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ADR 2001-04

March 6, 2001

VIA HAND DELIVERY

Lois Lerner, Esq.
Acting General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

ATTN: Bradley N. Litchfield, Esq.
Johnny Levin, Esq.

Re: Request for an Advisory Opinion Regarding the Use of
Electronic Signatures to Authorize Payroll Deductions

Dear Ms. Lerner:

Pursuant to 2 U.S.C. § 437f, we are writing to request an advisory opinion on behalf of the Morgan Stanley Dean Witter & Co. Political Action Committee ("MSDWPAC"), a separate segregated fund ("SSF") of Morgan Stanley Dean Witter & Co. ("MSDW"), regarding the use of electronic signatures to authorize payroll deductions. Specifically, we request that the Federal Election Commission ("Commission") confirm that MSDWPAC may obtain payroll deduction authorizations from its restricted class members by using a form of electronic signature which is prescribed under the recently enacted Electronic Signatures in Global and National Commerce Act ("E-Signatures Act"). See Pub. L. No. 106-229, 114 Stat. 464 (2000). This form of electronic signature is described in greater detail below. In the alternative, we request that the Commission permit MSDWPAC to obtain such authorizations by having the payroll deductee use his or her name and social security number as his or her electronic signature.

REC'D
FEDERAL ELECTION COMMISSION
MAR 7 10 00 AM '01

I. Background and Issue

MSDWPAC currently solicits funds from persons within its restricted class in accordance with the Federal Election Campaign Act of 1971, as amended ("FECA"), and the Commission's regulations. See 2 U.S.C. § 441b(b)(4); see also 11 C.F.R. § 114.5. To solicit and collect such contributions from MSDW's executive and administrative personnel, MSDWPAC employs, among other methods, a payroll deduction plan. See 11 C.F.R. §§ 114.1(f), 114.5(k)(1). Under this plan, MSDWPAC sends a written solicitation and payroll deduction form by interoffice mail to its restricted class members. Typically, a restricted class member will sign the payroll deduction form to indicate his or her voluntary assent, designate the amount to be deducted, and then return the completed authorization form to MSDWPAC.

Given the near-ubiquitous use of computer and Internet technology in the workplace today, MSDWPAC would like to solicit its restricted class members via the Internet and accept their payroll deduction authorizations in a form other than the traditional, written signature on a hard copy. Specifically, MSDWPAC intends to establish an Internet website which would enable its restricted class members to authorize payroll deductions via electronic signature. To ensure that only restricted class members have access to this website, it will be password protected. See Advisory Opinions 2000-22, 2000-7, 1997-16. MSDW employees who want to log onto the MSDWPAC website will have to enter their employee identification number and only those who are within the restricted class will be permitted access. See Exhibit ("Exh.") A1. Once logged onto the MSDWPAC website, each restricted class member will be asked to confirm his or her occupation as well as home and email addresses. See Exhs. A2, A3. Following confirmation of this information based upon corporate records, MSDW employees will be able to contribute via payroll deduction. See Exhs. A4. After receiving an electronic payroll deduction authorization in one of the two forms of electronic signature described below, MSDWPAC will send each deductee a confirmation email verifying the contribution. See Exh. A5.

MSDWPAC requests the Commission's guidance as to whether the alternative forms of electronic signature proposed below would constitute proper authorization by the restricted class members under the FECA. Under the first method, a restricted class member will be permitted to authorize a payroll deduction by typing

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his or her name into a prompt to verify his or her identity and then pressing the "submit" button which explicitly states "By pressing this button, I certify as to the accuracy of the name entered above." See Exh. A6. Under the second method, a restricted class member will be permitted to authorize a payroll deduction by typing his or her name and social security number into a prompt to verify his or her identity and then pressing the same "submit" button. See Exh. A7. Based upon the following argument, both forms of electronic signature should be permitted as valid authorizations under the FECA.

II. Argument

MSDWPAC is proposing to establish a web-based solicitation program which is similar to that described in the Commission's Microsoft Advisory Opinion. See Advisory Opinion 1993-2. In that advisory opinion, the Commission approved Microsoft's proposed plan to accept its employees' electronic signatures to authorize payroll deductions as long as: (1) Microsoft's employees possessed the ability to revoke or modify the amount of the deduction at any time; (2) Microsoft maintained retrievable records of the authorizing electronic signatures; and (3) Microsoft assured the integrity of its employees' electronic signatures. See id. at 4. Indeed, like Microsoft, MSDWPAC will continue its practice of ensuring that its restricted class members will be able to revoke or modify the amount of their authorizations at any time and will maintain such authorizations in a retrievable manner in the event of an audit or investigation. In light of the subsequent enactment of the E-Signatures Act, however, we now ask the Commission to clarify that the two forms of electronic signature described in this request may be used to authorize payroll deductions.

