

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

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5 **RAD REFERRAL: 18L-14**  
6 **DATE REFERRED: 03/06/2018**  
7 **DATE OF NOTIFICATION: 03/16/2018**  
8 **DATE OF ACTIVATION: 07/16/2018**

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10 **ELECTION CYCLE: 2014**  
11 **EXPIRATION OF SOL: 03/20/2019**

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13 **SOURCE:** Internally Generated  
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15 **RESPONDENT:** National Venture Capital Association VenturePAC  
16 and Jeff Farrah in his official capacity as treasurer  
17  
18 **RELEVANT STATUTE AND REGULATIONS:** 52 U.S.C. § 30104(b)(1), (b)(6)(B)(v)  
19 11 C.F.R. §§ 104.3(a), (b)(3)(ix)  
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21 **INTERNAL REPORTS CHECKED:** Disclosure Reports  
22 Reports Analysis Division Referral Materials  
23  
24 **FEDERAL AGENCIES CHECKED:** None

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26 **I. INTRODUCTION**

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28 The Reports Analysis Division (“RAD”) referred National Venture Capital Association  
29 VenturePAC and Jeff Farrah in his official capacity as treasurer (“NVCA PAC” or the  
30 “Committee”) to the Office of the General Counsel (“OGC”) for failure to provide information  
31 relating to disbursements corresponding to a \$93,339.13 cash-on-hand adjustment on its  
32 Amended 2014 March Monthly Report.<sup>1</sup> For reasons set forth below, we recommend that the  
33 Commission open a MUR and find reason to believe that the Committee violated 52 U.S.C.  
34 § 30104(b)(1) and (b)(6)(B)(v) by failing to provide the source of the disbursements related to  
35 that account adjustment. Additionally, we recommend that the Commission enter into pre-

<sup>1</sup> RAD Referral, National Venture Capital Association Venture PAC (Mar. 6, 2018) (“Referral”).

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1 probable cause conciliation with the Committee and approve the proposed conciliation  
2 agreement.

## 3 II. FACTUAL BACKGROUND

4 The Committee is a separate segregated fund affiliated with the National Venture Capital  
5 Association and also registered as a qualified Lobbyist/Registrant PAC.<sup>2</sup> On March 20, 2014,  
6 the Committee filed its 2014 March Monthly Report, disclosing \$20,562.00 in disbursements on  
7 Line 29 (Other Disbursements) of the Detailed Summary Page.<sup>3</sup> On July 25, 2017—over 39  
8 months later—the Committee filed an Amended 2014 March Monthly Report disclosing a  
9 disbursement on Line 29 of \$93,339.13 with a purpose of “Prior Period Adjustment.”<sup>4</sup> On that  
10 same day, the Committee filed a FEC Form 99 (“Form 99”) regarding the Amended 2014 March  
11 Monthly Report and stating, in part, that the reconciling entry of \$93,339.13 on the Report  
12 reflects a “discrepancy between the PAC’s bank account balance and the balance it disclosed to  
13 the FEC prior to the three-year review period.”<sup>5</sup>

14 On December 25, 2017, RAD issued an RFAI to the Committee regarding the Amended  
15 2014 March Monthly Report asking for clarifying entries and information related to the

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<sup>2</sup> See Amended Statement of Organization, NVCA PAC (Feb. 1, 2018).

<sup>3</sup> RAD Referral, RR 18L-14 (NVCA PAC) (Mar. 6, 2018). On April 18, 2014, a Request for Additional Information (RFAI) was sent to the Committee referencing the original 2014 March Monthly Report and requesting clarification regarding missing purposes for itemized disbursements on Schedule B, supporting line 29. *Id.* at 1. The RFAI also advised the Committee that transactions were disclosed on the wrong line of the Detailed Summary page. *Id.* On April 30, 2014, the Committee filed an Amended 2014 Monthly March Report that disclosed \$13.77 in disbursements on Line 29, moving \$20,548.23 in activity to Schedule B, supporting Line 21(b) (Other Federal Operating Expenditures). *Id.* at 2. On August 13, 2014, the Committee filed an Amended 2014 Monthly March Report disclosing no change in disbursements from the previous report. *Id.*

<sup>4</sup> Amended 2014 Monthly March Report, NVCA PAC (July 25, 2017).

