

Ashley N. Bailey
(202) 624-2732
abailey@crowell.com

28471995.1
104879.0000008

July 11, 2014

Via E-Mail and U.S. First-Class Mail

Lynn M. Fraser, Director
Alternative Dispute Resolution Office
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: ADR 720

Dear Ms. Fraser:

On behalf of our client, American Iron and Steel Institute ("AISI"), which operates the American Iron and Steel Institute PAC ("SteelPAC"), and in furtherance of the alternative dispute resolution in which the Federal Election Commission ("the Commission" or "FEC") has invited AISI to participate, we hereby supplement the information AISI previously provided regarding misdeposits into its PAC account.

The Commission's May 30, 2014 letter offering SteelPAC an opportunity to engage in alternative dispute resolution does not expressly indicate the regulations that the Commission believes may be implicated by the circumstances described below. Because the erroneous deposits that are the subject of these negotiations were unintentional, were the fault of a third party, and were not used unlawfully, we surmise that the Commission's concerns stem from the length of time during which the misdeposits remained in SteelPAC's account and/or the time in which it took to report this matter to the Commission. Accordingly, the remainder of this memorandum largely focuses on those issues, and AISI hereby commits to promptly refund any future erroneous transfers into SteelPAC's account and to timely report to the FEC all deposits to, and disbursements from, that account. Given the resulting hardship already borne by AISI and the corrective actions already taken, AISI respectfully requests that the Commission consider resolving this matter without any monetary penalty and upon agreement by AISI to undertake the compliance measures detailed below and any additional measures that the Commission may recommend.

BACKGROUND

AISI is a trade association comprised of 22 steel-producing member companies and approximately 125 associate members who are customers of and suppliers to the steel industry. Its history traces back to the formation in 1855 of the American Iron Association, which

ultimately became the American Iron and Steel Institute. Today, AISI's member companies are responsible for more than 75 percent of the steel produced in the United States and North America. AISI serves as the voice of the North American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI is dedicated to maintaining a sustainable North American steel industry strategically positioned for growth, innovation, and leadership in the global marketplace. To that end, in June 1994, AISI formed SteelPAC.

A. Acceptance of Contributions by Credit Card

For the first 15 years or so of its existence, SteelPAC accepted contributions solely by check. At the request of one or more restricted class members, in 2010 the PAC arranged to accept credit card contributions via Visa, MasterCard, and Discover. It did so with the assistance of a third-party credit card payment processor, Elavon, Inc. SteelPAC did not encounter any significant difficulties in its engagement with Elavon, although SteelPAC's members largely continued to make contributions by check.

In or about May 2012, a member of AISI's restricted class requested that SteelPAC also accept contributions made with American Express credit cards. SteelPAC was not then equipped to take payment from American Express, and it again called upon Elavon to facilitate and process such payments. On May 31, 2012, AISI submitted documentation to Elavon establishing that payments for contributions to SteelPAC could be made by American Express.

On June 4, 2012, two members of AISI's restricted class made contributions to the PAC through the Elavon system using their American Express cards. AISI confirmed that the contributions were deposited to the PAC account and in the correct amount. AISI had long used Elavon to process credit card payments made to the organization for other purposes, and for two years, it had been using Elavon without incident to process PAC contributions made with other major credit cards. AISI therefore had no reason to anticipate the difficulties that ultimately occurred.

SteelPAC's decision to expand its acceptance of credit card contributions marked the beginning of a time-consuming and resource-draining ordeal. That ordeal culminated in the FEC's request that AISI participate in this alternative dispute resolution.

B. Erroneous Deposits to the PAC Account

Shortly after SteelPAC began accepting American Express payments, on July 9, 2012, SteelPAC received a banking statement reflecting deposits into the PAC account that were intended for AISI's general treasury funds. That same day, an AISI employee responsible for administering the PAC contacted multiple employees of Elavon to bring the matter to their attention. Elavon committed to immediately resolve the problem. On July 10, 2012, Elavon confirmed that the erroneous deposits consisted of funds intended for AISI's primary bank account and suggested that the problem originated with American Express. Upon contacting American Express, AISI and Elavon learned that the erroneous deposits originated from payments to AISI's online book store. Although not yet confirmed, it appeared that, rather than

identifying SteelPAC's account as a separate, additional account, American Express had begun directing all American Express credit card payments for AISI to the SteelPAC account. On July 27, 2012, AISI finally received confirmation that this was the case.

