

MYL PAC & MYL C4
% Nick Staddon, Secretary
122 Pinecrest Rd.
Durham, NC 27705

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463

Re: MYL PAC & MYL C4 Advisory Opinion Request re. Bitcoin contributions

December 12, 2013

Dear Commissioners:

Please accept this request on behalf of the Make Your Laws PAC, Inc. (MYL PAC) and Make Your Laws Advocacy, Inc. (MYL C4)¹ for an advisory opinion from the Federal Election Commission (FEC or Commission), pursuant to 11 CFR 112.1(a) and 2 USC 437(f).

Background

The Commission's open meeting discussion on 2013-11-21 about AO 2013-15 Conservative Action Fund indicated that a majority of the Commission believes that PACs may accept Bitcoins (B or BTC), but could not agree on *how* they may do so in the context of that request (which did not ask or address several substantive issues that we raised). Nevertheless, Bitcoin is *already*

¹ The full MYL group consists of MYL PAC (a non-connected 527 hybrid Super PAC, FEC #C00529743), MYL C4 (a 501(c)4), and Make Your Laws, Inc. (MYL C3, a 501(c)3). All three are strictly non-partisan.

The MYL entities are not 'connected' by FEC rules (i.e. there is no formal relationship of control or payment of administrative expenses between the corporations). Each corporation was independently organized by the incorporators out of their own money, and no MYL entity is a member or controller of another.

However, they are 'associated' by IRS rules (i.e. they have complete overlap of directors, officers, and goals; they differ only in what aspect of those goals they each handle, to comply with all appropriate laws). See <http://www.irs.gov/pub/irs-tege/eotopics00.pdf> for IRS discussion of permissible c3/c4/527 triads.

Currently, MYL PAC pays for all shared expenses; MYL C4 and MYL C3 are generally on hold, pending a later AOR that will deal in more depth with 527/501(c)4/501(c)3 interoperation issues. MYL C4 does intend to solicit Bitcoin contributions, though only after those issues are resolved. Given the urgency of this issue, it joins MYL PAC now in asking questions about its future Bitcoin activity.

being accepted by FECA regulated entities² acting without Commission guidance.

We,³ too, intend to solicit contributions using Bitcoin (as one of many payment methods, e.g. PayPal, credit card, etc.) and to make payments for goods and services using Bitcoin, under the framework given below (both directly and as earmarks), though only *after* the Commission issues clear guidance.⁴

The Commission has left the door open to continued Bitcoin contributions to FECA-regulated entities, without giving any accounting, contribution limit, reporting, or technical guidance about how to handle such contributions. Without such guidance, we are deeply concerned that entities accepting Bitcoin may violate the FECA, and that there is no safe harbor policy that they can follow to ensure compliance. It seems that currently, we (and others) are allowed to accept Bitcoin, but we have no clear guidance on how to do so. We are filing this AOR in the hope that the Commission will either clearly say that we may *not* accept Bitcoin, or that we *may* do so under the framework we propose here. We would be fine with either outcome. It is the lack of even basic standards for transparency and auditability, combined with continued acceptance of Bitcoin by FECA-regulated entities, that causes us concern.

3 Commissioners voted in favor of AO 2013-15 draft D. 3 Commissioners voted against it, citing concerns about the inadequacy of the accounting and other requirements given therein, based in significant part on our own comments raising critical problems with that AO. We are thus in a unique position to propose a compromise. We believe that this AOR strikes a balance not proposed in CAF's request, by permitting Bitcoin's acceptance while giving clear and restrictive accounting requirements.

We therefore propose that, in the absence a more detailed, laborious, and time-consuming formal rulemaking, the Commission adopt the guidelines we propose below as an interim safe harbor policy, and that it impose the limits given as *mandatory* restrictions⁵ on our activities (and

² E.g. by the Libertarian Party (among others) <http://www.lp.org/make-a-bitcoin-contribution>

³ "We", "us", and "our" in this document refer jointly to MYL PAC and MYL C4. References to only one or the other will name the relevant entity explicitly.

