



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000

www.wileyrein.com

FEDERAL ELECTION COMMISSION
2018 MAY -7 PM 12:44

OFFICE

May 4, 2018

Caleb P. Burns
202.719.7451
cburns@wileyrein.com

BY EMAIL (CELA@FEC.GOV)

Mr. Jeff S. Jordan, Assistant General Counsel
Attn: Christal Dennis, Paralegal
Office of Complaints Examination and Legal Administration
Federal Election Commission
1050 First Street, NW
Washington, DC 20463

**Re: RR 18L-14 (National Venture Capital Association
VenturePAC)**

Dear Mr. Jordan:

On behalf of our clients, the National Venture Capital Association VenturePAC and Jeff Farrah, in his official capacity as treasurer (collectively, "VenturePAC" or "Respondents"), we appreciate this opportunity to respond to the Reports Analysis Division's ("RAD") referral of this matter to your office.

The referral concerns a \$93,339.13 accounting adjustment made by VenturePAC and disclosed to the FEC on the PAC's Amended 2014 March Monthly Report. As further explained below, this adjustment was made following a multi-year review of the PAC's receipts and disbursements, relates to activity that pre-dates the PAC's three-year statutory recordkeeping obligations and the employment of current association personnel, and is part of the association's larger initiative to ensure the accuracy of all future FEC reports.

Given the steps Respondents have voluntarily taken to correct the existing reporting record and to prevent similar recurrences in the future – including the retention of an outside consultant to address the committee's prior reporting issues and the adoption of detailed PAC operating procedures to prevent their recurrence – Respondents request that the Commission take no further action and close the file in this matter. In the event the Commission concludes it must proceed, it should do so through its Alternative Dispute Resolution process.

BACKGROUND

In 2017, in response to concerns that VenturePAC's FEC reports and bank account balances were not reconciling, Respondents retained Koch & Hoos, LLC – a consulting firm with particular experience advising PACs on accounting and FEC

180441001

May 4, 2018

Page 2

reporting obligations – to review and analyze VenturePAC’s receipts and disbursements and provide “a detailed [plan] for correcting all known reporting errors.” See Attachment A (Nat’l Venture Capital Ass’n VenturePAC AMENDMENT PLAN) (“KH Plan”) at 1. The KH Plan focused on activity during the preceding three-year period for which the PAC was statutorily required to maintain records, see 52 U.S.C. § 30102(d),¹ and corresponded with the tenure of the PAC’s current leadership and staff.²

As the KH Plan reflects, Koch & Hoos identified several minor reporting issues during the review period. For example, Koch & Hoos found that VenturePAC underreported its disbursements by \$3,136.70 because of “errors related to the disclosure of PayPal credit card or merchant fees.” *Id.* at 5. Koch & Hoos also determined that VenturePAC understated its receipts by \$12,210.08 as a result of several other issues, including the non-disclosure of certain investment dividends and the failure to include PayPal fees in the amount of the contributions received. See *id.* at 3-5.

After accounting for these errors, Koch & Hoos determined that a \$93,339.13 discrepancy remained between VenturePAC’s bank account balance and the amount to be reported to the FEC in the PAC’s amended filings. Accordingly, VenturePAC incorporated an initial \$93,339.13 reconciling adjustment into the first amended report covered by the KH Plan – i.e., the 2014 March Monthly Report. VenturePAC included this reconciliation adjustment, along with the other corrections identified in the KH Report, in a comprehensive set of 35 amended reports filed on July 25, 2017. See, e.g., *id.* at 1. VenturePAC also voluntarily submitted a Form 99 filing to summarize the changes reflected in the amended reports. See VenturePAC, Form 99 (July 25, 2017), available at <http://docquery.fec.gov/dcdev/fectxt/1174973.txt>.

¹ The start date of the KH Plan was February 1, 2014, which pre-dated the three-year recordkeeping period, but was chosen to account for amended March-July 2014 reports filed by VenturePAC during the recordkeeping period.

² In September 2013, the association hired a new President & CEO, Bobby Franklin. Over the course of the next several years, Mr. Franklin replaced all the association’s personnel, including those overseeing the PAC. The only exception was an employee who had no role in the operation or administration of the PAC – i.e., she was Manager of Administration & Meetings and Director of Conferences & Events.

