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MEMORANDUM

January 25, 2008 **SENSITIVE**

TO: The Commission

THROUGH: Patrina M. Clark *PMC*
Staff Director

FROM: John D. Gibson *JDG*
Chief Compliance Officer

Deborah Ruth Kant *DRK*
Director, ADR Office

SUBJECT: ADR 442 Brinker International, Inc. and Brinker International Inc. PAC ("Brinker PAC"), Charles M. Sonsteby, Treasurer, Recommendation To Dismiss¹

ADR Case: ADR 442

Source No. Pre-MUR 454

Pre-Mur Submitted by:
Brinker International Inc.
Brinker PAC
Charles M. Sonsteby

Respondents' Rep.:
Mike McNamara and Michael Zolandz

Referral: OGC

Committee Name: Brinker International Inc. PAC

Date Pre-Mur filed: 10/22/07

Date Forwarded to ADRO: 12/27/07

Committee Type: Separated Segregated Fund (SSF) **Election Cycles:** 1994-2008

Summary of Case: Treasurers of political committees are required to disclose all financial activity, including receipts. 2 U.S.C. §§ 434(a) 434(b)(2), 11 C.F.R. § 104.3(a). Receipts which are contributions (here payroll deductions) collected by any person must be transmitted to the treasurer of an unauthorized committee within ten (10) days of receipt for contributions over \$50 and within thirty (30) days for contributions of \$50 or less. 2 U.S.C. § 432(b)(2), 11 C.F.R. §§

¹ The Office of General Counsel reviewed the ADR Memorandum and concurs in the description of the case.

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102.6(c)(4), 102.8(b). SSFs may use collecting agents – *i.e.*, organizations or committees who collect and transmit contributions on behalf of SSFs. 11 C.F.R. § 102.6(b)(1). Connected organizations may serve as collecting agents on behalf of a SSF/PAC. Collecting agents and SSFs/PACs are responsible for compliance with the transmittal requirements. 11 C.F.R. §§ 102.6(b)(1)(ii), 102.6(c).

In this case, Brinker International Inc. (“Brinker”) and Brinker PAC, filed a *sua sponte* submission, acknowledging unreported receipts of payroll deductions from the connected organization, Brinker, and unreported contributions made by Brinker PAC to various candidates covering a period of 1994-2007. The submission also acknowledged transfers of payroll deductions that were late, *i.e.*, were outside the 10-day and 30-day time limits set forth in the FECA. Brinker and Brinker PAC explained that their errors resulted from multiple causes: such as the absence of regular reconciliation between the PAC’s bank account, and payroll records; several data sources for preparation of FEC reports; different calendars for FEC reporting versus its fiscal accounting system for payroll; and inadequate training for staff responsible for FEC filings. Brinker PAC also alleges it has taken a number of corrective actions including, *inter alia*, updating its governing procedures and policies, conducting internal training for staff employees involved in recordkeeping and reporting, adopting the internal controls as suggested by the Commission’s April 2007 policy statement, and reviewing all payroll receipts and bank records on a monthly basis. The Committee also stated that following resolution of this matter, it intends to finalize outsourcing the reporting, recordkeeping, and accounting to a new bank who will serve as its Third Party Administrator and designated reporting agent. The new bank, Brinker PAC asserted, will process payroll deductions and result in a more integrated approach for handling receipts, transfers, and FEC reporting.

RECOMMENDATION:

- 1. Dismiss ADR 442/Pre-MUR 454 and close the file.**
- 2. Approve appropriate letters.**

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