



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

November 2, 1995

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-36

Grant S. Cowan  
Frost & Jacobs  
201 East Fifth Street  
P.O. Box 5715  
Cincinnati, OH 45201-5715

Dear Mr. Cowan:

This responds to your letter dated September 8, 1995, as supplemented by your letter dated October 12, 1995, requesting an advisory opinion on behalf of AK Steel Corporation ("AK Steel") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proposed disaffiliation of two separate segregated funds.

In Advisory Opinion 1994-9, the Commission addressed the question of whether entities that had been affiliated prior to a business reorganization and recapitalization would still be affiliated after those events. Armco Steel Company, L.P. ("ArmLP") was a joint venture partnership owned equally by Armco, Inc. ("Armco") and Kawasaki Steel Corporation ("Kawasaki"). Pursuant to a multi-step reorganization plan to be implemented in 1994, AK Steel would become the owner of all the assets of ArmLP. ArmLP would become the AK Steel Corporation, with AK Steel Holding Corporation ("AK Holding") as its sole shareholder. Immediately after the reorganization, AK Holding would engage in a recapitalization whereby an initial public offering ("IPO") of stock would be made to the public. After the recapitalization, Kawasaki would hold approximately 20 percent, and Armco would hold four percent, of AK Holding common stock.

Armco was the connected organization of Armco Employees' PAC ("Armco PAC"). AK Steel would be the connected organization of AK Steel PAC. For purposes of its regulations, the Commission concluded that, due to various factors, disaffiliation of AK Steel (or AK Holding)

from Armco and Kawasaki would be premature. Hence, Armco PAC and AK Steel PAC would be affiliated.<sup>1/</sup> The Commission stated that this would "not preclude a different conclusion at a later point in the operations of AK Steel and AK Holding." Advisory Opinion 1994-9. (Hereinafter, AK Steel and AK Holding will be cited jointly as "AK Steel.")

AK Steel believes current circumstances warrant a Commission determination that AK Steel PAC and Armco PAC are now disaffiliated; that is, they are no longer affiliated committees. In April and early May of 1995, Armco sold all of its AK Steel stock (its four percent ownership share) and thus no longer has any ownership interest in AK Steel. You believe that this is the most significant change in prior circumstances warranting disaffiliation at this time.

You explain that AK Steel and Armco are separate, publicly traded corporations, and that AK Steel is not a subsidiary, branch, division, department, or local unit of Armco. You also note that none of the officers or employees of AK Steel are employed by Armco. At the executive management level, nine of the eleven officers of AK Steel were not formerly employed by Armco.<sup>2/</sup> The only current overlap exists on AK Steel's ten-person Board of Directors and involves one person. James F. Will, Armco's CEO and a member of Armco's Board, has recently been elected to serve another term on AK Steel's Board. You state that AK Steel's Board members serve at the discretion of AK Steel's shareholders who vote on the members at the company's annual meeting or by proxy. AK Steel recently added three new members to the Board without shareholder approval, expanding the number of Board members from seven (the size of the new Board discussed in Advisory Opinion 1994-9) to ten. However, at the Annual Meeting held on May 17, 1995, the shareholders voted on and elected all of the ten current Board members.

Citing the indicia of affiliation listed in Commission regulations (see discussion below), you also state that neither AK Steel's corporate governing documents, nor its formal and informal practices and procedures, provide Armco with the ability to direct or participate in AK Steel's governance. You further explain that neither Armco nor Armco PAC have the authority to hire, appoint, demote or otherwise control the officers or other decision-making employees of AK Steel or its PAC. See 11 CFR 110.3(a)(3)(ii)(B) and (C). You also state that Armco does not provide funds or goods in a significant amount or on an ongoing basis to AK Steel. See 11 CFR 110.3(a)(3)(ii)(G).<sup>3/</sup>

In emphasizing the separate operations of the two companies, you explain that AK Steel and Armco compete directly with each other in two specific product areas. This competition began in 1992, when AK Steel's predecessor was still half-owned by Armco. AK Steel supplies hot-rolled steel, the most basic of all flat-rolled steel products, from its Middletown, Ohio plant to a wide variety of markets, primarily in the Midwest. Armco, through its Mansfield, Ohio operations, supplies this product to the same geographic area and frequently sells to the same customers supplied by AK Steel or from whom AK Steel solicits business. Armco and AK Steel also produce comparable galvanized sheet steels and sell that product to the same heating, venting and air conditioning markets.

With respect to the SSFs themselves, you assert that Armco PAC and AK Steel PAC do not transfer funds to each other and do not conduct any joint fundraising activities. You state that Armco has no involvement in the operations of AK Steel PAC.

