

Record

April 2009

Federal Election Commission

Volume 35, Number 4

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Paper distribution of the FEC Record will end in July 2009.

See page 3 for details.

Reporting

April Reporting Reminder

The following reports are due in April:

- All principal campaign committees of House and Senate candidates must file a quarterly report by April 15, 2009. The report covers financial activity from January 1 (or the day after the closing date of the last report) through March 31;
- Principal campaign committees of Presidential candidates must file a report by April 15, if they are quarterly filers (the report covers financial activity from January 1 through March 31), or by April 20, if they are monthly filers (the report covers activity for the month of March); and
- National party committees, political action committees (PACs) following a monthly filing schedule and state, district and local party committees that engage in reportable “federal election activity” (see “State, District and Local Party Committees, on page 3) must file a monthly report by April 20. This report covers activity for the month of March. Other PACs and party committees will next file a Mid-Year Report, due July 31.

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800 Line

Best Practices for Committee Management

While the misappropriation of committee funds is not common, the Commission has encountered a number of cases of where political committee staff misappropriated funds. In addition to the difficulties committees face in discovering that funds are missing, misappropriations are often accompanied by the filing of inaccurate disclosure reports with the FEC, leaving committees vulnerable to FEC enforcement action and potential liability for those reporting errors.

To help protect committees, the FEC created a safe harbor for political committees that have certain internal controls in place to prevent misappropriations and associated misreporting. Under this provision, if these internal controls are in place at the time of a misappropriation, and the committee follows the post-discovery steps described below, the FEC will not seek a civil penalty against the political committee for filing incorrect reports due to the misappropriation of committee funds. This article answers common questions about the best way for committees to protect themselves in case of a misappropriation.

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Reporting

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Notification of Filing Deadlines

In addition to publishing this article, the Commission notifies committees of filing deadlines on its web site, via its automated Faxline and through reporting reminders called prior notices. Prior notices are distributed exclusively by electronic mail. For that reason, it is important that every committee update its Statement of Organization (FEC Form 1) to disclose a current e-mail address. To amend Form 1, electronic filers must submit Form 1 filled out in its entirety. Paper filers should

Federal Election Commission
999 E Street, NW
Washington, DC 20463

800/424-9530 (Toll-Free)
 202/694-1100 (Information Div.)
 202/501-3413 (FEC Faxline)
 202/219-3336 (TDD for the
 hearing impaired)

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 Division of the Office of
 Communications

Greg J. Scott,
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Amy L. Kort,
 Deputy Assistant Staff Director

Myles G. Martin,
 Editor

<http://www.fec.gov>

include only the committee's name, address, FEC identification number and the updated or changed portions of the form.

Treasurer's Responsibilities

The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Federal Election Campaign Act (the Act) and Commission regulations. Committee treasurers must comply with all applicable filing deadlines established by law, and the lack of prior notice does not constitute an excuse for failing to comply with any filing deadline.

Accordingly, reports filed by methods other than Registered, Certified or Overnight Mail (see below), or electronically, must be received by the Commission's (or the Secretary of the Senate's) close of business on the last business day before the deadline.

Filing Electronically

Under the Commission's mandatory electronic filing regulations, individuals and organizations that receive contributions or make expenditures, including independent expenditures, in excess of \$50,000 in a calendar year—or have reason to expect to do so—must file all reports and statements with the FEC electronically.¹ Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the applicable filing deadline. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's

validation program by the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines.

Senate committees and other committees that file with the Secretary of the Senate are not subject to the mandatory electronic filing rules, but may file an unofficial copy of their reports with the Commission in order to speed disclosure.

The Commission's electronic filing software, FECFile, is free and can be downloaded from the FEC's web site. New FECFile Version 6.3.1.1 is available for download from the FEC web site at <http://www.fec.gov/elecfil/updateslist.html>. All reports filed after March 10, 2009, must be filed in Format Version 6.3.1.1 (the new version). Reports filed in previous formats will not be accepted. Filers may also use commercial or privately developed software as long as the software meets the Commission's format specifications, which are available on the Commission's web site. Committees using commercial software should contact their vendors for more information about the Commission's latest software release.