⁴ We believe it unwise for candidates or committees to accept Bitcoin without the Commission's guidance, and have previously advised some to wait on such guidance. However, as far as we can tell, it is not currently *illegal* to do so — though it raises legal liabilities, as the Commission may retroactively punish FECA-regulated entities that failed to follow appropriate measures.

⁵ That is not a typo. We are explicitly asking the Commission to *restrict* our Bitcoin-related activities and to

those of all other similarly situated entities).

We request that, if the Commission approves this AOR, it do so with a sunset provision limiting the validity of the AO until the end of 2015, so that we may all revisit these issues in the light of more information on its usage in practice as well as any advancements in Bitcoin's technical capabilities or regulatory regime.

Finally, we request that in the event of a deadlock or insufficiency of votes on any point of this AOR, the Commission *prohibit* Bitcoin's use on that point until it does provide appropriate standards. We strongly prefer that Bitcoin contributions be clearly *denied* than that they continue to be implicitly permitted with no guidelines for accounting, reporting, etc. The current situation invites mischief, confusion, and unwitting violations of the FECA.

Summary of relevant legal, policy, and technical issues

We feel that the legal, policy, and technical questions around Bitcoin have been thoroughly covered by our comments⁶ on AOR 2013-15 as well as in the various other comments, GAO document, Congressional testimony, FinCEN guideline, etc. which have been raised in AOR 2013-15 and which the Commission and likely commenters have already read. For the sake of concision, we have attached our comments on that AOR to this request, and we give here only a summary by reference of the major legal and policy issues discussed at length already.

1. Bitcoin is a market traded commodity (specifically, a "de-centralized virtual currency"). It is not a 'real' currency, nor does it fall under the FECA's definitions of 'money', 'cash', or 'currency'.

See our first comment on AO 2013-15, section 1 parts 1 and 4, as well as 2013-15 agenda

impose *mandatory* limits and *more extensive* accounting requirements on our Bitcoin contributions, so that we (and others) have a clear safe harbor policy that ensures levels of transparency and safety appropriate to campaign contributions. If Bitcoin is to be permitted, it must have Bitcoin-specific accounting requirements, and we are concerned that entities accepting Bitcoin without guidance will violate the FECA.

⁶ See attached. For digital format originals, please see <https://makeyourlaws.org/fec/bitcoin>.

document 13-45 draft AO A⁷ pages 5-6.

We ask the Commission to clearly affirm that, right now, "Bitcoin is *not* 'money', 'cash', or 'currency' *as defined by the FECA*". We do not ask the Commission to take any stance on Bitcoin's definition under any other regulations or laws, or on what Bitcoin's *future* status under the FECA might be.

2. Bitcoin's value in US dollars is determined by its trading price on major online markets at any given instant. Its market price is currently highly volatile.

See agenda document 13-45, pages 10-11.

3. Because the FECA defines contributions in terms of what is contributed (rather than what is received), whether we use a Bitcoin transaction intermediary such as BitPay or Coinbase is irrelevant for the purposes of accounting requirements, contribution limits, etc. (except inasmuch as their cooperation may be required).

See page 3 of our first comment on AO 2013-15.

4. Bitcoin transactions can be made untraceable, and attributing Bitcoin contributions is inherently problematic. Therefore, the Commission should impose accounting requirements and contribution limits that make Bitcoin contributions as auditable as is feasible, regardless of the amount of the contribution, so that the origin of Bitcoin contributions, aggregate donation limits, and other disclosure issues remain fully accountable and transparent, as a *precondition* of permitting a Bitcoin contribution.

See section 1 part 5 and section 2 parts 4-5 of our first comment, pages 2-3 of our second comment, and parts 2, 4, 5, and 6 of our third comment on AO 2013-15.

⁷ See attached, and <http://saos.nictusa.com/aodocs/201315.pdf>.

5. It is not currently possible to reliably return Bitcoins to their true source; therefore, Bitcoins may only be either held or disbursed in accordance with the FECA, or donated to a 501(c)4 or 501(c)3 organization, and must never be "refunded".

See section 1 parts 3 and 5 and section 2 part 2 of our first comment, and part 5 of our third comment on AO 2013-15.