A. The First Proposed Form of Electronic Signature Should Be Permitted Because It Is Consistent With The Newly Enacted E-Signatures Act

The U.S. Congress recently passed the E-Signatures Act in an effort to promote global and national commerce using the Internet and other electronic means. The primary purpose of the E-Signatures Act is to afford electronic signatures, contracts and other records the same force in law as their paper counterparts by creating a single, nationwide standard for what constitutes a valid electronic signature. Specifically, the E-Signatures Act recognizes as a valid electronic signature "an electronic sound,

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symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record." 15 U.S.C. § 7006. The first form of electronic signature proposed in this advisory opinion request, i.e., typing in one's name and pressing the submit button, satisfies the E-Signatures Act standard for electronic signatures.

In Advisory Opinion 2000-22, the Commission, without deciding the issue, expressed reservations about the applicability of the E-Signatures Act to its functions. The Commission's primary concern was that the E-Signatures Act by its terms is limited to business, consumer and commercial affairs and does not necessarily purport to govern non-commercial activities such as those regulated by the Commission. See Advisory Opinion 2000-22 at n. 4. We are not necessarily asking the Commission in this advisory opinion request to decide whether the E-Signatures Act applies to its functions. Rather, the Commission should permit MSDWPAC to use a typewritten name and the submit button as a proper authorization to accommodate the "contemporary technological innovation" in the area of the electronic media. See Advisory Opinion 1999-3 at 3. Indeed, Congress, in passing the E-Signatures Act, extensively weighed the interest of affording maximum flexibility to companies and individuals seeking to deploy new technologies in the fast paced Internet era against the interest of safeguarding the authenticity of electronic signatures.

After weighing these interests, Congress permitted two individuals from different states, under the E-Signatures Act, to form a valid contract simply by exchanging emails over the Internet containing the text of the contract and each individual's typewritten name. In addition, the E-Signatures Act has clarified that one may merely press a button, such as the "submit" button, to create an electronic signature. Indeed, the standard "click-through" process consumers use to buy a book or CD online, where the consumer points his or her mouse to the "OK" button on successive computer screens to confirm a purchase, creates an enforceable contract because the click-through process falls within the definition of electronic signature contained in the E-Signatures Act.

Similar to any medium, including paper, electronic signatures raise issues regarding fraud. Please note, however, that the risk of fraud in the online world is not any greater than in the world of signatures on paper. Indeed, when considering the

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provisions of the E-Signatures Act, some Members of Congress argued that the risk of fraud actually decreases in the online world due to the inherent ability of electronic technology to record and store evidence of nearly all instances of electronic transactions. See Hearings on E-Signatures Act, 106th Cong. 33 (Jun. 24, 1999) at 33-34 (comments of Rep. Bilbray and testimony of W. Hardy Callcott, Senior Vice Pres. And General Counsel, Charles Schwab & Co., Inc); see also 146 Cong. Rec. H4346-07 (Jun. 14, 2000) (Rep. Sessions) (arguing that "electronic signatures leave a trail that would lead to the door of those who seek to defraud us").

Corporate executives have already soundly endorsed the use of typewritten names as electronic signatures, not only in word but in deed. For example, Viacom recently acquired Black Entertainment Television ("BET") for \$3 billion.¹ In spite of the size of the deal, when BET and Viacom filed for the requisite approvals from the Federal Communications Commission ("FCC") last November, no written signatures were ever used.² Instead, representatives from each of the companies signed the appropriate FCC form using an electronic signature, which in this case consisted only of the typewritten name of the individual authenticating the document. No elaborate technologies were required or used. Indeed, companies today all across the country are not just making government filings using electronic documents and signatures, they are forming extensive and often expensive corporate agreements without ever setting pen to paper. This is precisely what Congress intended to happen by enacting the E-Signatures Act.

Thus, while the possibility of fraud no doubt exists in the online or electronic world, this possibility is not greater than in the non-electronic world. In this case, the reply email confirmation process that MSDWPAC intends to establish provides an extra measure of security against fraud. Moreover, by permitting this form of electronic signature, the Commission would be acknowledging a practice which is

¹ See Press Release of Viacom, Inc., dated January 23, 2001, available at www.viacom.com.