Timely Filing for Paper Filers

Registered and Certified Mail. Reports sent by registered or certified mail must be postmarked on or before the mailing deadline to be considered timely filed. A committee sending its reports by certified or registered mail should keep its mailing receipt with the U.S. Postal Service (USPS) postmark as proof of filing because the USPS does not keep complete records of items sent by certified mail. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

¹ The regulation covers individuals and organizations required to file reports of contributions and/or expenditures with the Commission, including any person making an independent expenditure. Disbursements for "electioneering communications" do not count toward the \$50,000 threshold for mandatory electronic filing. 11 CFR 104.18(a).

Overnight Mail. Reports filed via overnight mail² will be considered timely filed if the report is received by the delivery service on or before the mailing deadline. A committee sending its reports by Express

² “Overnight mail” includes Priority or Express Mail having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service’s on-line tracking system.

or Priority Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

Other Means of Filing. Reports sent by other means—including first class mail and courier—must be received by the FEC (or the Secretary of the Senate) before close of business on the filing deadline. 11 CFR 100.19 and 104.5(e).

Paper forms are available for downloading at the FEC’s web site (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency’s automated fax system (202/501-3413). The 2009 Reporting Schedule is also available on the FEC’s web site (http://www.fec.gov/info/report_dates.shtml), and from Faxline. For more information on reporting, call the FEC at 800/424-9530 or 202/694-1100.

State, District and Local Party Committees

State, district and local party committees that engage in certain levels of “federal election activity” must file on a monthly schedule. 11 CFR 300.36(b) and (c)(1). Committees that do not engage in reportable “federal election activity” may file on a semi-annual basis in 2009. 11 CFR 104.5(c)(1)(i).

National Party Committees

National committees of political parties must file on a monthly schedule in all years. 2 U.S.C. §434(a)(4)(B) and 11 CFR 104.5(c)(4).

Political Action Committees

PACs (separate segregated funds and nonconnected committees) that filed on a quarterly basis in 2008 will file on a semiannual basis in 2009. Monthly filers continue on the monthly schedule. PACs may change their filing schedule, but must first notify the Commission in writing. Electronic filers must file this request electronically. A committee may change its filing frequency only once a year, after giving notice of change in filing frequency to the Commission, and all future reports must follow the new filing frequency. 11 CFR 104.5(c).

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No More Paper!

Electronic distribution of the FEC Record begins in July 2009

Beginning in July 2009, the FEC will no longer print and mail copies of its monthly newsletter, the *Record*, and will instead distribute it electronically. The *Record* will continue to be made available each month on the FEC web site at <http://www.fec.gov/pages/record.shtml>, and the FEC will notify all registered committees via e-mail each time a new issue is posted.

Individuals and organizations who are not registered with the Commission, but who would like to continue to receive the *Record*, can subscribe through FECMail to receive e-mail notification when a new issue is posted to the web site. Subscribing is easy. Simply visit our web site at <http://www.fec.gov/pages/record.shtml> and click on the link “Sign-up to receive an e-mail notification when a new issue of the *Record* is posted.”

We appreciate your patience as we make this transition. Publishing the *Record* electronically, rather than on paper, will improve efficiency, conserve resources and provide more timely delivery to subscribers. As a service to readers who cannot access the publication on-line, we will offer copies through our automated fax system, Faxline, and will print and mail paper copies upon request. For more information, please contact the Information Division at 800/424-9530 or 202-694-1100.

Reporting

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Additional Information

For more information on 2009 reporting dates:

- See the reporting tables in the January 2009 *Record*;
- Call and request the reporting tables from the FEC at 800/424-9530 or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document 586); or
- Visit the FEC's web page at http://www.fec.gov/info/report_dates.shtml to view the reporting tables online.

—Elizabeth Kurland

California Special Election Reporting: 32nd District

The Special General Election to fill the U.S. House seat in California's 32nd Congressional District vacated by Secretary Hilda Solis will be held on May 19, 2009. Under California law, a majority winner in a special election is declared elected. Should no candidate achieve a majority vote, a Special Runoff Election will be held on July 14, 2009, among the top vote-getters of each qualified party, including qualified independent candidates.