6. Because it is *de facto* infeasible to transact in Bitcoin without paying anonymous Bitcoin miners (very small) transaction fees in Bitcoin, we consider it an *unseverable* part of MYL PAC's part of this request that it be permitted to pay such fees.

Because it is *impossible* to prevent anonymous or excessive contributions to MYL PAC that may violate the FECA, we consider it also an *unseverable* part of MYL PAC's part of this request that it be told whether it can give such impermissible contributions to a 501(c)4 or 501(c)3 organization.

See section 1 part 6 and section 2 part 3 of our first comment and page 2 of our third comment on AO 2013-15.

If the Commission cannot agree on *both* of these two points, we ask that it *deny* questions 1 and 2 rather than failing to return an opinion on them, and that the Commission consider question 3 separately, in MYL C4's name alone. If the Commission does not answer these two questions but approves MYL PAC's acceptance of Bitcoin contributions otherwise, it will put MYL PAC in a legal catch-22, whereby if it accepts Bitcoins it can be forced by third parties into a situation with no legally permitted resolution.

7. There is no Constitutional basis for a restriction on completely anonymous and/or foreign national contributions to a 501(c)4, so long as such contributions are used *exclusively* for genuine issue advocacy.

See section 1 part 6 of our first comment on AO 2013-15.

8. It is unlawful for any anonymous or foreign national person or corporation to contribute *anything* of value,⁸ whether directly *or indirectly*, for the purpose of influencing *any* U.S. election. Likewise, it is unlawful for any person or corporation to assist in any such unlawful contribution. Bitcoin requires special precautions to avoid a PAC's rendering such unlawful assistance.

See section 1 part 6 of our first comment and part 3 of our third comment on AO 2013-15.

⁸ other than up to \$50 in cash (i.e. real currency) per contributor per recipient per year

Questions presented**1. May MYL PAC receive Bitcoins, if and only if it obeys the following guidelines?**

- a. MYL PAC will consider all contributions of Bitcoins to be in-kind contributions, and will not accept *any* anonymous in-kind contributions.
- b. MYL PAC will *only* accept Bitcoins through an online form designed specifically for the purpose, and will *not* accept "physical" Bitcoins.⁹
- c. MYL PAC will *only* accept contributions made through a one-time-only "linked address"¹⁰ associated with that specific contributor. MYL PAC will *not* publicly list any Bitcoin addresses it owns.¹¹
- d. MYL PAC will require *all* Bitcoin contributors, *regardless* of the proposed contribution amount, to provide their name, address, occupation, and employer, *before* disclosing to the contributor the linked address to which they can contribute Bitcoins.
- e. MYL PAC will require *all* Bitcoin contributors to explicitly affirm that every Bitcoin contribution attributed to them originates solely from Bitcoins owned by them¹², in addition to all other usual affirmations¹³ required.
- f. MYL PAC will maintain a record of
 - i. every Bitcoin address it owns/owned
 - ii. the linked address, date/time, and Bitcoin block chain transaction ID of every Bitcoin contribution received
 - iii. the date/time and transaction ID of all Bitcoin contributions received outside of these requirements as well as of their disposal (see subpart (m) below).

MYL PAC will not commit to reporting this information publicly, but *will* make it

⁹ See e.g. <https://www.casascius.com> or <https://bitcoinpaperwallet.com>

¹⁰ See our first comment on AO 2013-15, pages 8-9.

¹¹ Except inasmuch as this may be required by the FEC for reporting, or part of the Bitcoin system itself (e.g. addresses published in the Bitcoin blockchain). This restriction is meant to primarily cover MYL PAC's own website or solicitations.

¹² Or jointly by the contributor and their spouse, in the same situations as this would be permitted for other contributions.