² See Federal Communications Commission File No. SES-T/C-20001107-02111.

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already prevalent among corporations, even in the area of billion dollar deals. Accordingly, MSDWPAC urges the Commission to conclude that a restricted class member may use his or her typewritten name and the "submit" button as a valid written authorization for payroll deductions.

B. The Second Proposed Form of Electronic Signature Should Be Permitted Because It Is Consistent With The Microsoft Advisory Opinion

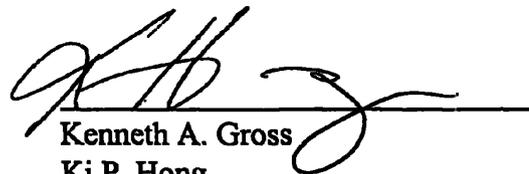
In the alternative, MSDWPAC seeks approval from the Commission to permit MSDWPAC to accept payroll deductions authorized by a restricted class member who uses his or her social security number, in addition to his or her name, and the "submit" button as an electronic signature. Although not necessary, the use of a social security number adds an additional layer of security to ensure the authenticity of the restricted class member's electronic signature. Social security numbers are not publicly distributed, though they are regularly used by millions of people to obtain drivers' licenses, pay taxes, and verify eligibility for a whole host of public and private sector benefits. See In re Crawford, 194 F.3d 954 (9th Cir. 1999) (discussing the frequent use of social security numbers for public purposes and the right of informational privacy). Thus, permitting a restricted class member to authorize a payroll deduction by using his or her social security number (and his or her typewritten name and the "submit" button) as an electronic signature is safe and will not compromise the deductee's privacy. In fact, like the first proposed form of electronic signature, MSDWPAC's reply email confirmation process will also guard against fraudulent deductions. So if the Commission rejects the first proposed form of electronic signature, it should conclude, at the very least, that a restricted class member may use this latter form of electronic signature as a valid written authorization for payroll deductions.

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III. Conclusion

Based upon the foregoing information, MSDWPAC requests an advisory opinion from the Commission. On behalf of MSDWPAC, please do not hesitate to contact us if you require any additional information that may aid in the consideration of this request.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'KAG', is written over a horizontal line.