Candidate committees involved in this election must follow the reporting schedule at right. Please note that the reporting period for the Post-General report spans two election cycles. For this report only, authorized committees must use the Post-Election Detailed Summary Page rather than the normal Detailed Summary Page.

PACs and party committees that file on a semiannual schedule and participate in this election must also follow this schedule. PACs and party committees that file monthly should continue to file according to their regular filing schedule.

California 32nd District Special Election Reporting

If Only the Special General (05/19/09) is Held, Political Committees Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-General	April 29	May 4	May 7
Post-General	June 8	June 18	June 18
July Quarterly	June 30	July 15	July 15

Political Committees Involved in Both the Special General (05/19/09) and the Special Runoff (07/14/09) Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-General	April 29	May 4	May 7
Pre-Runoff	June 24	June 29	July 2
July Quarterly	June 30	July 15	July 15
Post-Runoff	August 3	August 13	August 13
October Quarterly	September 30	October 15	October 15

If Both Elections are Held, Political Committees Involved in Only the Special General (05/19/09) Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-General	April 29	May 4	May 7
July Quarterly	June 30	July 15	July 15

¹ This date indicates the end of a reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

Filing Electronically

Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the applicable filing deadline. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program by the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines.

Timely Filing for Paper Filers

Registered and Certified Mail. Reports sent by registered or certified mail must be postmarked on or before the mailing deadline to be considered timely filed. A committee sending its reports by registered or certified mail should keep its mailing receipt with the U.S. Postal Service (USPS) postmark as proof of filing because the USPS does not keep complete records of items sent by certified mail. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

Overnight Mail. Reports filed via overnight mail¹ will be considered timely filed if the report is received by the delivery service on or before the mailing deadline. A committee sending its reports by Express or Priority Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

Other Means of Filing. Reports sent by other means—including first class mail and courier—must be received by the FEC before the Commission's close of business on the filing deadline. 11 CFR 100.19 and 104.5(e).

Forms are available for downloading and printing at the FEC's web site (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency's automated fax system (202/501-3413).

48-Hour Contribution Notices

Note that 48-hour notices are required of the participating candidate's principal campaign committee if it receives any contribution of \$1,000 or more per source between April 30 and May 16, 2009, for the Special General Election, and between June 25 and July 11 for the Special Runoff Election.

24- and 48-Hour Reports of Independent Expenditures

Political committees and other persons must file 24-hour reports of independent expenditures that aggregate at or above \$1,000 between April 30 and May 17, 2009, for the Special General Election, and between June 25 and July 17, 2009, for the Special Runoff Election. This requirement is in addition to that of filing 48-hour reports of independent

expenditures that aggregate \$10,000 or more during a calendar year.

Electioneering Communications

The 60-day electioneering communications period in connection with the Special General Election runs from March 20 through May 19, 2009. The 60-day electioneering communications period in connection with the Special Runoff Election runs from May 15 through July 14, 2009.

—Elizabeth Kurland

Advisory Opinions

AO 2008-21

Solicitation of Members of Corporation's Wholly Owned Mercantile Exchanges for PAC Contributions

CME Group, Inc. may solicit voluntary contributions to its separate segregated fund from certain categories of individual members of two of its wholly owned subsidiaries, the Chicago Board of Trade (CBOT) and New York Mercantile Exchange (NYMEX), regardless of whether such members own shares of stock in the parent corporation. CME Group, Inc. may also solicit individual members of its third wholly owned mercantile exchange, the Chicago Mercantile Exchange (CME), but only in their capacity as stockholders in CME Group, Inc.

Background

As a result of recent mergers, CME, CBOT and NYMEX are now wholly owned subsidiaries of CME Group, Inc. Some, but not all, of the members of each of the three exchanges own stock in CME Group, Inc., the parent corporation. CME Group, Inc. plans to solicit the members of the exchanges who

qualify as CME Group, Inc. stockholders for voluntary contributions to its separate segregated fund, CME Group, Inc. PAC (the PAC). CME Group, Inc. also wishes to solicit certain categories of members of the exchanges who are not CME Group, Inc. stockholders for contributions to its PAC.

