



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 16, 2015

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2015-02

Michael J. Barron, Jr., Esq.  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, IL 60606-2832

Dear Mr. Barron:

We are responding to your advisory opinion request on behalf of the Grand Trunk Western Railroad Company – Illinois Central Railroad Company Political Action Committee concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations to the requestor’s contribution-matching program. The requestor asks whether its connected organizations may match contributions made to the requestor with charitable donations to a Canadian registered charity. The Commission concludes that the proposal is consistent with the Act and Commission regulations.

***Background***

The facts presented in this advisory opinion are based on your letter dated May 27, 2015, and filings and information on the website of the Canada Revenue Agency.

The requestor is a separate segregated fund (“SSF”) of Grand Trunk Western Railroad Company and Illinois Central Railroad Company. The requestor operates a “charity-match” program, under which its connected organizations make donations to the charity of a contributor’s choice in an amount equal to the contributor’s contribution to the requestor. The requestor states that it operates the charity-match program to attract contributions and that a contributor does not receive any tangible benefits from the requestor, its connected organizations, or the charity as a result of the contribution or the matching donation.

An individual contributor to the requestor wishes to designate the Taylor Birks Foundation (the “Foundation”) as the recipient of a matching charitable donation. The Foundation is a Canadian charity headquartered in Montreal. The Foundation provides financial support to projects that assist children with intellectual disabilities. The Foundation is not a 501(c)(3) charity but is a “registered charity” under Canadian law.<sup>1</sup> The requestor asks whether it may make a matching donation to the Foundation.

### ***Question Presented***

*May the connected organizations make a dollar-for-dollar matching donation to a non-501(c)(3) charity, such as the Foundation, if the Foundation is designated by a PAC contributor as the charity of choice to receive the donation?*

### ***Legal Analysis and Conclusions***

Yes, the connected organizations may make a dollar-for-dollar matching donation to the Foundation.

The Act provides that a corporation may use its general treasury funds to pay the expenses of establishing and administering an SSF and of soliciting contributions to that SSF. 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.5(b). Commission regulations further provide, however, that a corporation may not “use the establishment, administration, and solicitation process as a means of exchanging treasury monies for voluntary contributions.” 11 C.F.R. § 114.5(b). The regulations also state that a contributor may not be paid for his or her contributions through a bonus, expense account, or other form of direct or indirect compensation. 11 C.F.R. § 114.5(b)(1).

In numerous advisory opinions, the Commission has approved a connected organization’s provision of contribution-matching donations to organizations operated under section 501(c)(3) of the Internal Revenue Code. Because such matching donations “encourage greater participation” in the SSF, *see* Advisory Opinion 1986-44 (Detroit Edison PAC) at 1; Advisory

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<sup>1</sup> The Foundation’s registration number with the Canada Revenue Agency is 11892 5296 RR0001. Additional information about the Foundation, including recent Information Returns, is available at the Canada Revenue Agency’s website. *See* Canada Revenue Agency, Charities Listing, <http://www.cra-arc.gc.ca/chrts-gvng/1stngs/menu-eng.html> (last visited June 16, 2015).

Like 501(c)(3) organizations, registered charities are “exempt from paying income tax” and may issue “donation receipts,” which enable donors to claim certain tax benefits. Canada Revenue Agency, Registered Charity vs. Non-Profit Organizations, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/rgstrtn/right-eng.html> (last visited June 16, 2015); Canada Revenue Agency, Does a Registered Charity Have to Issue Official Donation Receipts for Gifts It Receives?, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/rqss-eng.html> (last visited June 16, 2015). Registered charities must “operate exclusively for charitable purposes,” meet certain spending thresholds with respect to their charitable activities, file annual returns, and are prohibited from “us[ing] [their] income to personally benefit [their] members.” Canada Revenue Agency, Registered Charity vs. Non-Profit Organizations, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/rgstrtn/right-eng.html> (last visited June 16, 2015); *see also* Canada Revenue Agency, Obligations of Registration, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/rgstrtn/blr-eng.html> (last visited June 16, 2015).

Opinion 2003-04 (Freeport-McMoRan Copper & Gold Citizenship Committee) at 1, the Commission has found that they are solicitation expenses for the SSF that the connected organization may pay under 52 U.S.C. § 30118(b)(2)(C). *See, e.g.*, Advisory Opinion 2003-04 (Freeport-McMoRan Copper & Gold Citizenship Committee) (approving charity-match program); Advisory Opinion 1994-06 (Political Action Coors Employees) (same); Advisory Opinion 1986-44 (Detroit Edison PAC) (same). And the Commission has concluded that a charity-match program does not constitute a prohibited exchange of corporate treasury monies for political contributions as long as no contributor to the SSF receives in exchange a financial, tax, or other tangible benefit from the corporation, the SSF, or the charities receiving the matching donations. *See, e.g.*, Advisory Opinion 2003-04 (Freeport-McMoRan Copper & Gold Citizenship Committee) (approving charity-match program); Advisory Opinion 1994-06 (Political Action Coors Employees) (same); Advisory Opinion 1986-44 (Detroit Edison PAC) (same).

The requestor's proposal is materially indistinguishable from the charity-match programs approved in prior advisory opinions. Like those previously approved programs, the requestor's connected organizations wish to make matching donations to "attract[ ] contributors" to the PAC. Advisory Opinion Request at AOR001. Such "matching of voluntary political contributions with charitable donations [is] a solicitation expense related to [their] separate segregated fund, an expense . . . that the Act expressly permits." Advisory Opinion 1988-48 (National-American Wholesale Grocers' Association PAC) at 2 (citing current 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.5(b)).

Additionally, "no tangible benefits . . . [are] given to the PAC contributor from either [the requestor], the connected organizations, or the charity in response to the contributor's contribution." AOR001. Thus, the requestor's proposal does not constitute an "exchange of corporate treasury monies for voluntary contributions," 11 C.F.R. § 114.5(b), or suggest that the contributor is being "paid for" the contribution. 11 C.F.R. § 114.5(b)(1). *See, e.g.*, Advisory Opinion 1994-07 (GEON PAC); Advisory Opinion 1987-18 (Texas Industries PAC); Advisory Opinion 1986-44 (Detroit Edison PAC).

The requestor's connected organizations may make a matching donation to the Foundation, as proposed.<sup>2</sup>

The Commission expresses no opinion regarding any tax ramifications of the described activity because such matters are not within the Commission's jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See*

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<sup>2</sup> The Commission notes that the Foundation's *receiving* of donations does not implicate the Act's prohibition on foreign nationals *making* any contribution or donation in connection with an election. *See* 52 U.S.C. § 30121(a); 11 C.F.R. § 110.20(f). Commission regulations provide that foreign nationals may not "direct, dictate, control, or directly or indirectly in participate in the decision-making process of any . . . corporation . . . [or] political committee" with respect to election-related activities, 11 C.F.R. § 110.20(i), but the request presents no facts that suggest the Foundation is in any way doing so.

52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

A handwritten signature in blue ink that reads "Ann M. Ravel". The signature is written in a cursive style with a large, stylized "M" and "R".

Ann M. Ravel  
Chair