Kenneth A. Gross

Ki P. Hong

Andrew E. Weis

Skadden, Arps, Slate, Meagher & Flom, LLP

Counsels to the Morgan Stanley Dean

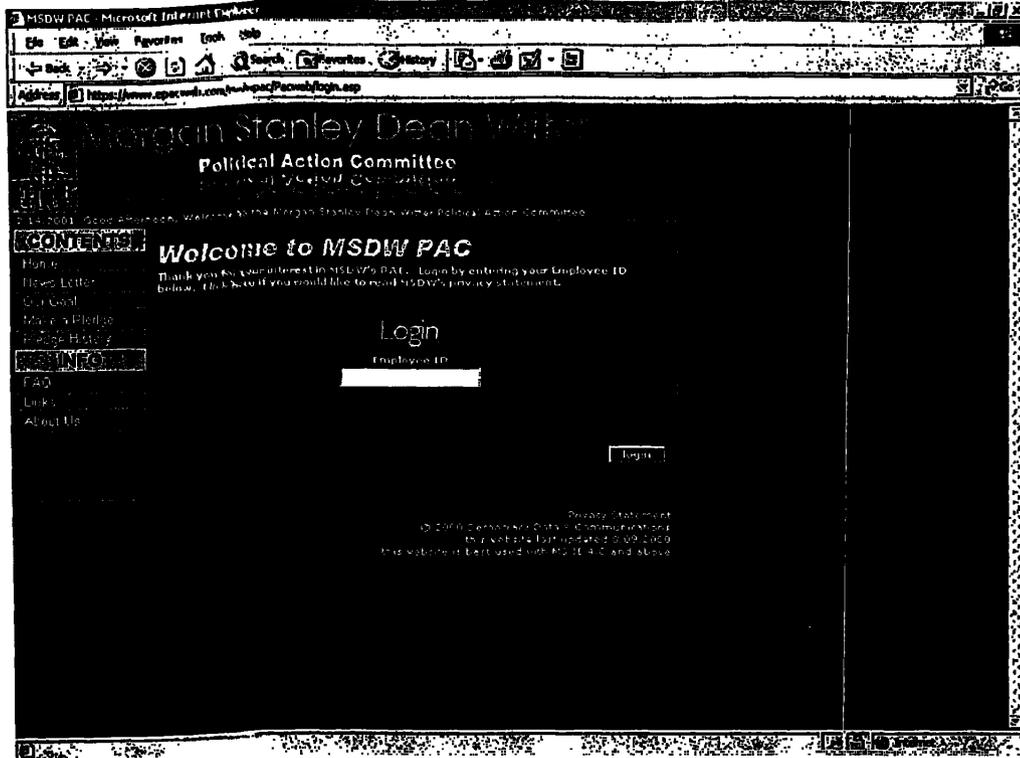
Witter PAC

Attachment

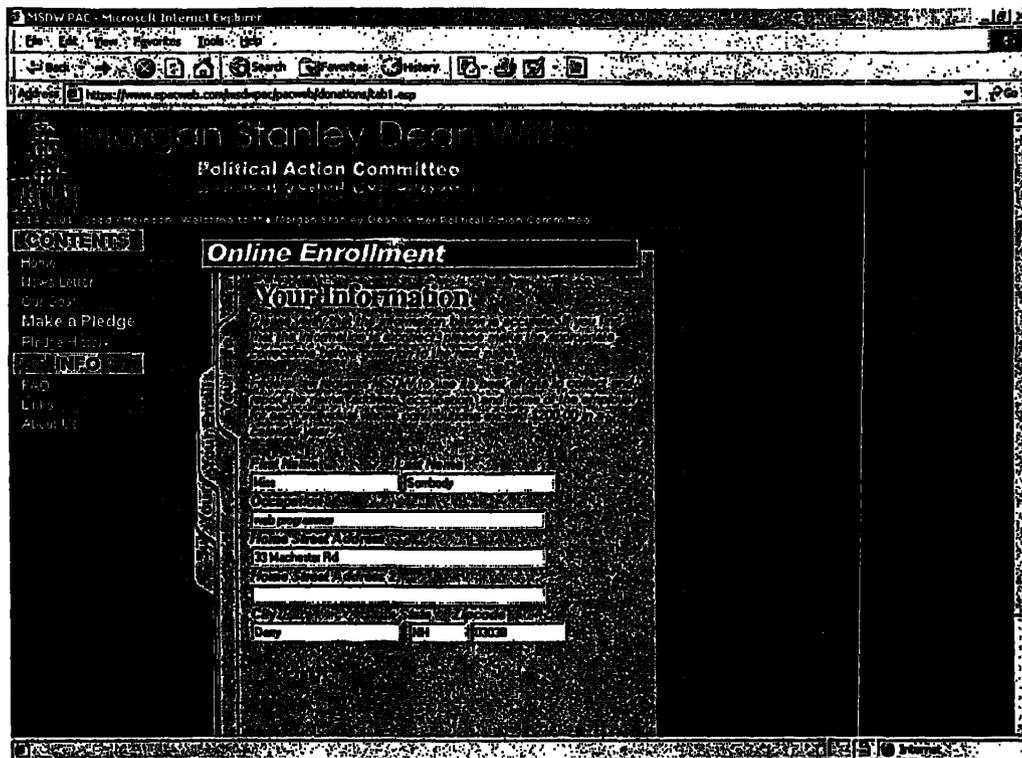


A-1

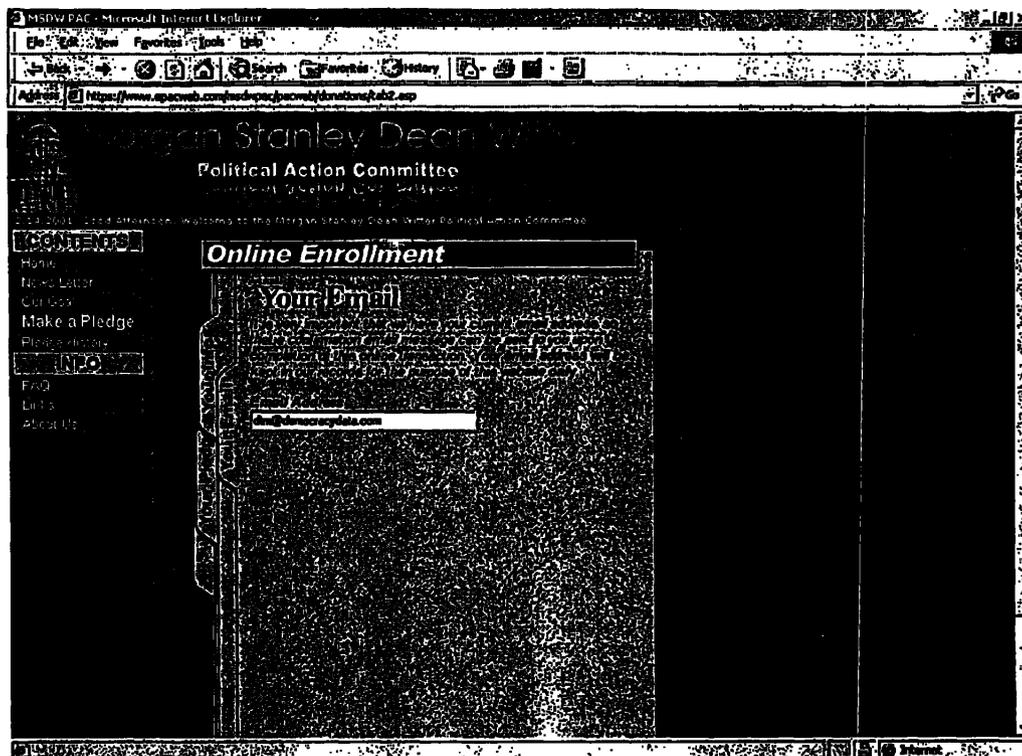




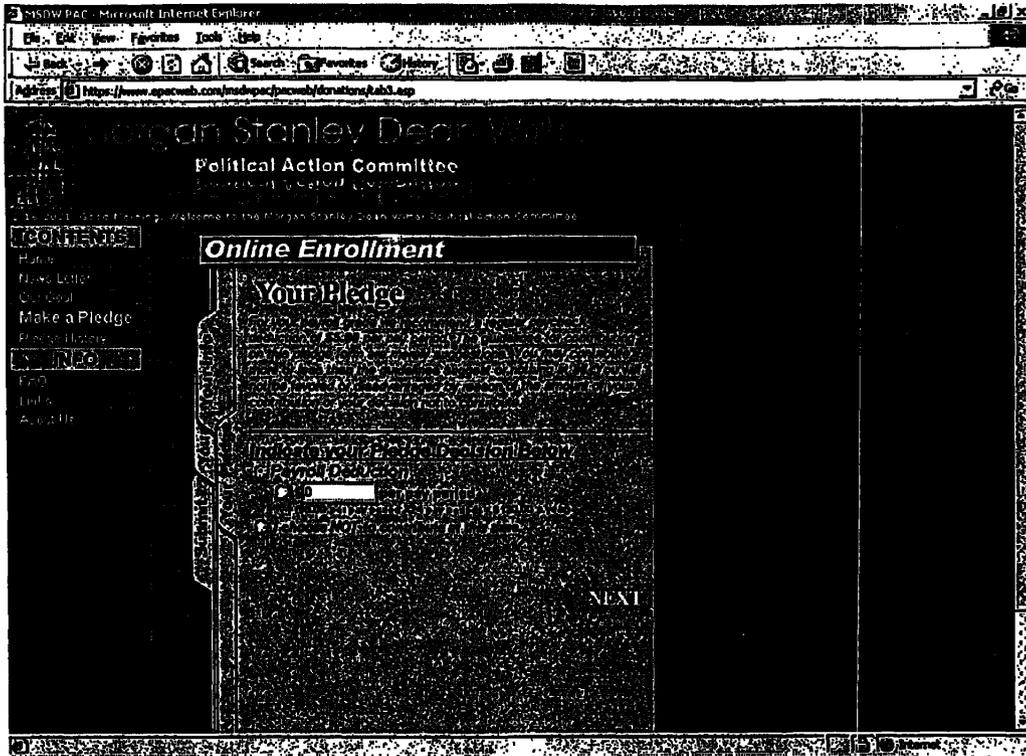
A1- This screen is the first one that users see when attempting to access the MSDWPAC website. To log onto the website, users must enter personally unique employee identification numbers. These employee identification numbers then will be checked against a database of eligible restricted class members. Only those users whose employee identification numbers are verified as belonging to eligible restricted class members will be permitted access to the website. Thus, if users enter employee identification numbers not contained in the database, then such users will be denied access to the website. Even access to the menu options on the left side of the screen will be restricted until users log-on successfully. All transactions will use 128 bit encryption.



