



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 1 11 08 AM '94

June 1, 1994 **SUBMITTED LATE**
AGENDA ITEM
For Meeting of: JUN 2 1994

MEMORANDUM

TO: The Commission

FR: Lee Ann Elliott
Commissioner *llk*

RE: Alternative language for Advisory Opinion 1994-9

After reading the complete facts of this case, I believe the requester has put forward a strong case for disaffiliation of Armco, Kawasaki and AK Steel. To expedite consideration of this alternative, I suggest the following changes be made in the General Counsel's draft:

Delete the sentence on page 12 lines 16-18 beginning with "In assessing ..."

Insert the following language on page 13, before the citation to the regulation, four lines from the top:

The fact that Armco and Kawasaki each have only one member on AK's new seven-member board further shows the former partners now only play a minority role in the affairs of the newly created company.

Delete the first and second full paragraphs on page 13 beginning with "Significantly, however, ..." and "Relevant to ..." through the words "Most recently," in the third paragraph.

Insert the following three paragraphs on page 13:

There is no evidence of common or overlapping officers or employees between AK Steel and Armco or Kawasaki. That fact that certain employees of ArmLP now work for AK Steel does not mean they overlap with Armco or Kawasaki, nor does it indicate "a formal or ongoing relationship between" the parties as required by 11 CFR 110.3(a)(3)(i)(E) and (F).

There is also no indication Kawasaki or Armco will provide "funds or goods in a significant amount

or on an on-going basis" to AK Steel. 11 CFR 110.3(a)(3)(ii)(G),(H). In fact, Armco and Kawasaki's financial stake appears limited to their initial subscription of AK common stock. The Joint Venture Termination Agreement eliminated most of the previous financial obligations.

Although Armco and Kawasaki were instrumental in the formation of AK Steel's predecessor, the Commission does not believe this fact alone affiliates the parties in this case. 11 CFR 110.3(a)(3)(ii)(I). The Commission has taken this position in corporate reorganizations where the successor entity is not owned or controlled by the prior parent. Advisory Opinion 1993-23.

Delete the sentence on page 14, six lines from the top, beginning with "The Commission ..." and delete the next paragraph beginning with "In view ..."

Insert the following new paragraph on page 14, after the regulatory cite, six lines from the top of the page:

Accordingly, the Commission concludes that Armco and Kawasaki may be treated as disaffiliated with AK Steel as of the date of the Initial Public Offering.

I request this memorandum be placed on the Open Session Agenda for June 2, 1994. Attached to this memorandum is an edited copy of the General Counsel's agenda document.

Enc.

Opinion 1990-16.^{6/}

B. Affiliation After Recapitalization

The presence or absence of affiliation between AK Holding and Armco and between AK Holding and Kawasaki after the IPO depends upon application of the factors described above.

After the IPO, neither Armco nor Kawasaki will come close to owning a controlling interest in the outstanding common shares. In addition, you anticipate that AK Holding shares will be vigorously traded on the open market and no single group of shareholders will hold a controlling interest. See 11 CFR 110.3(a)(3)(ii)(A).

~~In assessing the next five factors cited above as relevant, the disaffiliation of Kawasaki and Armco becomes problematic.~~ You state that you anticipate that the governing documents will enable neither Armco, Inc. nor Kawasaki to engage in the governance of AK Steel and AK Holding and that the governance and management of AK Steel

^{6/} You should note that in Advisory Opinion 1984-31, the Commission requires compliance with the solicitation provisions of 11 CFR 114.5 and the opinion addresses contributions from members of the restricted class of solicitees. See 11 CFR 114.5(g)(1) and 114.1(c) and (h). Furthermore, to solicit outside the restricted class requires additional safeguards not presented in your request. See 11 CFR 114.6(c) and (d). Your requests for authorization from (i.e., solicitation of) each contributor, therefore, should not extend to those contributors not in the restricted class, e.g., non-executive and non-administrative employees, and employees of a company not affiliated with Armco L.P. You should note that the determination of which contributions are represented in the cash on hand must include all of the recent contributions, not just those from contributors in the restricted class.

and AK Holding will be independent and separate from the former joint venturers. There is also a Joint Venture Termination Agreement terminating obligations and continuing others.[^] See 11 CFR 110.3(a)(3)(ii)(B), (C), and (E).