The Federal Election Campaign Act (the Act) and Commission regulations detail the types of persons who may be solicited for contributions to separate segregated funds such as the PAC. 2 U.S.C. §441b(b)(4); 11 CFR 114.1(j). This solicitable class includes a corporation's stockholders, executive and administrative personnel, and their family members. 2 U.S.C. §441b(b)(4)(A)(i); 11 CFR 114.1(j). A membership organization is membership-based rather than stockholder-based. The solicitable class of an incorporated membership organization includes its members—as defined by the Act and Commission regulations—and its executive and administrative personnel and their families. 2 U.S.C. §441b(b)(4)(C); 11 CFR 114.1(e)(1), (2) and (3). Commission regulations also define any corporation's solicitable class to include the executive and administrative personnel, and their families, of its subsidiaries or other affiliates. 11 CFR 114.5(g)(1).

Analysis

Based on these legal principles, CME Group, Inc.'s situation can be broken down into four questions, discussed below.

Do CME, CBOT and/or NYMEX qualify as membership organizations that have "members" under the Act and Commission regulations? Commission regulations define a membership organization as a "trade association, cooperative, [or] corporation without capital stock" that:

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¹ "Overnight mail" includes Priority or Express Mail having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service's on-line tracking system.

Advisory Opinions

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- Is composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution or other formal organizational documents;
- Expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;
- Makes its articles, bylaws, constitution or other formal organizational documents available to its members upon request;
- Expressly solicits persons to become members;
- Expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and
- Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to federal office. 11 CFR 114.1(e)(1) and 100.134(e).

CME has issued capital stock and, as a result, is not a membership organization under Commission regulations. CBOT and NYMEX, however, are both corporations without capital stock and also meet the six criteria for being a membership organization.

CBOT and NYMEX meet the first criterion because they are made up of members, at least some of whom are vested with the power and authority to govern the organizations. Both organizations are governed by CME Group, Inc.'s 33-member Board of Directors, and each is entitled to designate members to serve as voting members on the Board. The Board serves as the highest governing body for each exchange and is empowered to make policy for both.

CBOT and NYMEX meet the second and third criteria because

they have rulebooks that expressly state the qualifications for membership, CBOT posts these rules on its web site, and NYMEX makes them available on its web site and upon request. They meet the fourth requirement because both expressly solicit membership by advertising the benefits of membership on their respective web sites and inviting applications, and they meet the fifth requirement because they formally acknowledge an individual's membership through detailed procedures for applying for and approving membership. In addition, both exchanges provide jackets or badges to new members that permit access to the trading floor. Finally, CBOT and NYMEX were organized to operate as trading organizations and not primarily for the purpose of influencing federal elections, thus meeting the sixth criterion.

Having determined that CBOT and NYMEX are membership organizations, the next issue is to determine which persons within those organizations are members under the Act and, thus, may be solicited for contributions to the PAC. Under Commission regulations the term "members" includes all persons who currently satisfy the membership requirements of a membership organization, affirmatively accept the membership organization's invitation to become a member **and**:

- Have a significant financial attachment to the organization, such as a significant investment or ownership stake; or
- Pay membership dues at least annually of a specific, predetermined amount; or
- Have a significant organizational attachment that includes affirmation of membership on at least an annual basis and direct participatory rights in the organization's governance.

On a case-by-case basis, the Commission may also determine

that individuals who do not precisely satisfy the above requirements nevertheless qualify as members, provided that such individuals demonstrate a "relatively enduring and independently significant financial or organizational attachment to the organization." 11 CFR 114.1(e)(3) and 100.134(g).

CME Group, Inc. asked whether the following categories of individuals qualify as members of the exchanges:

- Outright owners of seats, including owners who lease their seats to others (lessors);
- Owners of seats who temporarily transfer their memberships to others (temporary transferors); and
- Certain individuals who do not own seats, but who hold them and

AO Search System Available

The FEC has an Advisory Opinion Search System available on its web site at www.fec.gov. This search function allows users to search for advisory opinions (AOs) by the AO number or name of requestor, or to enter search terms or perform an advanced search for documents.

The system quickly provides relevant AOs, along with all related documents including advisory opinion requests, comments and any concurring or dissenting opinions issued by Commissioners. The search function also provides summary material and links to other AOs cited in the opinion.