¹³ e.g. that one is not a foreign national or government contractor, etc.

freely available to FEC auditors under the same conditions as would apply to an audit of any other records that could disclose contributors' private financial information.¹⁴

- g. MYL PAC will accept only \$100 worth of Bitcoin per year per recipient per contributor.¹⁵
 - i. MYL PAC will consider earmarks designating a recipient other than MYL PAC itself, over which MYL PAC has no direction or control, to have separate \$100 limits.¹⁶
 - ii. MYL PAC will convert any earmarked contributions to currency before disbursement to the earmarked recipient.
 - iii. This \$100 will count towards the contributor's overall contribution limit to the recipient.
- h. MYL PAC will consider a Bitcoin contribution "received" at the time its transaction is included in a published block, "valid" after it has at least 6 confirmations,¹⁷ and "valued" at the price in USD for which that Bitcoin can most quickly sold on any major exchange once it is validated.
- i. MYL PAC will *not* refund Bitcoins under any circumstances.
- j. MYL PAC will pay anonymous Bitcoin miners the normal transaction fees¹⁸

¹⁴ MYL PAC will *not* make its Bitcoin private keys available to *anyone* other than those of its own agents who have an operational need to know, except by final order of a court warrant specifically authorizing the *seizure* (not *inspection*) of MYL PAC's assets. We commit only to disclosure of public keys under audit.

¹⁵ "Per contributor" is based on the identity *claimed* by the contributor when asked (see 1(d)). MYL PAC will take ordinary "best effort" means to obtain that identity, and does not commit to conducting the technologically sophisticated network analysis necessary to de-anonymize contributors who lie.

¹⁶ We ask that the Commission *mandate* this \$100 limit, by analogy to the limit on attributed but similarly hard-to-trace contributions of cash in 11 CFR 110.4(c)(1-2). Bitcoin is not cash, but the same Congressional intent expressed in 110.4 to limit the contribution of funds that present problems for auditing applies here.

A merely *voluntary* \$100 limit would cause us another legal catch-22; if we receive an earmarked contribution of more than \$100 worth of Bitcoins and are not *mandated* to dispose of the excess amount as per 110.4(c), we would be legally *required* to conduit the entire amount, contravening our desired policy and the promises made in this AOR. Therefore, if the Commission decides not to mandate a \$100 limit, we must retract our commitment in 1(g) as untenable.

¹⁷ See <http://bitcoin.stackexchange.com/questions/146/what-are-bitcoin-confirmations> and <https://www.youtube.com/watch?v=Lx9zgZCMqXE>

¹⁸ See our first comment on AO 2013-15, pages 14-15. Normal transaction fees are currently ~\$0.0001.

required to process Bitcoin transactions, in Bitcoin. MYL PAC will pay any other Bitcoin transaction intermediaries, such as BitPay or Coinbase, their normal processing fees — either in Bitcoin (if cheaper or the only method offered) or in US dollars (if available at the same effective price).

- i. All such fees will be paid by MYL PAC itself, and will not be subtracted from the amount contributed. They will be reported in the category of "overhead expenses".
- k. MYL PAC will value all Bitcoin contributions at either
 - i. the trading price at the time closest to receipt on its usual, major Bitcoin exchange,¹⁹ or
 - ii. zero, if they are worth less than they would cost to transfer²⁰ (and thus not even a reportable "contribution" at all).
 - 1. MYL PAC will not consider Bitcoins to be "owned" or "received" by MYL PAC unless it has actual knowledge and control of them (whether directly or through an intermediary).²¹
- l. MYL PAC will not mine Bitcoins itself, nor using its users' resources. MYL PAC will *only* obtain Bitcoins either by in-kind contribution or by purchase on an open, high-volume exchange.
- m. MYL PAC will report its buying or selling of Bitcoins as a conversion of held assets to/from held currency, will buy/sell them *only* using a high-volume exchange or intermediary thereof,²² will value the Bitcoin at the time of purchase/sale, and will *not* consider such trade for fair market value a contribution or disbursement, but only a liquidation of assets from one form to another.

¹⁹ See Agenda Doc. 13-45, pp 10-12.

²⁰ See our first comment on AO 2013-15, page 15.

²¹ There are some unusual ways to transmit Bitcoin other than transfers to a Bitcoin address, wherein while the receiver might not even *know* about the transfer, they would technically have access to the Bitcoin, with adequate technical skill. See e.g. p2sh, https://en.bitcoin.it/wiki/BIP_0016. We make no commitment to track, verify, or control such more exotic transfers. Legally speaking, we say simply that we only have "possession" of Bitcoin if we have *actual ability to control it*. A merely *theoretical* ability to do so would not constitute possession. This caveat is made simply for the same reason as for 1(k)(ii) — to prevent the possible actions of malicious and technically sophisticated third parties from negatively affecting us; our proposal in 1k(ii) covers nearly all such activity in blanket terms.