~~Significantly, however, the boards of both AK Holding and AK Steel each contain a high-ranking director or executive from Armco and from Kawasaki. Sitting on both boards will be the President and CEO of Armco (Mr. Will) and a Managing Director of Kawasaki (Mr. Emoto). In addition, Kawasaki's position on the board is, in effect, an obligation of AK Holding for the near future. It is also significant that the directors from Armco and Kawasaki are two of the three persons choosing the new members of both boards.~~ INSERT # 2

~~Relevant to factor (F), which pertains to former officer and employees of one sponsoring organization who were officers or employees with another, is the presence of three former Armco employees among the seven executive officers, all of whom are also holdovers from ArmLP. See 11 CFR 110.3(a)(3)(ii)(F). The Commission also notes that Armco and Kawasaki were instrumental in the formation of the Armco LP joint venture partnership, the predecessor organization. See 11 CFR 110.3(a)(3)(ii)(I).~~

~~The Commission has addressed possible disaffiliation situations in prior opinions. Most recently, in Advisory Opinion 1993-23, the Commission addressed a situation where the parent spun off its remaining shares in its subsidiary to the parent's shareholders, after offering one-eighth of its~~

0 shares in the subsidiary to the public. The Commission
1 concluded that the former parent and former subsidiary would
2 be disaffiliated. The Commission relied partially on the
3 Separation Agreement between the parent and subsidiary and
4 considered it to prevail over the presence of some of the
5 factors set out at 11 CFR 110.3(a)(3)(ii). ~~The Commission,
6 in distinguishing the situation in Advisory Opinion 1993-23
7 from similar previous corporate spin-offs where the
8 Commission declined to disaffiliate, noted, however, that, in
9 Advisory Opinion 1993-23, there would be a complete
0 separation of the former subsidiary's group of directors,
1 officers, and employees from that of the former parent. See
2 Advisory Opinions 1987-21 and 1986-42.~~

3 ~~In view of the background presented as to the
4 relationships of the companies, the continued presence on the
5 boards of AK Holding and AK Steel of the high ranking
6 officials of Arceo and Kawasaki leads the Commission to
7 conclude that the disaffiliation of AK Steel and AK Holding
8 from these two companies would be premature at this time. INSERT #3
9 This does not preclude a different conclusion at a later
0 point in the operations of AK Steel and AK Holding.~~ 7/

1 C. Change in the Name of the Connected Organization and the

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7 7/ The Commission notes that Kawasaki's interest in AK
8 Holding raises the question of foreign national involvement
9 in the solicitation and making of contributions with respect
0 to Federal and non-Federal elections. See 2 U.S.C. §441e; 11
CFR 110.4(a). Because you did not raise this issue, the
Commission will not analyze it. The Commission, however,
refers you to Advisory Opinion 1992-16 and opinions cited
therein.

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The Act and regulations require that the name of any separate segregated fund established by a corporation includes the full name of the connected organization. 2 U.S.C. §432(e)(5); 11 CFR 102.14(c). The facts presented by you indicate that AK Steel is the successor organization to ArmlP. In addition, ArmlP PAC was not only acting as a PAC "sponsored" by a partnership, but could act as a separate segregated fund. (See analysis above.) After the reorganization, what will then be the former Armco L.P. PAC may be treated as the PAC of AK Steel. If this is done, the PAC name must include the name of AK Steel in its PAC name, assuming that AK Steel is acting as its connected organization. See Advisory Opinions 1993-7, 1986-42, and 1980-98.^{8/}

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.

For the Commission,

Trevor Potter
Chairman

Enclosures (AOs 1993-23, 1993-7, 1992-17, 1992-16, 1990-20, 1990-16, 1989-8, 1987-34, 1987-21, 1986-42, 1984-36, 1984-31, 1983-48, 1982-63, and 1980-98)

^{8/} The Commission notes that AK Holding is the parent of AK Steel. There is nothing in the Act precluding a connected organization from including the parent's name in the name of the SSF. Advisory Opinion 1989-8.