1004447834



May 4, 2018

Page 3

To avoid a recurrence of future accounting and reporting discrepancies, VenturePAC separately adopted a new set of Operating Procedures. See Attachment B. Among other things, this document:

- Creates a Custodian of Records (“Custodian”) position responsible for maintaining VenturePAC’s records. This position is appointed by the association’s President and is a position separate from VenturePAC’s Treasurer and Assistant Treasurer;
- Requires the Custodian to “double check all recordkeeping entries against the [PAC’s] ledger of receipts . . . and check request forms” and to “perform a reconciliation of VenturePAC’s accounting records to its bank statements” on a monthly basis;
- Provides third-party accounting professionals with access to VenturePAC’s accounting records and other materials “to perform an independent reconciliation and to report the results to the Treasurer”;
- Ensures that all electronic records of VenturePAC are backed-up;
- Mandates that the Treasurer conduct an audit of VenturePAC at least once every two years; and
- Emphasizes that VenturePAC’s Treasurer and Custodian should both “periodically obtain training from the FEC, legal counsel, and other sources on the accounting procedures and legal obligations that apply to VenturePAC.”

DISCUSSION

The Commission should dismiss this matter for several reasons. *First*, in response to a self-identified reporting problem, Respondents dutifully dedicated internal and external resources to research and understand the issue, amended 35 reports to correct the errors, and preemptively disclosed these issues to the Commission. Respondents have voluntarily enclosed a copy of the KH Plan to demonstrate the thoroughness and completeness of their remedial efforts.

Second, the \$93,339.13 reconciling adjustment relates to activity that is more than three years old. That is beyond the time-period for which VenturePAC was statutorily required to maintain records. Furthermore, the activity was conducted by employees who are no longer with the association and pre-dates the

May 4, 2018
Page 4

tenure of the association's current President & CEO and employees responsible for VenturePAC's administration.

Third, Respondents have taken significant additional steps to eliminate the potential for future VenturePAC accounting and reporting errors. Importantly, VenturePAC adopted the above-described Operating Procedures that are based on the regulatory safe-harbors and other best practice guidance issued by the Commission. *See, e.g.*, 11 C.F.R. § 104.7; *Statement of Policy Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act*, 72 Fed. Reg. 31,438 (June 7, 2007); *Statement of Policy; Safe Harbor for Misreporting Due to Embezzlement*, 72 Fed. Reg. 16,695 (Apr. 5, 2007); FEC, *Best Practices for Committee Management*, available at https://transition.fec.gov/pages/brochures/best_practices.pdf. Respondents have voluntarily enclosed a copy of these Operating Procedures to demonstrate their commitment to the accuracy of VenturePAC's ongoing accounting and reporting practices.

A decision to dismiss this matter would be consistent with the Commission's actions in other cases involving similar facts. For example, in Matter Under Review 6582 (NOW/PAC), the Commission voted to close the file, without penalty, where the PAC had over \$226,000 in unreported receipts and disbursements during a four-year period. *See Factual & Legal Analysis*, MUR 6582 (June 5, 2012); *Vote Certification* in MUR 6582 (Feb. 7, 2013). As part of its submission, the PAC explained that "after a period of review and reconciliation, NOW/PAC, in concert with its consultant, voluntarily filed comprehensive amendments to its reports to correct these errors." Letter from Neil Reiff to Erik Morrison, RR 12L-04 at 2 (Mar. 23, 2012). The PAC further noted that the vast majority of errors occurred prior to the installation of new compliance staff and PAC officers. *See id.* at 2-3. In addition, the PAC represented that it was working on refinements to its training and oversight procedures to ensure that it did not repeat these errors. *See id.*

Similarly, VenturePAC conducted its own review and reconciliation and has filed comprehensive amendments. The disclosure at issue here – i.e., the \$93,339.13 reconciling adjustment – relates to activity that pre-dates the PAC's current personnel. And, VenturePAC has already fully implemented procedures to prevent a recurrence of the problem. For these reasons – and because the \$93,339.13 reconciling adjustment here is less than the amount at issue in the NOW/PAC matter – this matter should also be dismissed.