When the search system was first launched, it included AOs issued from 1997 to the present. The system has now been updated to include AOs dating back to 1977. The AO search system is available at <http://saos.nictusa.com/saos/searchao>.

exercise membership rights associated with them on behalf of others (temporary transferees).

The value of a seat on CBOT or NYMEX has typically ranged between \$500,000 and \$1.5 million. Thus, outright owners of a seat, who currently satisfy the membership requirements of an exchange and have affirmatively accepted that membership, have either paid a substantial amount for the seat or have been given a seat having substantial value. The Commission has specifically recognized such an ownership stake in a stock or commodity exchange as a significant "investment or ownership stake," and hence a significant financial attachment. Therefore, outright owners of a seat are members.

Seat owners who lease their seats are also members. CBOT and NYMEX lessors retain beneficial ownership of the seat because they can unilaterally decide to terminate the lease and sell the seat. The retention of beneficial ownership and exclusive rights of alienation in the seats indicates that lessors retain their significant financial attachments to their respective exchanges during the lease period.

CBOT and NYMEX also allow individuals who own seats to temporarily transfer their memberships to other individuals, subject to certain conditions. These temporary transferors are members of their respective exchanges for the purposes of the Act and Commission regulations, even if the exchanges do not consider the transferors to be members during the transfer period. While they cannot exercise most of the prerogatives of membership associated with seat ownership during the transfer period, they may regain those prerogatives at any time by revoking the transfer. Thus, they are in effect "temporarily retired" or "temporarily inactive" members. Accordingly, they demonstrate "relatively enduring and independently significant financial" ties to the exchanges sufficient to qualify them as members.

Finally, the request asks about two types of temporary transferees. CBOT has members, known as member-firm transferees, who are not lessees but rather hold seats through transfer from a member firm. In NYMEX, there are individuals, known as conferring members, who qualify for membership in the exchange, but who essentially hold their memberships on behalf of member firms. Although these classes of transferees do not own their seats, they must apply for membership in the exchanges through the same processes that member-owners undergo. In affirmatively accepting such membership, member-firm transferees and conferring members agree to abide by, and are bound by, the rules of their respective exchanges and are subject to significant penalties from the exchange. Penalties range from warning letters and reprimands to substantial monetary penalties and suspension or expulsion from the exchange. Although member-firm transferees and conferring members do not own their seats, the exchanges' rulebooks show that they are current, fully-functioning trading members, having significant privileges in the trading of options contracts, futures contracts and/or commodities contracts and earn their livelihoods, at least in part, through such trading privileges. The fact that they are personally liable for violations of the membership rules and that their livelihoods, in terms of trading privileges, are dependent upon their continued status in the exchange suffices as a significant financial attachment despite the absence of an ownership interest. See AOs 1997-5 and 1995-2. Thus, both types of temporary transferees are members of their respective exchanges under the Act and Commission regulations.

Are the individual members of CME stockholders and therefore solicitable? Under the Act and Com-

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PACronyms, Other PAC Publications Available

The Commission annually publishes an alphabetical listing of acronyms, abbreviations and common names of political action committees (PACs).

For each PAC listed, the index provides the full name of the PAC, its city, state, FEC identification number and, if not identifiable from the full name, its connected, sponsoring or affiliated organization.

This index is helpful in identifying PACs that are not readily identified in their reports and statements on file with the FEC.

To order a free copy of PACronyms, call the FEC's Disclosure Division at 800/424-9530 or 202/694-1120.

PACronyms is also available on diskette for \$1 and can be accessed free on the FEC web site at www.fec.gov.

Other PAC indexes, described below, may be ordered from the Disclosure Division. Prepayment is required.

- An alphabetical list of all registered PACs showing each PAC's identification number, address, treasurer and connected organization (\$13.25).
- A list of registered PACs arranged by state providing the same information as above (\$13.25).
- An alphabetical list of organizations sponsoring PACs showing the name of the PAC and its identification number (\$7.50).

The Disclosure Division can also conduct database research to locate federal political committees when only part of the committee name is known. Call the telephone numbers above for assistance or visit the Public Records Office in Washington at 999 E St. NW.