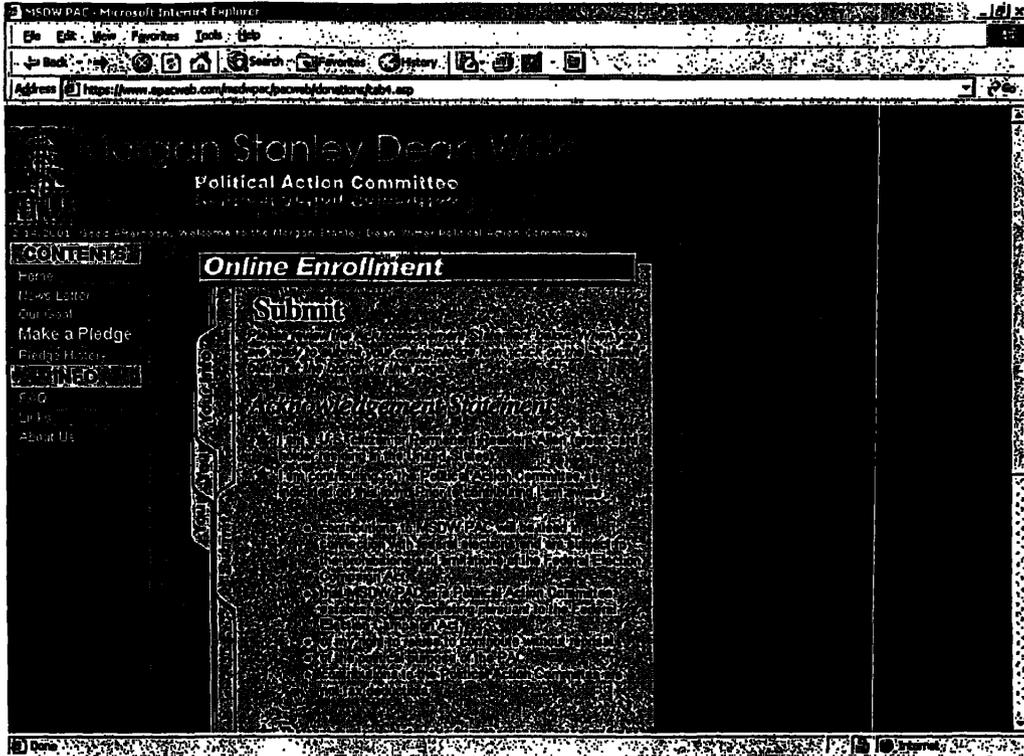
A2 - This screen commences the enrollment process by asking users, who have successfully logged onto the website, to confirm their home addresses and occupations. This information will be checked against company records of eligible restricted class members.



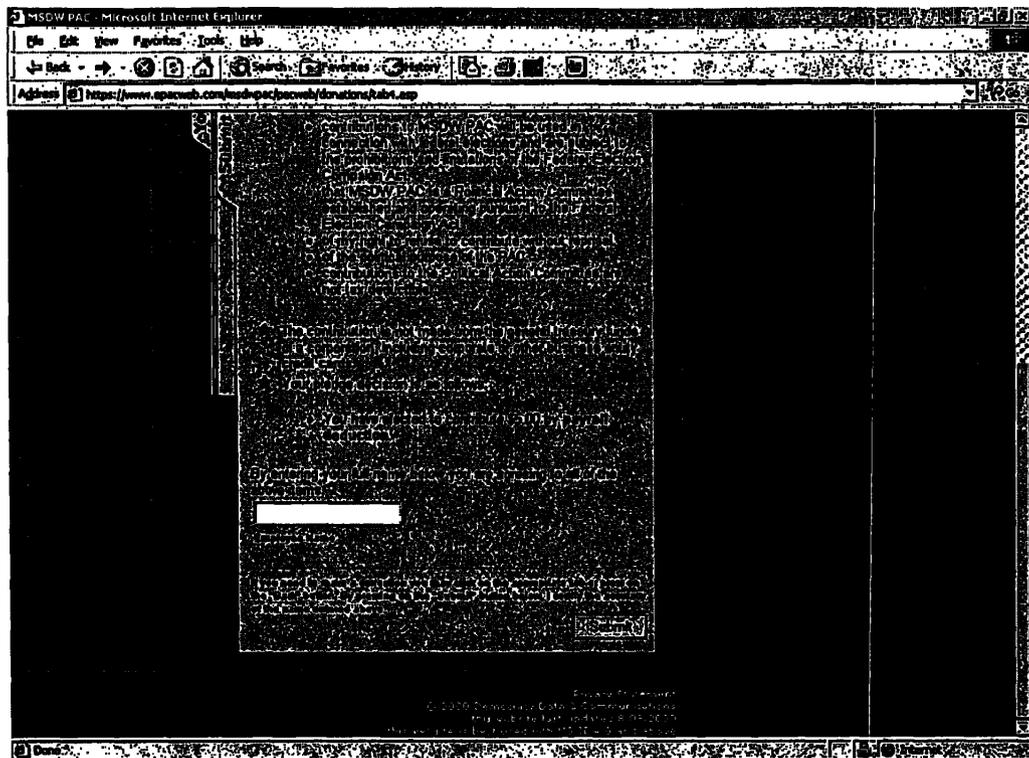
A3 - This screen asks users to verify their email addresses. These email addresses will be checked against company records of eligible restricted class members. This step in the enrollment process ensures that users will be sent emails confirming their contributions.