May 4, 2018
Page 5

Relatedly, in MUR 6707, the Commission conciliated with the campaign of Congressman Peter Visclosky, whose campaign committee had nearly \$215,000 in receipts and disbursements that went unreported between 2008 and 2010. See First General Counsel's Report, MUR 6707 (Aug. 17, 2012); Pre-Probable Cause Conciliation Agreement, MUR 6707 (July 9, 2013). In that case, "[a]t the RAD Analyst's direction, the Committee reconciled the Committee's financial activity and amended its reports" following a reported "discrepancy between the Committee's prior FEC reports and its bank records." First General Counsel's Report, MUR 6707 at 2 (emphasis added). Though the committee ultimately paid a \$4,000 civil penalty, the facts here do not warrant one. Unlike the Visclosky campaign, VenturePAC voluntarily conducted the reconciliation and amendment process without prompting by the FEC. And, again, the \$93,339.13 reconciling adjustment at issue here is less than the Visclosky campaign's undisclosed amount.

CONCLUSION

Respondents' have demonstrated their commitment to correcting reporting errors that occurred during the statutory three-year recordkeeping period and their tenure, and to preventing future errors from occurring. In light of this, and consistent with the FEC's treatment of prior violations, the Commission should dismiss this matter. If the Commission concludes that additional action is warranted, Respondents request that this matter be referred to the ADR Office for final resolution.

Sincerely,



Caleb P. Burns
Andrew G. Woodson

National Venture Capital Association VenturePAC
Operating Procedures

The purpose of National Venture Capital Association VenturePAC is to support and encourage the election to federal offices of persons who support the interests and policy goals of the National Venture Capital Association and its members. VenturePAC shall operate in the following manner:

I. PAC OFFICERS

A. Treasurer. The President of the National Venture Capital Association shall appoint the Treasurer of VenturePAC who shall be a United States citizen or lawful permanent resident, i.e., "greencard" holder, currently residing in the United States. The Treasurer shall be the chief financial officer of VenturePAC, and shall have legal responsibility under the Federal Election Campaign Act, as amended, ("FECA") for all funds and operations of the PAC. The Treasurer shall: direct the collection, deposit, and disbursement of all VenturePAC funds; maintain responsibility for all VenturePAC records required by law or regulation; direct the preparation and filing of all reports required by law or regulation; and perform all other functions required by law of the Treasurer.

B. Custodian of Records. The President of the National Venture Capital Association shall appoint one individual to serve as Custodian of Records for VenturePAC who shall be a United States citizen or lawful permanent resident, i.e., "greencard" holder, currently residing in the United States. The Custodian of Records, under the direction and supervision of the Treasurer, shall develop and maintain VenturePAC's accounting and all other records as described in these Operating Procedures and as required by law.

C. Designated Agent (hereinafter "Assistant Treasurer"). The Assistant Treasurer shall be the President of the National Venture Capital Association who shall be a United States citizen or lawful permanent resident, i.e., "greencard" holder, currently residing in the United States. The Assistant Treasurer shall immediately assume the responsibilities of the Treasurer in the absence or unavailability of the Treasurer.

D. The names of the Treasurer, Custodian of Records, and Assistant Treasurer must be disclosed on VenturePAC's FEC Form 1; any change in these positions will require an amendment to VenturePAC's FEC Form 1 within 10 days.

II. PAC PROCEDURES

A. Depository Account. The Treasurer shall maintain a separate checking account in the name of VenturePAC that is associated with an Employer Identification Number unique to VenturePAC to serve as the designated depository account of VenturePAC. Authority over the account shall be limited to the Treasurer and Assistant Treasurer. Authority to sign all checks, drafts, and orders for the payment of money in the name of VenturePAC shall be limited to the Treasurer and Assistant Treasurer. Any change in the institution that holds the VenturePAC depository account will require an amendment to VenturePAC's FEC Form 1 within 10 days.

B. Contributions to the PAC

1. VenturePAC is empowered to solicit voluntary contributions of up to \$5,000 per calendar year from the following persons:

a. Salaried employees of the National Venture Capital Association who (i) are United States citizens or lawful permanent residents, i.e., "greencard" holders, currently residing in the United States, and (ii) have policymaking, managerial, professional, or supervisory responsibilities.

b. Individual members of the National Venture Capital Association, as recognized by the By-Laws of the National Venture Capital Association, who are United States citizens or lawful permanent residents, i.e., "greencard" holders, currently residing in the United States.