Advisory Opinions

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mission regulations the individual members of CME are stockholders. A stockholder is defined as someone who has:

- A vested beneficial interest in stock;
- The power to direct how that stock shall be voted, if it is voting stock; and
- The right to receive dividends.

Individuals acquiring seats in CME automatically own one share of Class B stock in CME Group, Inc.¹ Therefore, the first condition of qualification as a stockholder under the regulation is met. Individuals holding seats in CME have regular and special voting rights associated with their shares of stock, and they have the right to receive dividends. They also have the right to receive value for the share in the event of CME Group, Inc.'s liquidation. Therefore, the second and third criteria of stockholder status are also satisfied.

Are the three exchanges affiliated with CME Group, Inc.? Committees, including separate segregated funds, that are established, financed, maintained or controlled by the same corporation, person or group of persons, including any parent, subsidiary, branch, department or local unit thereof, are affiliated. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2) and 110.3(a)(1)(ii). As wholly owned subsidiaries, CME, CBOT and NYMEX are affiliated with CME Group, Inc.

Are the members or stockholders of the three exchanges part of CME Group, Inc.'s solicitable class? As holders of Class B stock in CME Group, Inc., the individual members of CME are solicitable by CME

Group, Inc. 2 U.S.C. §441b(b)(4)(A)(i) and 11 CFR 114.1(j). With respect to the categories of members of CBOT and NYMEX, the Commission has concluded in previous advisory opinions that a corporation may solicit all individuals within the solicitable classes of its subsidiaries or other affiliates. See AOs 2005-17, 2003-28 and 2001-18. Although CME Group, Inc. is a corporation and CBOT and NYMEX are membership organizations, the Commission has previously affirmed that this difference is not an obstacle to permissible solicitation. See AO 2005-17.

Because CBOT and NYMEX are affiliated with CME Group, Inc., and are incorporated membership organizations with solicitable members, any SSF established by either of the exchanges could transfer without limit its federally permissible contributions, received from its own members, to CME Group, Inc. PAC. It follows that CME Group, Inc. may solicit the solicitable members of CBOT and NYMEX for contributions to CME Group, Inc. PAC. AO 2005-17

Conclusion

CME Group, Inc. may solicit voluntary contributions to the PAC from the following categories of members of CBOT and NYMEX regardless of whether such members hold stock in CME Group, Inc.:

- Outright owners of seats on the exchanges, including owners who lease their seats to others;
- Owners of seats who temporarily transfer their memberships to others; and
- Certain individuals who do not own seats, but who hold them and exercise membership rights associated with them on behalf of others.

Because individual members of CME qualify as stockholders of

CME Group, Inc., CME Group, Inc. may also solicit contributions to the PAC from those individuals.

Date Issued: February 13, 2009;
Length: 12 pages.

—Isaac J. Baker

Alternative Disposition of Advisory Opinion Request

AOR 2009-05

The requester withdrew its request for this advisory opinion on March 17, 2009 (Andy Harris for Congress).

Advisory Opinion Requests

AOR 2009-06

Federal officeholder's ability to raise nonfederal funds to retire state campaign's debt (Jim Risch for Lieutenant Governor Committee, February 17, 2009)

Statistics

Number of PACs Increases

The number of federally registered political action committees (PACs) increased by nine percent from 4,234 on January 1, 2008, to 4,611 by January 1, 2009.

For more than 20 years, the number of active PACs has ranged from approximately 3,800 to about 4,600. While the overall total has remained steady, new committees continue to register in numbers roughly equal to those that terminate their activity in each cycle.

The number of nonconnected PACs increased the most, up 23 percent from 2008, with 1,594 committees. Corporate committees increased by less than one percent, yet they make up the largest group of registered PACs at 1,598. As of January 1, 2009, 103 committees

¹ CME Group, Inc. issues two types of stock. Class A stock is publicly traded. Class B stock is owned exclusively by CME seat holders and is not publicly traded.

