

Recent FEC Advisory Opinions Shed Light on Affiliation Issues

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The Federal Election Commission (FEC) recently issued two advisory opinions focusing on affiliation among corporate political action committees (PACs). In both advisory opinions, the FEC determined that the two corporate PACs at issue were not affiliated because of changing business relationships or corporate restructuring. Although seemingly innocuous, determining whether two PACs are affiliated can be quite complex and have far-reaching consequences for the PACs involved.

Why Is Affiliation Important?

When PACs are affiliated, they share a single contribution limit—with respect to the contributions the PACs make to candidates and other political committees and with respect to the contributions that the PACs receive from individuals. Relatedly, affiliated PACs may make unlimited transfers to each other. For contribution limit purposes, affiliated PACs effectively operate as a single PAC. Affiliation can also affect the scope of the PACs' restricted classes; when PACs are affiliated, they may solicit each other's restricted class.

When Are PACs Affiliated?

Under FEC regulations, PACs are affiliated if they are established, financed, maintained, or controlled by the same corporation, organization, person, or group of persons. Certain PACs are automatically affiliated. For example, a parent corporation's PAC is automatically affiliated with its wholly-owned subsidiary's PAC. In most cases that reach the FEC, however, affiliation is determined on a case-by-case basis by examining the relationships among the sponsoring corporations and the PACs. This is done by considering a non-exhaustive list of ten affiliation factors.

What Insight Did the FEC Provide?

Affiliation in the Context of Changing Business Relationships. In Advisory Opinion 2014-11, the FEC determined that the PACs sponsored by Health Care Service Corporation (HCSC) and Blue Cross and Blue Shield Association (BCBSA) were no longer affiliated. As a licensee of BCBSA, HCSC has the exclusive right to market health insurance in five states under the “Blue Cross and Blue Shield” name and trademark in exchange for adhering to certain restrictions and obligations. The FEC has generally taken the position that a licensor-licensee relationship does not result in affiliation unless “one entity exercises pervasive supervision

and direction over the daily operations and business policies of another entity.” Although HCSC and BCBSA were initially affiliated, in recent years HCSC increasingly diversified its business outside of the health insurance products that it markets under its licensing agreement with BCBSA. Because the current relationship between HCSC and BCBSA evolved into that of merely a contractual licensor and licensee, the FEC determined that the PACs sponsored by HCSC and BCBSA were no longer affiliated.

Affiliation in the Context of Corporate Restructuring. In Advisory Opinion 2014-18, the FEC determined that the PACs sponsored by Rayonier, Inc. (Rayonier) and Rayonier Advanced Materials, Inc. (RYAM) were not affiliated. Rayonier technically “established” RYAM through a spin-off, but did not own RYAM stock, control RYAM’s day-to-day operations, or share any officers or directors with RYAM. Moreover, RYAM did not create its PAC until after the spin-off occurred. In finding that the two PACs were not affiliated, the FEC confirmed earlier precedent that one corporation’s formation of another through a spin-off “does not necessitate a finding of continued affiliation when significant changes in the relevant relationships have occurred,” such as “separating the operations of the companies,” “apportioning their assets and obligations,” and “nearly complete separation of corporate leadership and personnel.”