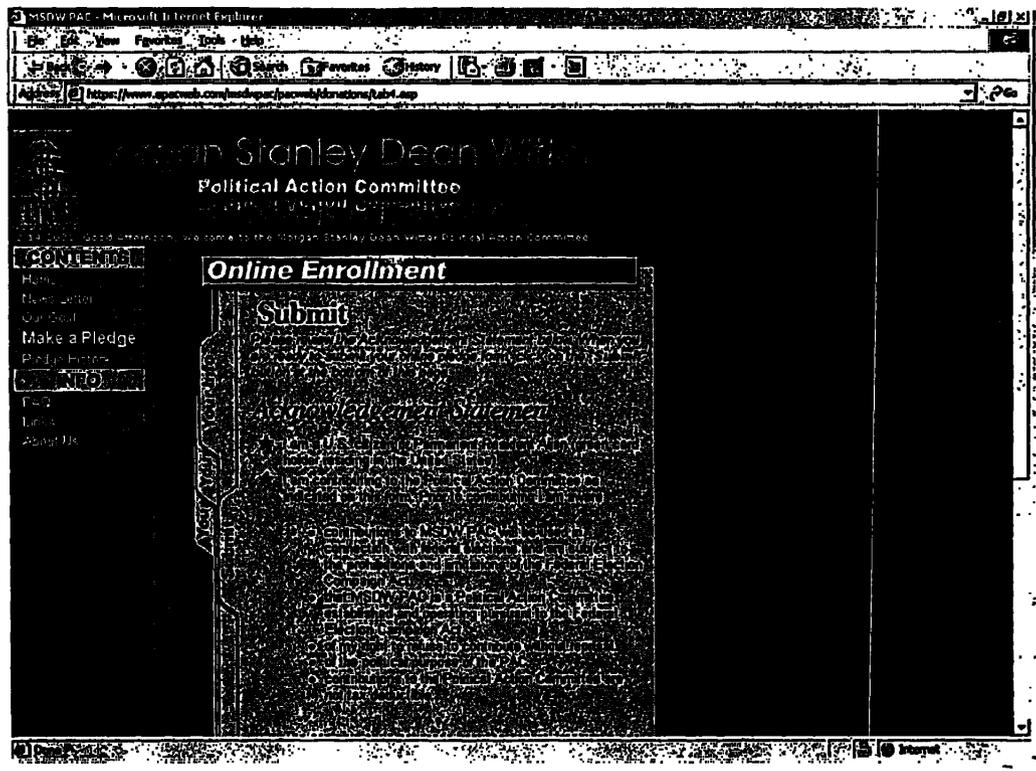
A4 - This screen asks users to decide whether or not to contribute by payroll deduction.



