



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 21, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Andrew J. Surdykowski, Esq.
Vice President & Associate General Counsel
IntercontinentalExchange, Inc.
2100 RiverEdge Parkway
Suite 500
Atlanta, GA 30328

RE: Advisory Opinion Request 2009-03

Dear Mr. Surdykowski:

This letter responds to your letter received on February 23, 2009 requesting an advisory opinion.

On April 9, 2009, the Commission released for public comment Agenda Document No. 09-18, which contains a draft advisory opinion responding to your request. Under the Federal Election Campaign Act of 1971, as amended (“the Act”), the affirmative vote of four members of the Commission is required in order for the Commission to render an advisory opinion. *See* 2 U.S.C. 437c(c) and 437d(a)(7); *see also* 11 CFR 112.4(a). On April 21, 2009, the Commission considered Agenda Document No. 09-18 and voted 3-3 on a motion to approve the draft. Thus, the Commission was unable to render an opinion in this matter.

Agenda Document No. 09-18 is enclosed for your convenience, but should not be considered an advisory opinion by the Commission or any of its employees because the Commission may issue such an opinion only in accordance with specific provisions of the Act. *See* 2 U.S.C. 437f(b).

Letter to Andrew J. Surdykowski, Esq.
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Accordingly, you are hereby advised that the Commission has concluded its review of Advisory Opinion Request 2009-03.

Sincerely,

(signed)
Rosemary C. Smith
Associate General Counsel

Enclosure