On August 7, 2012, AISI resubmitted paperwork to Elavon at its request in an attempt to resolve any confusion concerning the purpose of the PAC merchant processing account. On August 8, 2012, following submission of the paperwork, Elavon assured AISI that the problem had been resolved and that no additional unauthorized deposits would be made to the PAC account.

Despite Elavon's assurances, erroneous deposits continued to appear in the PAC account over the next four months. During this period, three AISI employees worked diligently to monitor and resolve the problem with Elavon and American Express. But Elavon and American Express both believed that the other was responsible. After several months and countless telephone conversations with multiple AISI employees, neither Elavon nor American Express had managed to find a solution. Desperate for a resolution, AISI attempted to close the PAC merchant processing account with Elavon, but misdeposits continued to appear in SteelPAC's account. On January 8, 2013, Elavon again confirmed that the issue had been resolved, but it told AISI that it could not reverse the transactions. See Exh. 1 (email from Sheryl Mintz-White of Elavon). Elavon even offered to provide AISI with a letter confirming that the erroneous deposits were due to "a system error and not the fault of [the] organization." Exh. 1.

The last erroneous deposit entered AISI's account on February 28, 2013. For one month thereafter, AISI continued to monitor SteelPAC's account to satisfy itself that the problem truly had been resolved.

C. Corrective Action and Response

Satisfied that the errors had ceased, on April 11, 2013, SteelPAC made a final accounting and refunded to AISI all erroneous deposits (totaling \$77,225.43).¹ Thereafter, AISI sought the advice of counsel, as well as instruction from its FEC analyst, regarding disclosure of the matter to the Commission. Consistent with the advice and instruction received, SteelPAC itemized and reported each erroneous deposit, amending prior reports as necessary, and answered related inquiries from the Commission. See Exh. 2 (reports to FEC disclosing and explaining misdeposits).

AISI also terminated SteelPAC's merchant processing account with Elavon and discontinued, at least for the time being, the option to make PAC contributions by credit card.

¹ The May 30, 2014 letter from the Commission states that the misdeposits totaled \$69,791.04. AISI's records indicate that the misdirected funds totaled \$77,225.43, and AISI has confirmed that it disclosed receipts totaling that amount in its amended reports to the FEC. AISI is happy to work with the Commission to identify the source of the discrepancy if needed.

Throughout this ordeal, the erroneously deposited funds remained untouched in the PAC account as AISI worked to correct the issue with Elavon. At no point were these deposits used for any political purpose, including the making of federal campaign contributions.

As a consequence of this incident, AISI conducted a formal review of, and made improvements to, SteelPAC's bylaws. Many of the rules applicable to separate segregated funds already have been incorporated directly into the bylaws. Outside counsel is further reviewing them and will make additional recommendations if needed. In addition, AISI has transitioned internal oversight of PAC compliance to newly hired in-house counsel, Colin Carroll. On May 21, 2014, Mr. Carroll attended the Commission's seminar for "Trade Associations, Membership and Labor Organizations and Their PACs," and he plans to attend more programs of this nature in the future. Mr. Carroll has prior experience handling regulatory compliance matters, and his addition to the SteelPAC team will help ensure adherence to the letter and spirit of the federal election laws.