Semi-annual PAC Count 2000-Present

	Corporate	Labor	Trade/ Member/ Health	Coop- erative	Corp. w/o Capital Stock	Non- connected ¹	Total
Jan. 00	1,548	318	844	38	115	972	3,835
Jul. 00	1,523	316	812	39	114	902	3,706
Jan. 01	1,545	317	860	41	118	1,026	3,907
Jul. 01	1,525	314	872	41	118	1,007	3,877
Jan. 02	1,508	316	891	41	116	1,019	3,891
Jul. 02	1,514	313	882	40	110	1,006	3,865
Jan. 03	1,528	320	975	39	110	1,055	4,027
Jul. 03	1,534	320	902	39	110	1,040	3,945
Jan. 04	1,538	310	884	35	102	999	3,868
Jul. 04	1,555	306	877	34	97	1,174	4,040
Jan. 05	1,622	306	900	34	99	1,223	4,184
Jul. 05 ²	1,646	302	936	37	103	1,267	4,291
Jan. 06	1,622	290	925	37	103	1,233	4,210
Jul. 06	1,621	283	935	40	105	1,233	4,217
Jan. 07	1,582	273	937	37	100	1,254	4,183
Jul. 07	1,586	273	926	37	99	1,247	4,168
Jan. 08	1,601	273	925	38	97	1,300	4,234
Jul. 08	1,551	264	962	49	97	1,328	4,251
Jan. 09	1,598	272	995	49	103	1,594	4,611

¹ Nonconnected PACs must use their own funds to pay fundraising and administrative expenses, while the other categories of PACs have corporate or labor “connected organizations” that are permitted to pay those expenses for their PACs. On the other hand, nonconnected PACs may solicit contributions from the general public, while solicitations by corporate and labor PACs are restricted.

² During the second six months of 2005, 189 PACs were administratively terminated for inactivity.

sponsored by nonstock corporations had registered with the FEC as well as 272 labor, 995 trade/membership/health and 49 cooperative committees.

PACs sponsored by corporations and labor organizations are “separate segregated funds” and must register within 10 days of being established. Nonconnected PACs (those that are not connected to or sponsored by a corporation or labor organization, and which are not related to a candidate’s campaign or to a political party organization) must register within 10 days after certain financial activity exceeds \$1,000 during a calendar year.

Registration does not necessarily imply financial activity. Many PACs report making no contributions to

candidates or independent expenditures advocating for or against candidates.

Beginning in March, committees must disclose new information on their status to comply with regulations resulting from the Honest Leadership and Open Government Act of 2007 (HLOGA), known as the “lobbyist bundling” rules. A political committee that is directly or indirectly established, financed, maintained or controlled by a candidate for federal office, but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, must identify itself as a “Leadership PAC.” In addition, any political committee that is “estab-

lished or controlled” by a lobbyist/registrant must identify itself as a “lobbyist/registrant PAC” on FEC forms. Registered committees must amend their Statements of Organization (the FEC form required to establish a committee) by March 29. Committees that register with the FEC on or after March 19 will have to identify themselves as Leadership PACs and/or lobbyist/registrant PACs.

—Myles Martin

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(continued from page 1)

What are the minimum internal controls required for the safe harbor?

In order to avail itself of the safe harbor, a political committee must implement these minimum internal controls:

- All bank accounts must be opened in the name of the committee using the committee’s Employer Identification Number. Bank accounts should never be opened in the name of an individual using an individual’s Social Security Number.
- Bank statements must be reviewed for unauthorized transactions and reconciled with the accounting records each month. Further, bank records must be reconciled with disclosure reports prior to filing. The reconciliations must be done by someone other than a check signer or an individual responsible for handling the committee’s accounting.
- Checks in excess of \$1,000 must be authorized in writing and/or signed by two individuals. Further, all wire transfers must be authorized in writing by two individuals. The individuals who authorize disbursements or sign checks should be identified in writing in the committee’s internal policies.

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- An individual who does not handle the committee's accounting or have banking authority receives incoming checks and monitors all other incoming receipts. This individual makes a list of all committee receipts and places a restrictive endorsement, such as "For Deposit Only to the Account of the Payee," on all checks.
- The committee must use an imprest system for petty cash funds, and the value of the petty cash fund should be no more than \$500. An imprest system is one in which the sum of the disbursements recorded in the petty cash log since the last replenishment and the remaining cash always equals the stated amount of the fund. When the fund is replenished, the amount of the replenishment equals the amounts recorded since the prior replenishment and should bring the cash balance back to the stated amount. Only one person should be in charge of the fund.