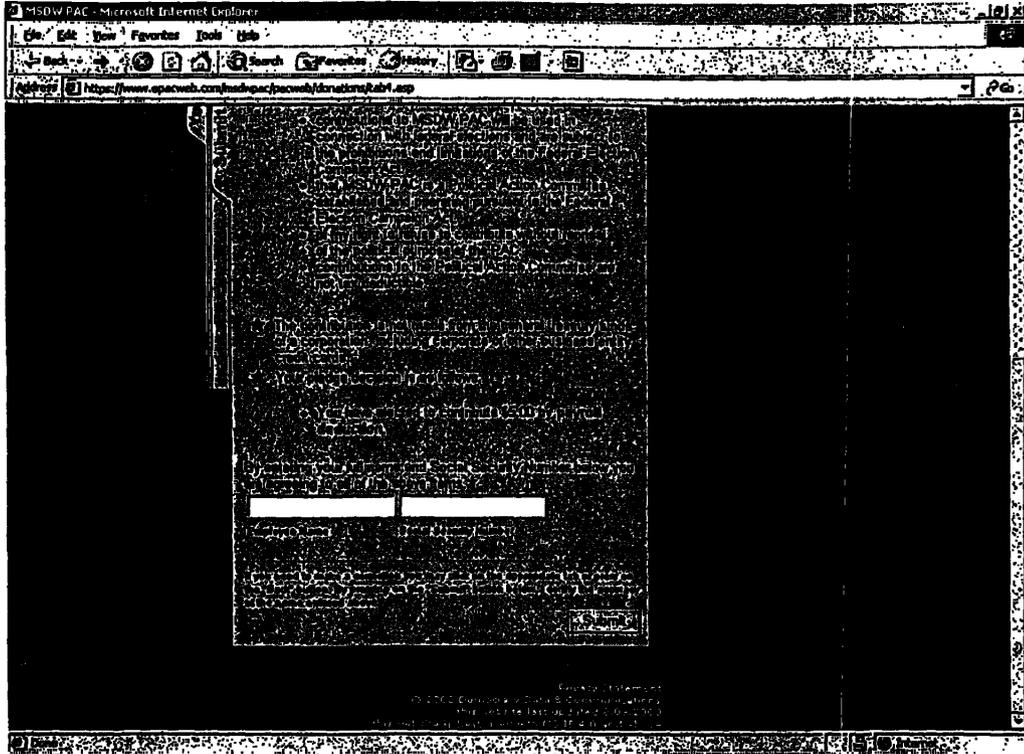
A-6



A6 - This screen, which represents the first proposed form of electronic signature, requires users to review a series of FEC disclaimers and their contribution decisions and then enter their full names and press the "submit" button to authorize their payroll deductions.

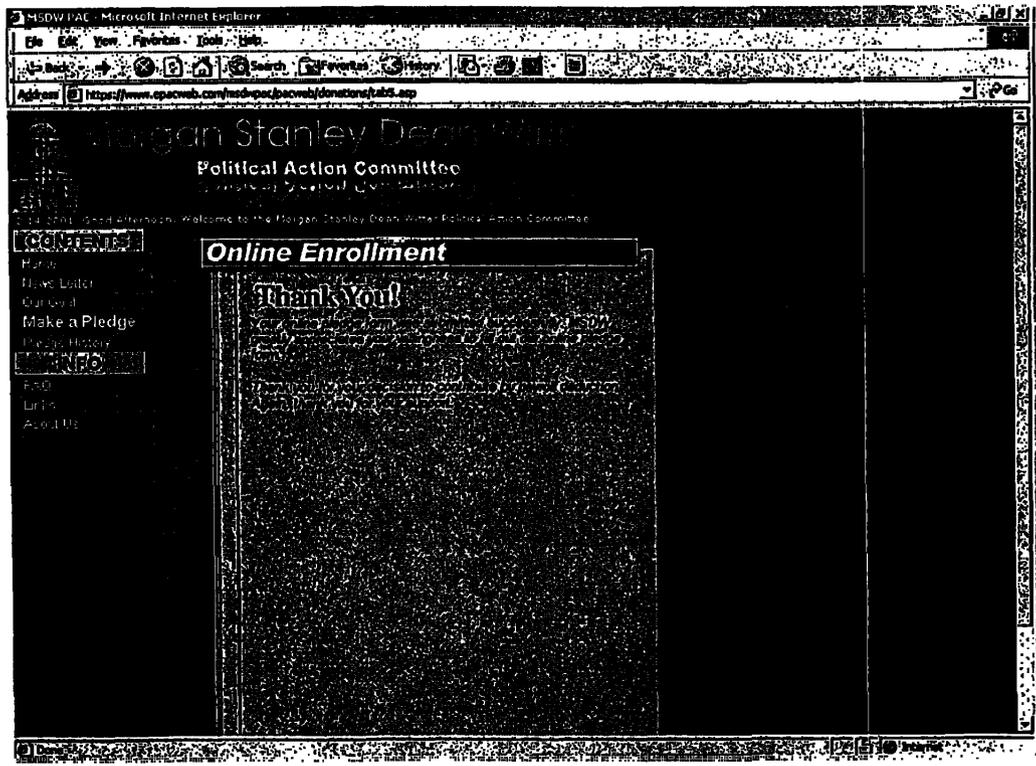


A-7



A7 - This screen, which represents the second proposed form of electronic signature, requires users to review a series of FEC disclaimers and their contribution decision and then enter their social security numbers as well as their full names and press the "submit" button to authorize their payroll deductions.

A-8



A8 - This screen, which is the last one that users will see after authorizing their payroll deductions, thanks users for their contributions to the MSDWPAC.