ARGUMENT

During the events above, AISI and SteelPAC acted at all times in good faith, including the decision to refund and report the misdeposits after SteelPAC's account had normalized and it could make a full and accurate accounting of the misdirected funds. At the time of the events above, AISI was aware that it could not solicit contributions from persons other than restricted class members. It also knew that it could not make contributions to SteelPAC or commingle its general treasury funds with donations to SteelPAC. But AISI neither "solicited" the misdeposits nor intended that they be put to political uses, and although the regulations' definition of "contribution" encompasses deposits of money, it speaks solely in terms of deposits made "for the purpose of influencing any election for Federal office."² 11 C.F.R. § 100.52. Knowing that it eventually would refund all of the misdeposits, AISI did not view the misdirected bookstore funds as political contributions or as payments from AISI to the PAC. This explains why SteelPAC did not treat them with the same exigency that it would have treated a contribution made, for example, by a foreign national or by a contributor who already had maximized his PAC contributions for the calendar year. To be sure, AISI would have preferred, and it did seek, immediate reversal of the transactions, but its outside credit card processor maintained that reversal was not possible, and the continued influx of misdeposits made it difficult to reconcile the account with any finality or accuracy. To the extent that the errors resulted in an impermissible comingling of PAC and general treasury funds, although AISI could have attempted to refund the misdeposits on a rolling and more immediate basis, it could not have undone *the fact* of the comingling, and it was concerned that refunding and reporting the misdeposits on a piecemeal basis would only add confusion and result in inaccurate and

² Similarly, the *Campaign Guide for Corporations and Labor Organizations* does not expressly anticipate the problem of erroneous deposits, as opposed to the treatment of impermissible or excessive (but intended) contributions, intended loans, or interest earned. See e.g., *Campaign Guide for Corporations and Labor Organizations*, Chapter 7 at 58-59 (2007).

repeatedly amended reports. Finally, try as it might, it does not believe that it could have ended the misdepositing of funds any sooner.

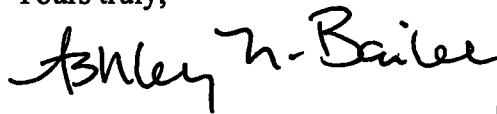
Moreover, AISI acted responsibly in all other respects. Because of AISI's vigilant oversight of the PAC account, it detected the very first instance of error and did everything reasonably within its power to ensure against further mistaken deposits. It maintained a close watch over the account until it was sure that it could itemize the last of the misdeposits and confidently attest that the problem had been resolved. Then AISI reported this matter to the Commission of its own initiative. SteelPAC also discontinued, for the time being, its acceptance of credit card payments, given its uncertainty that errors would not recur. Moreover, during the nine months in which AISI struggled with Elavon and American Express to rectify the problem, SteelPAC left the misdeposits untouched. The common sense approach that AISI adopted achieved compliance with 11 C.F.R. § 103.3(b)(4), such that none of the misdeposits was used to make political contributions. See 11 C.F.R. § 103.3(b)(4) (requiring political committees to maintain sufficient funds to refund seemingly impermissible contributions). Accordingly, neither AISI nor any candidate or political committee improperly benefited from the mistake. To the contrary, the infuriating saga was a drain upon AISI's limited resources and an unwelcomed distraction from the mission of the organization.

In response to this matter, AISI has renewed its commitment to compliance with the Commission's regulations. As detailed above, it reviewed and revised SteelPAC's bylaws, has engaged the assistance of outside counsel, has assigned in-house counsel to oversee SteelPAC's compliance, and has participated in relevant training by the FEC. Should similar problems arise in the future, AISI plans to promptly redirect erroneous payments to the proper recipient such that they do not remain within SteelPAC's account for more than 30 days and will disclose the error(s) in its very next report due to the Commission.

In light of the hardship that AISI already has endured, the voluntary disclosures it has made, the corrective action taken, and AISI's commitment to timely report all receipts to and disbursements from SteelPAC's account, AISI respectfully suggests that no further "penalty" or payment is necessary to serve the Commission's ends. It therefore requests that the Commission consider settling this matter solely based upon the commitments made herein and with AISI's agreement to undertake additional compliance measures that the Commission may recommend.

Please do not hesitate to contact me at (202) 624-2732 if you have any questions, or if I can provide any additional documentation to aid your consideration of this matter.

Yours truly,



Ashley N. Bailey

Enclosures