<sup>5</sup> See FEC Form 99, NVCA PAC (July 25, 2017). Further, the Committee stated that the staff responsible for administering the Committee three years ago have since then been replaced with new employees. *Id.*

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1 \$93,339.13 account adjustment disclosed on the report.<sup>6</sup> On January 29, 2018, the Committee  
2 filed another Form 99, which provided the same explanation as the one provided on the earlier  
3 Form 99.<sup>7</sup> On February 9, 2018, RAD informed the Committee that the matter would be referred  
4 to OGC.<sup>8</sup> In response to the referral, the Committee stated that it commissioned an independent  
5 audit after its own internal audit revealed discrepancies between its FEC reports and its bank  
6 balances.<sup>9</sup> The Committee further states that the \$93,339.13 adjustment relates to activity that is  
7 both more than three years old and was conducted by employees who are no longer with the  
8 association.<sup>10</sup> In addition, the Committee has filed 35 amended reports to correct various errors,  
9 most of which were minor, except for the \$93,339.13 discrepancy.<sup>11</sup> Although the independent  
10 audit was unable to determine the source of the discrepancy, the Committee asserts that it  
11 voluntarily amended the relevant report and instituted remedial procedures to eliminate the  
12 potential for future accounting and reporting errors.<sup>12</sup>

### 13 III. LEGAL ANALYSIS

14 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee  
15 treasurers to file reports of receipts and disbursements in accordance with the provisions of

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<sup>6</sup> *Id.*

<sup>7</sup> FEC Form 99, NVCA PAC (Jan. 29, 2018). In addition, the Form 99 stated that the Committee has instituted formal procedures, using the Commission's policies on Best Efforts, Safe Harbors for Embezzlement and Internal Policies, as guidelines, to prevent a recurrence of the problem. *Id.*

<sup>8</sup> Referral at 4.

<sup>9</sup> RR 18L-14 (NVCA PAC), Response at 1-2 (May 4, 2018) ("Resp.").

<sup>10</sup> *Id.* at 2. According to the Committee, the independent audit was focused on activity within a three-year period since the Commission regulations only require it to maintain records for three years. *Id.*; see also 52 U.S.C. § 30102(d).

<sup>11</sup> Resp. at 2.

<sup>12</sup> *Id.* at 3-4.

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1 52 U.S.C. § 30104.<sup>13</sup> The Act and Commission regulations further require that political  
2 committees other than authorized committees identify each person who has received any  
3 disbursement within the reporting period not otherwise disclosed in accordance with 11 C.F.R.  
4 § 104.3(b)(3) to whom the aggregate amount or value of disbursements made by the reporting  
5 committee exceeds \$200 within the calendar year, together with the date, amount and purpose of  
6 any such disbursement.<sup>14</sup> Here, the Committee did not comply with the Act's reporting  
7 requirements when it disclosed an adjustment of \$93,339.13 to its cash-on-hand balance on its  
8 Amended 2014 March Monthly Report, without the necessary individual entries supporting the  
9 adjustment.

10 The Committee asserts that the appropriate resolution for the matter is dismissal or  
11 referral to ADRO.<sup>15</sup> However, this matter was appropriately referred pursuant to Standard 6 of  
12 RAD's Review and Referral Standards for the 2013-2014 election cycle, and the Committee  
13 acknowledges its reporting error. Accordingly, we recommend that the Commission open a  
14 MUR and find reason to believe that the Committee violated 52 U.S.C. § 30104(b)(1) and  
15 (b)(6)(B)(v).

<sup>13</sup> 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

<sup>14</sup> *Id.* § 30104(b)(6)(B)(v); *Id.* § 104.3(b)(3)(ix).

