

September 13, 2002

**VIA E-MAIL**

Mai T. Dinh  
Acting Assistant General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**RE: Federal Election Commission's ("FEC") Proposed Revisions to 11 C.F.R. § 110  
Implementing the Bipartisan Campaign Finance Reform Act ("BCRA"); 67 Fed.  
Reg. 54366 (August 22, 2002)**

Dear Ms. Dinh:

These comments are submitted on behalf of Placer Dome America. Placer Dome America is a U.S. subsidiary of Placer Dome Inc., a hardrock mining company, headquartered in Vancouver, Canada.

**I. Introduction**

Placer Dome America is writing to comment on a particular issue raised by the FEC in the preamble to its August 22, 2002 proposed rule implementing certain provisions of the BCRA.<sup>1</sup> Specifically, Placer Dome America's comments respond to the portions of the rule concerning "whether 'indirectly' should cover a foreign controlled U.S. corporation, including a U.S. subsidiary of a foreign corporation, when such corporation seeks to make (1) non-federal donations of corporate treasury funds, or (2) federal contributions through a political action committee." We contend that BCRA's plain language and the legislative history indicate no intention by Congress to define the term "indirectly" to mean U.S. subsidiaries, their PACs, and their U.S. citizen-employees contributions.

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<sup>1</sup> 67 Fed. Reg. 54366 (August 22, 2002).

## *II. Legal Background*

The Federal Election Campaign Act ("FECA") and current FEC regulations prohibit foreign nationals from making a contribution, directly or through any other person, or an expenditure in connection with an election to any political office. In addition, it is unlawful to solicit, accept, or receive a contribution from a foreign national.<sup>2</sup> However, under 22 U.S.C. §611(b), a corporation organized under the laws of any State within the United States, with its principal place of business within the United States, is not a foreign principal. Accordingly, such an entity would not be a foreign national under 2 U.S.C. §441e. Under 2 U.S.C. §441e, a foreign national who is a shareholder, or an executive or administrative employee of a U.S. subsidiary, or a family member of such a person, may not make contributions to the subsidiary's PAC nor be solicited for such contributions. However, the Commission has made clear that those individuals in the restricted class who are employed by foreign national corporations, but who are not foreign nationals, may be solicited for contributions to the domestic parent.

## **III. Analysis**

### *A. Congress Did Not Authorize The FEC To Treat U.S. Employees of U.S. Subsidiary Corporations Differently Than U.S. Employees of U.S. Based Corporations*

As stated above, the plain language of BCRA makes no mention of U.S. subsidiaries. Likewise, we find no mention of U.S. subsidiaries in the legislative history regarding this provision. One of the primary authors of this legislation in the Senate, Senator Feingold, produced a section-by-section description of BCRA during the Senate deliberations and his analysis does not reach the same conclusion as the proposed rule.<sup>3</sup>

Furthermore, when BCRA was considered on the floor of the House of Representatives, an amendment was offered to restrict contributions solely to U.S. citizens and nationals. This amendment was debate and defeated by a vote of 268-160.<sup>4</sup> At no time during the discussion of this amendment on the House floor did the suggestion arise that the legislation should diminish the ability of U.S. corporations and their PACs to participate in the U.S. political system.

Lastly, in 1998, Representative Marcy Kaptur (D-OH) introduced a bill that would have prohibited U.S. citizen employees from participating in PACs. To counter

<sup>2</sup> 2 U.S.C. §441e(a); 11 C.F.R. §§ 110.4(a)(1) and (2).

<sup>3</sup> Sec. 303. Strengthening Foreign Money Ban. Prohibits foreign nationals from making any contribution to a committee of a political party or any contribution in connection with federal, state or local elections, including any electioneering communications. This clarifies that the ban on contributions to foreign nationals applies to soft money donations Cong. Rec. S1994 (March 18, 2002).

<sup>4</sup> Cong. Record H448-451 (February 13, 2002).

her amendment, Representatives Paul Gillmor (R-OH) and John Tanner (D-TN) introduced an amendment to protect U.S. subsidiaries from such discriminatory treatment. The Gillmor/Tanner amendment was introduced so that all Americans eligible to vote be treated in the same way. On June 19, 1998, the House overwhelmingly passed the Gillmor/Tanner amendment by a vote of 395 to 0. Floor debate indicated strong support for the rights of the employees of U.S. subsidiaries to contribute to PACs based mainly on the notion that those contributing are U.S. citizens and should be treated as U.S. citizens.<sup>5</sup>

Therefore, Congress is well aware of the issue and specifically did not raise the issue in BCRA. Hence, no authority exists for the Commission to exceed its statutory mandate and rulemaking authority by implementing a regulation in contravention to the plain language of the law and its legislative history.

***B. American Citizens Should Not Be Discriminated Against Based On The Country Of Origin Of The Foreign Based Parent Company***

U.S. subsidiaries are American companies. Any contribution from a PAC of a U.S. subsidiary would be required to come only from individual contributors who are U.S. citizens. These employees are American citizens, voters, and taxpayers and should be treated accordingly. Their political involvement, including contributions, must remain on equal footing with the employees of other American companies and their employees to maintain the fairness and integrity of the U.S. political process. Thus, the FEC must refrain from taking any actions that would imply that U.S. subsidiaries and their American employees are somehow second-tier citizens with differing rights.

**IV. Conclusion**

Thank you in advance for your consideration of these comments. Placer Dome America looks forward to working with the Commission during this rulemaking. In addition, Placer Dome America requests that the Commission hold hearings as stated in its Notice of Proposed Rulemaking on August 22, 2002.

Respectfully,

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<sup>5</sup> Cong. Rec. H4863 (Oct. 28, 1997).