²² E.g. MYL PAC will require that any Bitcoin transaction intermediary it uses to either use or be an appropriate high-volume exchange, as described in agenda document 13-45, pages 10-11.

- i. MYL PAC will deposit proceeds from its Bitcoin sales into a depository account within 10 days of the sale.
 - ii. MYL PAC will treat appreciation or depreciation of value between acquiring and liquidating Bitcoin identically to an appreciation or depreciation of the value of stock, bonds, and other investments, and will pay investment income taxes on appreciation.
- n. To the extent that MYL PAC requires the cooperation of any Bitcoin transaction intermediaries it uses to comply with the above limits, or to the extent that it relies on an intermediary for record-keeping or the like, it will either enter a specific written contract with them to do so or require their standard terms of service to comply with these requirements.
- o. All of these requirements apply *regardless* of whether MYL PAC uses an intermediary to accept Bitcoin. MYL PAC will retain full responsibility for fulfilling the above requirements if it knowingly consents to Bitcoins being the source of such contributions.²³
- p. MYL PAC will *not*, directly or indirectly, knowingly use any Bitcoin exchange unless it is registered as an MSB at federal and/or state levels, as appropriate.
- q. MYL PAC will *not* accept Bitcoins from, nor give Bitcoins to, any political committee. MYL PAC will only give or accept contributions between committees made using traceable, US currency denominated depositories.
- r. MYL PAC will *not* accept Bitcoins or Bitcoin-*derived* contributions from any 501(c)4 organization.
- s. These rules make no distinction between MYL PAC's contribution and non-contribution accounts.²⁴
 - i. MYL PAC *may* accept *non-Bitcoin-derived* contributions from a 501(c)4 organization to its non-contribution account.²⁵

²³ However, we may delegate some of that responsibility, e.g. by having our Bitcoin intermediaries track transaction IDs, linked addresses, etc., in the same way as we have banks track analogous information for check or credit card contributions (where we do not directly track bank routing information).

²⁴ We note that MYL PAC is a *Carey* hybrid Super PAC.

²⁵ This is not intended as a change or policy position, but just a restatement of current law. Our proposed policy would require a 501(c)4 organization to maintain separate accounts for money that can vs. cannot be transmitted to a Super PAC — but this is already the case, given that 501(c)4 organizations may receive foreign national sourced contributions, but SuperPACs may not (including via a 501(c)4).

- t. MYL PAC will maintain separation of its Bitcoin assets in the same way it maintains separation for its bank accounts and other assets — e.g. contribution vs non-contribution, federal vs non-federal, etc.
- u. MYL PAC will donate any Bitcoins that it receives that do not comply with these requirements, or that it believes to be suspicious, either to a 501(c)4 organization that promises in writing to obey the guidelines given in 3(a-b), or to a 501(c)3 organization.²⁶
 - i. MYL PAC will pay any usual Bitcoin miner transaction fees necessary to make this donation using the Bitcoins disposed of, rather than its own.

²⁶ such as MYL C4 and MYL C3 respectively

2. *May MYL PAC disburse Bitcoins, if and only if it obeys the following guidelines?*

- a. MYL PAC will *not* transfer Bitcoins to any PAC, SuperPAC, committee, party, or similarly FECA-regulated entity.
- b. MYL PAC will *not* disburse Bitcoins for solicitation, advertising, polling, transfers, loans, refunds, candidate appearances, or political contributions.²⁷
- c. MYL PAC will value disbursements as per 1(k) above, at the time of disbursement.
- d. MYL PAC will *only* disburse Bitcoins for:
 - i. conversion to currency,²⁸
 - ii. administrative/overhead expenses (including ordinary Bitcoin miner transaction fees), salary, travel, campaign materials, campaign event expenses (not including payments to candidates),
 - iii. donations to a 501(c)3 organization, or
 - iv. donations to a 501(c)4 organization which promises in writing to obey the guidelines given in 3(a-b).
- e. In disbursing Bitcoins for goods or services, MYL PAC will accept any discount offered by the provider thereof on an equal basis to non-political entities.