<sup>15</sup> Resp. at 1. The Response cites to two previous enforcement matters, MURs 6582 (NOWPAC) and 6707 (Visclosky), in support of its request for dismissal. *Id.* at 4-5. In MUR 6582, the Commission split on a motion to accept a conciliation agreement and voted to close the file for reasons unrelated to the nature of the violations. Rather, the Commission disagreed about whether to apply the 2011-2012 RAD referral thresholds to activity that predated the adoption of those thresholds. Further, in MUR 6707, the Commission obtained a \$4,000 civil penalty even though the committee worked with RAD to amend its reports to accurately describe the specific unreported activity, something which the committee in this matter asserts it is unable to do. *See* First Gen. Counsel's Rpt. at 4-5, MUR 6707 (Visclosky). Therefore, the arguments raised by the Committee in support of dismissal or referral to ADRO are unpersuasive and do not vitiate the violations.

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1 **V. RECOMMENDATIONS**

- 2 1. Open a MUR;
- 3 2. Find reason to believe that National Venture Capital Association VenturePAC and  
4 Jeff Farrah in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(1)  
5 and (b)(6)(B)(v);
- 6 3. Approve the attached Factual and Legal Analysis;
- 7 4. Authorize pre-probable cause conciliation with National Venture Capital  
8 Association VenturePAC and Jeff Farrah in his official capacity as treasurer;
- 9 5. Approve the attached Conciliation Agreement; and
- 10 6. Approve the appropriate letter.

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9.11.18  
DATE

Lisa J. Stevenson  
Acting General Counsel

Kathleen M. Guith  
Associate General Counsel for Enforcement



Stephen Gura  
Deputy Associate General Counsel for  
Enforcement



Mark Shonkwiler  
Assistant General Counsel



Kimberly D. Hart  
Attorney

23 **Attachments:**

- 24 1. **Factual and Legal Analysis**  
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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENTS: National Venture Capital Association MUR \_\_\_\_\_  
6 VenturePAC and Jeff Farrah in his official  
7 capacity as treasurer

8 **I. INTRODUCTION**

9 This matter was generated based on information ascertained by the Federal Election  
10 Commission (the “Commission”) in the normal course of carrying out its supervisory  
11 responsibilities, *see* 52 U.S.C. § 30109(a)(2). The Reports Analysis Division (“RAD”) referred  
12 the National Venture Capital Association VenturePAC and Jeff Farrah Menes in his official  
13 capacity as treasurer (“NVCA PAC” or the “Committee”) to the Office of General Counsel for  
14 failure to provide information relating to disbursements corresponding to a \$93,339.13 cash-on-  
15 hand adjustment on its Amended 2014 March Monthly Report.<sup>1</sup> For the reasons set forth below,  
16 the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30104(b)(1) and  
17 (b)(6)(B)(v) by failing to provide the source of the disbursements related to that account  
18 adjustment.

19 **II. FACTUAL BACKGROUND**

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21 Association and also registered as a qualified Lobbyist/Registrant PAC.<sup>2</sup> On March 20, 2014,  
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<sup>11</sup> Resp. at 2.

<sup>12</sup> *Id.* at 3-4.

<sup>13</sup> 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

<sup>14</sup> *Id.* § 30104(b)(6)(B)(v); *Id.* § 104.3(b)(3)(ix).

1 requirements when it disclosed an adjustment of \$93,339.13 to its cash-on-hand balance on its  
2 Amended 2014 March Monthly Report, without the necessary individual entries supporting the  
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5 referral to ADRO.<sup>15</sup> However, this matter was appropriately referred to the Office of the General  
6 Counsel, and the Committee acknowledges its reporting error. Accordingly, the Commission  
7 finds reason to believe that the Committee violated 52 U.S.C. § 30104(b)(1) and (b)(6)(B)(v).

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<sup>15</sup> Resp. at 1.