The Act and Commission regulations provide that committees, including separate segregated funds, that are established, financed, maintained or controlled by the same corporation, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. Contributions made to or by such committees shall be considered to have been made to or by a single committee. 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1), and 110.3(a)(1)(ii).

Where an entity is not an acknowledged subsidiary of another entity, as in 11 CFR 110.3(a)(2)(i), Commission regulations provide for an examination of various factors in the context of an overall relationship to determine whether one company is an affiliate of another and, hence, whether their respective SSFs are affiliated with each other. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J).

In concluding that disaffiliation was premature at that time, Advisory Opinion 1994-9 referred to the following factors: (A) the ownership by one sponsoring organization of a controlling interest in the voting stock or securities of another sponsoring organization; (B) the authority or ability of one sponsoring organization to participate in the governance of another sponsoring organization through provisions of constitutions, by-laws, contracts or other rules, or through formal or informal practices or procedures; (C) the authority or ability to hire, demote or otherwise control the decisionmakers of another sponsoring organization; (E) common or overlapping officers or employees, indicating a formal or ongoing relationship between the sponsoring organizations; (F) members, officers, or employees of one sponsoring organization who were members, officers, or employees of another organization which indicates a formal or ongoing relationship or the creation of a successor entity; and (I) an active or significant role by one sponsoring organization in the formation of another. 11 CFR 110.3(a)(3)(ii)(A), (B), (C), (E), (F), and (I).

The opinion noted the representation that, after the IPO, the governing documents would enable neither Armco nor Kawasaki to engage in AK Steel's governance and that the governance and management of AK Steel would be independent from the former joint venturers. Two of the persons sitting on AK Steel's Board of Directors, however, would be a Managing Director of Kawasaki and the aforementioned Mr. Will of Armco. In addition, those directors were two of the three persons choosing the new Board members. The opinion also noted that three Armco former employees were among the seven AK Steel executive officers, all of whom were holdovers from ArmLP. Finally, the opinion observed that Armco and Kawasaki were instrumental in the formation of ArmLP, the predecessor entity. The Commission stated that "[i]n view of the background presented as to the relationships of the companies," the continued presence of the high-ranking Armco and Kawasaki officials on the AK Steel Board lead to a conclusion that disaffiliation was premature.

A number of facts discussed in Advisory Opinion 1994-9 remain the same. These include the continued presence of the Armco CEO on the AK Steel Board and of former Armco

employees among the executive officers of AK Steel. Nevertheless, a number of developments since Advisory Opinion 1994-9 have altered the circumstances described just above. Foremost among these developments is Armco's sale of its remaining stock in AK Steel.<sup>4/</sup> Furthermore, the expansion of the Board and the intervening shareholder election reduce the significance of Armco's earlier role in the reorganization and AK Steel's management. In addition, the passage of time since Armco's interest was reduced through the IPO, along with the continuous separate operations during this time period (including the direct competition),<sup>5/</sup> further diminishes the effects of the historical relationship between the companies. The Commission concludes, therefore, that AK Steel is disaffiliated from Armco, and that AK Steel PAC and Armco PAC are no longer affiliated committees.

Because the committees are no longer affiliated, AK Steel PAC should amend its Statement of Organization to delete Armco PAC as an affiliated committee, and Armco PAC should similarly amend its Statement. The amendments should be filed with the Commission no later than 10 days of your receipt of this opinion. 2 U.S.C. 433(c); 11 CFR 102.2(a)(2).

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Lee Ann Elliott  
Vice Chairman

Enclosure (AO 1994-9)

Endnotes

1/ Kawasaki had no SSF at the time and has none presently.

2/ You note that, beginning in June 1992, AK Steel's predecessor (ArmLP) went through significant management changes. Since that time, a substantial number of former Armco personnel in the top salaried positions have been replaced by outside personnel.

3/ You note that AK Steel does business with Armco on an arms length basis. This business consists of processing by AK Steel of stainless steel slabs for Armco and periodic purchases by AK Steel of stainless steel coils from Armco at market prices. In addition, AK Steel continues to perform certain administrative services for Armco for a fee.

4/ Advisory Opinion 1994-9 noted that Armco (along with Kawasaki and another shareholder) agreed not to sell any of its shares for a period of 180 days after the IPO without the prior written consent of representatives of the U.S. Underwriters and managers.

5/ Commission regulations state that the list of ten circumstantial factors indicating affiliation listed at 11 CFR 110.3(a)(3)(ii) is not an exclusive list. Thus, the competition described above may be considered as a factor. Although such competition may not, by itself, indicate a

disaffiliation of the companies, these circumstances are certainly relevant to analyzing the relationship, or lack thereof, between the companies.