2. The Federal Election Commission ("FEC") has broadly defined solicitation to include any communication that encourages support for a PAC. Thus, all such communications, e.g., requests for VenturePAC contributions, thank you notes for past VenturePAC contributions, VenturePAC Newsletters, etc., may only be directed to the persons described above who are eligible to be solicited to contribute to VenturePAC.

3. All VenturePAC solicitation materials must include the following disclaimer language:

"Contributions to the National Venture Capital Association VenturePAC are not tax deductible. All contributions are voluntary and will be used for political purposes; you are free to refuse to contribute without reprisal. Contributions from corporations or foreign nationals are strictly prohibited. Federal law requires VenturePAC to use its best efforts to collect and report the name, mailing address, occupation, and name of employer of individuals whose contributions exceed \$200 in a calendar year."

If a solicitation suggests a specific contribution amount, then the solicitation materials must contain the following additional disclaimer language:

"Contribution guidelines are only suggestions; you may contribute more (up to the \$5,000 maximum) or less and you will not be favored or disadvantaged based on the amount of your contribution or your decision not to contribute."

4. Contributions to VenturePAC shall be made by check, credit card, and wire transfer. No cash contributions will be accepted.

5. VenturePAC shall not accept a contribution of more than \$5,000 per year from any permissible contributor.

6. All contributions received by VenturePAC shall be voluntary, as defined by FECA, and shall not be reimbursed by others or made in the name of another person.

7. Contributions to VenturePAC shall be processed in the following manner.

a. All contributions to VenturePAC shall be received by the National Venture Capital Association Director of Administration who will create a ledger of all receipts.

i. For contributions by check, the Director of Administration shall record the check information on the ledger and place a restrictive endorsement on all checks such as: "For Deposit Only to the Account of National Venture Capital Association VenturePAC."

ii. For contributions by credit card, the Treasurer or Custodian of Records sends a secure link generated through the PAC's accounting software to the contributor to enter credit card information. Upon completion, an automated e-mail is sent to the Director of Administration with the amount, the date of transaction, and, in some cases, the identity of the contributor. The Director of Administration shall record this information on the ledger and forward the automated e-mail to the Custodian of Records. The Custodian of Records reconciles and records this information and PAC's accounting records.

iii. For wire transfers, the Treasurer, Assistant Treasurer, or Custodian of Records provide a form seeking contributor information and providing wire transfer instructions to the contributor. A representative of the PAC's bank notifies the Assistant Treasurer by phone call or voicemail that a wire transfer has been deposited into the PAC's bank account. The Assistant Treasurer forwards this information to the Director of Administration to record on the ledger and to the Treasurer and Custodian of Records to record in the PAC's accounting records.

b. The Director of Administration will immediately forward contributions and contribution information to the Custodian of Records who will, under the supervision of the Treasurer: (i) create and maintain copies of contribution checks and other records related to the contributions, (ii) review contributions for compliance with FECA's contribution limits and source restrictions, and (iii) enter all required contribution information into VenturePAC's accounting records including the name, address, employer, and occupation of each contributor, the amount of each contribution, and the date on which the contribution was received. The Custodian of Records or Treasurer shall immediately issue a written follow-up request to a contributor if the PAC does not receive the above-described information or the permissibility of a contribution is in question.

c. The Custodian of Records and the Treasurer shall ensure that all permissible contributions are deposited into the VenturePAC bank account within ten days of receipt and shall secure all undeposited contributions in a locked cabinet.

C. Disbursements by the PAC

1. All contributions by VenturePAC shall be requested by any of the following: a Vice President for Government Affairs or Director of Government Affairs and approved by the President of the National Venture Capital Association. VenturePAC contribution requests and approvals must be in writing on a VenturePAC check request form.
2. Upon receipt of a duly executed VenturePAC check request form, the Custodian of Records shall, under the supervision of the Treasurer: (i) ensure that the contribution complies with VenturePAC's contribution limit to the recipient, (ii) enter the contribution information into VenturePAC's accounting records, (iii) prepare the contribution check, (iv) obtain the Treasurer's or Assistant Treasurer's signature on the check, (v) create and maintain a copy of the signed check, (vi) deliver the check to the intended recipient, and (vii) maintain a copy of the VenturePAC check request form as well as copies of other documents related to the contribution (e.g., a campaign fundraising event invitation).

