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ADR 2003-04

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(VIA U.S. MAIL)

Federal Election Commission
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**RE: Request for Advisory Opinion re FCX Federal Political Action Committee
Matching Charitable Contribution Plan**

Ladies and Gentlemen:

This letter is intended to revise and restate our previous letters in which we requested an advisory opinion of the Commission. As we explained in those letters, we represent Freeport-McMoRan Copper & Gold Inc. ("Freeport"), a Delaware corporation. Freeport has established a separate segregated fund, the FCX Federal Political Action Committee (the "PAC"), pursuant to 2 U.S.C. Sections 441b(a) and 441(b)(2)(C) of the Federal Election Campaign Act of 1971, as amended (the "Act").

The purpose of this letter is to seek an advisory opinion from the Commission regarding a plan that Freeport is considering implementing to encourage participation in the PAC. Under this proposed plan, for each contribution made to the PAC by an individual contributor, Freeport would make a matching contribution to any §501(c)(3) charity of the contributor's choice. Under Section 441b(b)(4)(B) of the Act, individuals who are stockholders, executives or administrative personnel may make contributions to the PAC, and therefore would be eligible to participate in the proposed matching contribution plan. Under the Act and the appropriate regulations, "executive or administrative" personnel are those individuals who are paid on a salary basis and who have policymaking, managerial, professional or supervisory responsibilities. See 2 U.S.C. §441b(b)(7) and 11 CFR §114.1. These individuals may participate in the plan. For example, the commission regulations explain that the "executive or administrative personnel" category includes individuals who run the corporation's business, such as officers, other executives, and plant, division and section managers. See 11 CFR §114.1 (c)(1)(i). This category also includes members of a corporation's board of directors if the members are paid a salary for their service on the board. See also AO Nos. 1985-35, 1984-55.

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A corporation may solicit not only *its* executive or administrative personnel, but also those of its subsidiaries, branches, divisions, and affiliates and their families. 11 CFR § 114.5 (g)(1). Under Freeport's proposed plan, solicitations would be made both to eligible individuals at Freeport and its subsidiary, FM Services Company (FMS). See 11 CFR §§ 114.5 and 100.5 (g)(2).¹ Correspondingly, eligible individuals at these two organizations would participate in the matching charitable contribution plan.

Under the proposed plan, individual contributors would not receive any tax benefits from the matching donations made on their behalf. The matching contribution plan would be completely voluntary, and individual contributors would not receive any bonuses, expense accounts or other forms of direct or indirect compensation as a result of their participation in the plan. See 11 CFR §114.5(b)(1).

Additionally, Freeport proposes to match each contribution made by the individual contributor, dollar for dollar, up to the maximum amount an individual can contribute to a PAC under § 441a(2)(C) of the Act. Thus, if an individual contributes to the PAC in a given calendar year, Freeport will make a contribution of an equal amount to the 501(c)(3) charity of the individual's choice. It is our understanding these matching contributions qualify as permissible solicitation expenses related to the PAC under §441b(b)(2)(7). See AO 1986-44.

We are aware that as a result of Congress adopting the Bipartisan Campaign Reform Act of 2001, there has been increasing discussion and concern about politically active 501(c)(3) organizations. Freeport has no interest in facilitating contributions to politically active 501(c)(3) organizations under the proposed plan. If the FEC adopts regulations in the future regarding corporate contributions to such 501(c)(3) organizations, Freeport will, of course, conform its plan to those regulations. If, alternatively, the Commission provides guidance to Freeport in its advisory opinion about contributions to such tax exempt organizations, Freeport will also conform its plan accordingly.

The Commission has issued a number of advisory opinions approving plans very similar to the one that Freeport seeks to implement. See AO Nos. 1986-44, 1987-18, 1988-48, 1989-7, 1989-9 and 1990-6, 1994-7. Like the plans discussed in those

¹ Effective October 1, 2002, FMS is now a wholly owned subsidiary of Freeport. While our discussion in our previous letters of the "affiliated" relationship between FMS and Freeport was important when FMS was not a subsidiary, this is no longer the case. This is because Sections 114.5 and 100.5 provide an "automatic" affiliation for subsidiaries. See 11 CFR 114.5(g)(1) and 100.5. See also AO 2000-28. In addition, §114.5 specifically permits a corporation to make solicitations to eligible employees of its subsidiaries.

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opinions, we believe that Freeport's proposed plan is a permissible incentivized contribution plan. We request your opinion, however, as to whether the particular plan Freeport proposes is permissible under the Act and the appropriate regulations.

Thank you in advance for your prompt attention to this matter. If for some reason our request is incomplete, or you otherwise need additional information, please do not hesitate to contact me. In addition, please notify me of any scheduled hearings, deadlines, or other actions taken by the Commission regarding our request.

Sincerely yours,



R. Patrick Vance