²⁷ as defined in the FEC's disbursement category codes

²⁸ Conversion to currency itself is not actually a "disbursement", but merely a liquidation of assets. However, it may require Bitcoin disbursements for transaction fees.

3. *May MYL C4 receive and disburse Bitcoins, if and only if it obeys the following guidelines?*

- a. MYL C4 will *only* disburse Bitcoin contributions for:
 - i. conversion to currency,
 - ii. genuine issue advocacy,
 - iii. administrative/overhead expenses (including ordinary Bitcoin miner transaction fees), salary, travel, advocacy materials, advocacy event expenses (not including payments to candidates),
 - iv. donation to another 501(c)4 organization which promises in writing to obey the guidelines given in 3(a-b), or
 - v. donation to a 501(c)3 organization.

MYL C4 will *not* transfer Bitcoins, *nor* anything purchased with Bitcoins (including currency), to any PAC, SuperPAC, committee, party, or similarly FECA-regulated entity.

- b. MYL C4 *will* follow part 1 items h-k, m-p, and t (except that MYL C4's FEC reporting obligations extend only to ones it would incur using other assets).
- c. MYL C4 will *not* require part 1 items a-e, g, or q-u.
- d. MYL C4 will solicit and accept *completely anonymous* Bitcoin contributions.²⁹
- e. MYL C4 will make some effort to maintain records per part 1 item f, but will *not* make these records available to the FEC except by final court order.

4. *How should MYL PAC and/or MYL C4 report all of the above, and what other restrictions should we obey in accepting, holding, and/or disbursing Bitcoins?*

²⁹ E.g., MYL C4 may publicly publish Bitcoin addresses corresponding to specific issues or a single Bitcoin address for MYL C4 itself, with no further contributor information required. MYL C4 may also allow its contributors to use Tor to access its website when making such contributions, and allow foreign nationals to contribute (where permissible). However, MYL C4 may not legally convey foreign national sourced contributions to MYL PAC.

Conclusion

Thank you in advance for your consideration and assistance in answering these questions. We hope to be a non-partisan force for good in supporting the Commission's objectives of improving the accountability and transparency of our political process and the power and ease of normal individuals' participation in it.

We have submitted this AOR immediately in the wake of AO2013-15, because we feel that the Commission has clearly approved of Bitcoin acceptance by political entities in its discussion (and in choosing not to act against FECA-regulated entities who are already accepting Bitcoin), but has not approved of a way in which this could be done in a reasonable, regulated manner. Our proposal above is intended as a conservative safe harbor policy; it errs on the side of caution, providing as much auditability as is technically possible for Bitcoin while conforming as closely as possible to both letter and spirit of existing FEC regulations.

It addresses directly the issues that AO2013-15 did not, and we hope that the Commission can approve this AOR, pending any more intensive rulemaking process, to provide a reasonable interim safe harbor policy for committee treasurers who want to accept Bitcoin (or are already doing so).

We would suggest for those committees that have already accepted Bitcoin, the Commission give them a reasonable amount of time to compile appropriate accounting information retroactively (and then audit them to ensure that the records are present), but *not* retroactively punish contributions that were over the \$100 limit we propose here.

I request the Commission's permission to appear at any hearing on this matter remotely, as I am unable to appear in person. I would prefer to appear via video conference if possible.

If you have any questions or comments, please do not hesitate to contact me at sai@makeyourlaws.org or +1 (717) 469-5695.

Sincerely,
Sai


President & Treasurer

Make Your Laws PAC, Inc. (MYL PAC), FEC ID # C00529743
Make Your Laws Advocacy, Inc. (MYL C4)

MYL PAC and MYL C4
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Re: AO 2013-15 Conservative Action Fund

November 12, 2013

Dear Commissioners:

Please accept this comment regarding AO 2013-15 Conservative Action Fund on behalf of Make Your Laws PAC, Inc. (MYL PAC) and Make Your Laws Advocacy, Inc. (MYL C4).¹

In its request, Conservative Action Fund PAC (CAF) asks how Bitcoin-based contributions should be treated under the Federal Election Campaign Act (FECA).

