inc. Political Action Committee (the "ICE PAC") do not receive any kind of payment, reward, award, or premium from, the ICE PAC, or from the charities that they select as recipients of the charitable donations. The only reward is the satisfaction in knowing that their chosen charity is receiving the benefit of their participation in the ICE PAC.
- In light of current economic times, the proposed modification would allow ICE to give more to charities while encouraging participation in the ICE PAC.
- ICE believes the matching of voluntary political contributions with charitable donations should be characterized as solicitation expenses related to fundraising for the ICE PAC in accordance with the Federal Election Campaign Act of 1971, as amended and Commission regulations. Of utmost importance to this conclusion is that the individual contributor to ICE PAC would not receive a financial, tax, or other tangible benefit from ICE or the recipient charities, which avoids an exchange of corporate treasury monies for voluntary contributions. Further, the Internal Revenue Service has concluded that "a Charity/PAC matching program grant to an IRC 501(c)(3) organization should not be recharacterized as payment of compensation to the

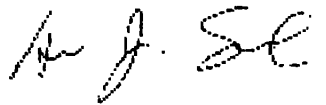
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employee, and a subsequent payment by the employee to the IRS 501(c)(3) organization." Judith E. Kindell and John F. Reilly, Election Year Issues, IRS publication, 441 (1992); see also Rev. Rul. 67-137, 1967-1 C.B. 63. The Internal Revenue Service has also concluded that the corporation may not receive a tax deduction for the matching charitable donation it makes. ICE does not claim a tax deduction for the matching charitable donations it makes because ICE PAC receives a benefit or quid pro quo in return for ICE's donations to the employee designated charity. Therefore, the donation cannot be viewed as a true "gift" from ICE. This additional incentive will help the ICE PAC receive more contributions, while providing much needed additional funds to the charities without providing a direct or indirect benefit to the contributor. Further, the increase in amount that ICE contributes to a charity will not result in any financial or tangible benefit as a result of the increased matching program to charities.

Accordingly, for the reasons set forth above we urge the Commission to vote in favor of the ICE PAC request.

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