

FEC Permits Disaffiliation at the Time of a Corporate Spin-off

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In Advisory Opinion 2007-12, the Federal Election Commission (FEC) permitted the disaffiliation of the U.S. subsidiaries of two spun-off corporations and their PACs from the U.S. subsidiary of the former parent entity (and its PAC). Importantly, the FEC for the first time found disaffiliation at the time of the spin-off instead of at a later time.

The advisory opinion request came from Tyco International Management Company (Tyco US) and its federal separate segregated fund. The facts involved the separation of Tyco Electronics Ltd. and Covidien Ltd from the former ultimate parent Tyco International Ltd. All three companies after the spin-off are publicly traded on the New York and Bermuda stock exchanges.

In support of its request, Tyco US submitted historical data from Goldman Sachs that detailed the increased stock-trading volume after major spin-offs had taken place. Given the anticipated vigorous trading and concomitant diversification of the companies' shareholder bases in this particular spin-off (as predicted by the historical data), the FEC found that the shareholder bases among the companies would cease to be common in a very short amount of time. Accordingly, disaffiliation was made retroactive to the date of the spin-off. The FEC also looked at many other factors of disaffiliation, such as minimal overlap among the boards of directors.

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