

FEC Deadlocks on \$2 for \$1 PAC Charitable Matching Program

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By a vote of three to three (with four votes necessary for approval), the Federal Election Commission (FEC) failed to reach an agreement last month on an advisory opinion that would have expanded a corporation's ability to encourage PAC participation through a charitable matching program. Under current rules, the FEC allows a corporation to match employee contributions to the company's PAC with a contribution to a charity of the employee's choosing provided that the employee does not receive any financial or tangible benefit from the charitable contribution. For example, the employee may not take a tax deduction for the value of the contribution. However, the FEC has only approved matching programs on an equivalent, one-to-one basis (e.g., a \$1,000 PAC employee contribution is matched by a \$1,000 employer charitable contribution).

In its advisory opinion request (AOR 2009-3), Intercontinental Exchange, Inc. (ICE), sought to double the amount that it could match for each employee contribution. ICE argued that the increased matching program was in line with previous Commission opinions, noting that the corporation would still not take a tax deduction for any part of the matching contribution. The three Republican-appointed Commissioners agreed with ICE's proposal, but the Democratic Commissioners strongly resisted the \$2 for \$1 program, noting that such a substantial enticement would "skew the incentives" and largely undercut the voluntariness of any contributions to the corporate PAC. One Commissioner noted that any rational person wanting to contribute to a charity would begin contributing to the PAC—even if he or she knew little about the PAC's purposes or, in some cases, even where he or she opposed candidates the PAC supported—simply to take advantage of the increased matching

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benefit.

The Commission's failure to approve or disapprove ICE's proposal means that such a program remains an open question for the foreseeable future.