What should the committee do if it discovers a misappropriation?

As soon as a misappropriation is discovered, the political committee must notify law enforcement. The committee also must notify the FEC and file amended reports to correct any reporting errors due to the misappropriation.

Is there anything else the committee can do to prevent misappropriations?

The Commission recommends that political committees implement additional internal controls to help prevent misappropriation of funds and the filing of inaccurate disclosure reports. The recommended controls include:

- Limiting the number of people authorized to sign checks. In addition, checks in excess of a certain

dollar amount should require the signature of two responsible individuals. The recommended threshold is \$1,000. Facsimile signatures should be prohibited unless controlled by a check-signing machine with a numerical sequence counter. No signature stamps should be allowed.

- Carefully controlling committee debit and credit cards since they represent easy access to committee assets. Ask the committee's bank or credit card issuer about placing dollar restrictions and prohibitions on withdrawals.
- Recording receipts as mail is opened. A responsible official should periodically compare the list with the recorded amount for the deposit and the amount on the bank statement. Consider using a lockbox service to process receipts.
- Mailing checks promptly and directly to the payees. The person mailing the check should be independent of those requesting, writing and signing it. Also, require that the person taking control of the checks sign for them.
- Implementing a daily back-up system for the committee's electronic data to avoid a loss of data that can interfere with the committee's ability to file timely and accurate disclosure reports.

Additional Information

For more information on the safe harbor and for additional measures committees may take to prevent misappropriation, please consult the Statement of Policy (http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-9.pdf) and the list of recommended controls (http://www.fec.gov/law/policy/guidance/internal_controls_polcmtes_07.pdf).

—Zainab Smith

Outreach

Washington, DC, Conference for Trade Associations, Membership Organizations and Labor Organizations

The Commission will hold its annual conference in Washington, DC, on May 21-22, 2009, for trade associations, membership organizations, labor organizations and their political committees. Commissioners and staff will conduct a variety of technical workshops on federal campaign finance law. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. For additional information, to view the conference agenda or to register for the conference, please visit the conference web site at <http://www.fec.gov/info/conferences/2009/trade-memberlabor09.shtml>.

Hotel Information. The conference will be held at the Omni Shore-

FEC Conference Schedule for 2009

Conference for Trade Associations, Membership Organizations, Labor Organizations and their PACs
May 21-22, 2009
Omni Shoreham
Washington, DC

Conference for Campaigns, Party Committees and Corporate/Labor/Trade PACs
September 15-16, 2009
Hyatt Regency
Chicago, IL

Conference for Campaigns, Party Committees and Corporate/Labor/Trade PACs
October 28-29, 2009
Sheraton at Fisherman's Wharf
San Francisco, CA

ham hotel in northwest Washington, DC, near the National Zoo and the Woodley-Park-National Zoo Metro subway station (Red Line). A room rate of \$249 (single or double) is available to conference attendees who make reservations on or before April 17, 2009. To make your hotel reservations and reserve this group rate, please call 800-545-8700 or visit the hotel web site (<http://www.omnihotels.com/FindAHotel/WashingtonDCShoreham/MeetingFacilities/FederalElectionCommissionTradeAssociations5.aspx>) and identify yourself as attending the Federal Election Commission conference. The FEC recommends that waiting to make hotel and air reservations until you have received confirmation or your conference registration from Sylvester Management Corporation.

Registration Information. The registration fee for this conference is \$499, which covers the cost of the conference, materials and meals. A \$51 late fee will be added to registration received after 5 p.m. EST, April 17, 2009. Complete registration information is available online at <http://www.fec.gov/info/conferences/2009/tradememberlabor09.shtml>.

FEC Conference Questions

Please direct all questions about conference registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; e-mail: toni@sylvestermanagement.com). For questions about the conferences and workshops in 2009, call the FEC's Information Division at 1-800/424-1100, or send an e-mail to Conferences@fec.gov.

—Kathy Carothers

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