In principle, we support the use of Bitcoin as contribution method, especially for recipients to whom unlimited anonymous contributions are permitted. We too would like to enable our users to contribute to us using Bitcoin. However, the substantive and legal issues underlying CAF's questions raise some very serious problems, which we discuss below.²

Re. [CAF's original request](#) and [BitPay](#) and [Bitcoin Foundation's initial comments](#)³

1. *Bitcoin is not a 'currency', and contributions of Bitcoin are in-kind contributions*

CAF describes Bitcoin as a 'currency', 'cash', and 'money'. While these are terms used *informally* to describe Bitcoin, under the FECA they are incorrect as a matter of law.

[2 USC 441g](#) limits "contributions of currency of the United States or currency of any foreign

¹ The full MYL group consists of MYL PAC (a non-connected 527 hybrid Super PAC, FEC #C00529743), MYL C4 (a 501(c)4), and Make Your Laws, Inc. (MYL C3, a 501(c)3). All are non-partisan. Currently, only MYL PAC is financially active. However, this comment is on behalf of both MYL PAC and MYL C4, as the issues discussed affect each in different ways; see parts 5 & 6.

² We discuss this in terms of PACs, as requester CAF is one. However, the same restrictions would apply to any entity permitted to accept money to influence elections, e.g. parties, candidates, etc., and all of the considerations discussed apply equally to both independent-expenditure and contribution accounts.

³ This section was written before draft AO 13-45 was published; our legal analysis here is completely independent. We respond to the draft AO separately, below.

country to or for the benefit of any candidate ... with respect to any campaign of such candidate for nomination for election, or for election, to Federal office". [11 CFR 110.4\(c\)\(3\)](#), implementing that statute, defines 'cash' as "currency of the United States, or of any foreign country". [11 CFR 100.52\(c\)](#) defines 'money' as "currency of the United States or of any foreign nation, checks, money orders, or any other negotiable instruments payable on demand".

The Financial Crimes Enforcement Network (FinCEN) is the US agency that regulates the Bank Secrecy Act (BSA). FinCEN regulates how currency may be transacted, with a primary focus on preventing money laundering but also touching on the federal government's exclusive sovereignty over the issuance of currency. FinCEN defines 'currency' as the "coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance".⁴

FinCEN has recently addressed Bitcoin in its interpretive guidance letter [FIN-2013-G001](#), saying that "in contrast to real currency, "virtual" currency is a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction". FinCEN's definition of "de-centralized virtual currency" accurately describes Bitcoin as something "(1) that has no central repository and no single administrator, and (2) that persons may obtain by their own computing or manufacturing effort".

It is clear above that Bitcoin is *not*, to quote FinCEN, a "'real' currency", and contrary to CAF's argument, it does *not* meet the FECA definitions of (real) 'cash', 'money', or 'currency'.

Rather, Bitcoin is a *commodity*. Much like gold bullion, oranges, and baseball cards,⁵ it has no

⁴ [31 CFR 1010.100\(m\)](#). Note the 'and's. Although Bitcoin *is* a "medium of exchange", it is not "customary", "legal tender", nor "coin or paper money ... of [a] country", and is therefore not currency.

⁵ The Bitcoin Foundation has repeatedly, publicly, *unequivocally* characterized Bitcoin as a *commodity* (as has virtually all of the Bitcoin community). Quoting from an [American Banker article](#) written by Jon Matonis, the Bitcoin Foundation's Executive Director (links as in original):

"Bitcoin's price can exhibit extreme volatility and its value is not supported by any government's legal decree. ... So, do regulatory bodies like the Financial Crimes Enforcement Network believe that virtual Bitcoin sufficiently resembles real money for its exchange to be regulated under Money Services Business guidelines or money transmitter rules? Would Fincen also want to regulate the commodity-based exchange of rare gems and [Tide](#) detergent?

Bitcoin falls most appropriately into the property category of commodity, although it is an intangible commodity supported by mathematics and a distributed computing network driven by social consensus. Regulating an intangible commodity with unprovable existence places the burden of proof on the regulator since there is sufficient plausible deniability in the system for someone to deny holding Bitcoin or even access to the private key required to send them from a given address on the network. ...