D. PAC Reporting

1. Every month, the Custodian of Records shall double check all recordkeeping entries against the ledger of receipts created pursuant to paragraph II.B.7.a. and check request forms executed pursuant to paragraph II.C.2., perform a reconciliation of VenturePAC's accounting records to its bank statements, and report the results of the reconciliation to the Treasurer.
2. The Custodian of Records shall be responsible for compiling and timely filing VenturePAC's FEC Form 3X disclosure reports based on VenturePAC's accounting records. Once a draft of the FEC Form 3X is prepared, the Custodian of Records shall reconcile it with VenturePAC's bank statements.
3. Third-party accounting professionals shall also be given access to VenturePAC's accounting records, the ledger of receipts created pursuant to paragraph II.B.7.a., the

check request forms executed pursuant to paragraph II.C.2., VenturePAC's bank statements, and the draft FEC Form 3X to perform an independent reconciliation and to report the results to the Treasurer.

4. After reviewing the draft FEC Form 3X and reconciliation reports, the Treasurer may authorize electronic submission of the final FEC Form 3X by the Custodian of Records.
5. If VenturePAC maintains an interest bearing depository account or derives other income, e.g., dividends, from its funds, VenturePAC must annually file a tax return on IRS Form 1120-POL if its income exceeds \$100.

E. PAC Recordkeeping

1. The Custodian of Records shall, under the supervision of the Treasurer, maintain VenturePAC's accounting records, copies of all VenturePAC filings with the FEC, and original back-up records of contributions received and made for a period of three years from the date of filing the FEC Form 3X that disclosed those contributions.
2. The Custodian of Records shall be responsible for ensuring that all electronic records of VenturePAC are regularly backed-up.
3. The Treasurer and Custodian of Records shall periodically obtain training from the FEC, legal counsel, and other sources on the accounting procedures and legal obligations that apply to VenturePAC.

F. State or Local Contributions/Pay-To-Play. Some contributors to VenturePAC may be regulated by MSRB Rule G-37, SEC "pay-to-play" rules regarding investment advisors, or other federal, state or local "pay-to-play" rules and, thus, may be precluded from making political contributions to certain state or local candidates and government officials. To assist in complying with these rules, it is the policy of VenturePAC to make contributions in connection with federal elections; VenturePAC does not contribute to campaign committees, political parties, or other political committees at the state or local levels. In addition, VenturePAC seeks contributions for the general purpose of making contributions in connection with federal elections; VenturePAC does not seek contributions for the purpose of supporting a limited number of state or local officials who are federal candidates who may be subject to MSRB Rule G-37, SEC "pay-to-play" rules regarding investment advisors, or other federal, state or local "pay-to-play" rules. Furthermore, contributions to VenturePAC are used at the complete discretion of VenturePAC and National Venture Capital Association staff as described in these Operating Procedures; neither the National Venture Capital Association board, nor the National Venture Capital Association's members control VenturePAC contributions. Finally, VenturePAC and National Venture Capital Association staff will not earmark contributions for the purpose of supporting a limited number of state or local officials who are federal candidates who may be subject to MSRB Rule G-37, SEC "pay-to-play" rules regarding investment advisors, or other federal, state or local "pay-to-play" rules.

G. Audit. The Treasurer shall consider directing an audit of VenturePAC (from an operational and financial perspective) at least once every two years.

III. ASSOCIATION PROCEDURES

A. Association Support of PAC. The National Venture Capital Association shall pay the reasonable and necessary start-up, administrative, and fundraising expenses for VenturePAC as contemplated in these Operating Procedures and to the extent permitted by law.

B. Separation of Accounts. The National Venture Capital Association shall not commingle its general treasury funds with those deposited in VenturePAC's depository account.

IV. AMENDMENT

These procedures may be amended from time to time by the President of the National Venture Capital Association who shall be a United States citizen or lawful permanent resident, i.e., "greencard" holder, currently residing in the United States.

Adopted May 2, 2017.

NATIONAL VENTURE CAPITAL ASSOCIATION