Treating Bitcoin as a monetary instrument for purposes of regulation fails to understand the nature of math-based commodities that rely on reusable "[proof-of-work](#)" to verify and record transfers of ownership. In the general classification of commodity, Bitcoin's trade is similar to any other collectible item, such as

face value and is not issued by any government. It is *traded for* currency on open markets and thus easily *convertible to* real currency. It is a 'good' and a "thing of value" under [11 CFR 100.52](#)(d)(1), and a contribution of Bitcoins is therefore an "in-kind contribution".

Using Bitcoin transaction intermediaries does not alter the outcome

Previous FEC opinions have found that for-profit companies which assist in transactions (such as BitPay or Coinbase) are generally not regulated by the FECA unless they make an in-kind contribution, which they can avoid doing by simply giving PACs the same services and prices that they give to any non-political entity as part of their normal business.

Intermediaries such as BitPay and Coinbase offer two distinct services:

- A. the merchant receives and holds Bitcoins, which it can later to convert to currency
- B. the intermediary converts Bitcoins to currency, which it then gives to the merchant

Under the FECA, service (a) would clearly result in an in-kind contribution.

Service (b) requires a more nuanced analysis, because although the PAC would be *receiving* currency, the contributor would be *contributing* a commodity.

[11 CFR 110.4](#) says that "no person shall *make contributions ... of currency*" over certain limits. [11 CFR 100.52](#)(a) defines 'contribution' as a "*gift ... of money or anything of value made by any person*". [100.52](#)(d) refers to the "*provision of any goods or services*".

Since the FECA defines contributions based on what is given *by the contributor*,⁶ even service (b) is a contribution *of* Bitcoins, and thus an in-kind contribution.

CAF's interpretations of law on this question are completely without merit

CAF errs in its interpretation of [SEC v Shavers](#). That court held that Bitcoin was 'money' in a completely different context, namely investment fraud under the Securities Act.

Shavers asked whether Bitcoin is 'money' in the sense of the Supreme Court's holding in [SEC v. WJ Howey Co.](#), [328 US 293](#) that "an investment contract *for purposes of the Securities Act* means a contract ... whereby a person invests his money" (emphasis added). The Court's usage of 'money' was based on *State v. Gopher Tire & Rubber Co.*, 146 Minn. 52, 56, 177 N.W. 937, 938, which defined an 'investment' as including "the laying out of money in a way intended to secure income or profit". In that context, 'money' is "broadly construed ... so as to afford the

antique diamonds, celebrity autographs, moon rocks, Buddha figurines, and [baseball cards](#)."

<http://www.americanbanker.com/bankthink/in-person-Bitcoin-exchanges-are-thriving-10661-1.html>

⁶ Even if this were not true, other policy considerations apply (see parts 4 and 5 below) which would override this in an as-applied analysis, as it is *source* based restrictions that curtail illegal activity. We also note that both BitPay and Coinbase are FinCEN-registered MSBs.

investing public a full measure of protection" (*WJ Howey*).

Neither the *WJ Howey* nor *Shavers* interpreted 'money', 'cash', or 'currency' in the narrow senses used by the FECA and the BSA. Where the FECA explicitly seeks to treat contributions of currency and in-kind contributions of other goods *differently*, *Shavers* and *WJ Howey* use a much broader interpretation of 'money' to encompass *all* investment fraud. Both interpreted 'money' under the *Securities Act*, which is unrelated to the FECA.

CAF errs in its interpretation of [AO 1982-08 BARTERPAC](#), which said that "[a]lthough the value of credit units is realized *only once they are exchanged*, the fact that credit units may immediately be converted into goods or services clearly renders them a *"thing of value"* (as in [11 CFR 100.52\(d\)\(1\)](#); emphasis added).

AO 1982-08 did not hold BARTERPAC's proposed "credit units" to be currency. To the contrary, its "central question" was the pragmatic issue of how to value "credit units". Because no open market existed for them, their market value "could not be determined unless and until they are ultimately used by a candidate".

This is not true of Bitcoins, which have clear market value in US Dollars (a real currency). The very *question* of "market value" could only apply to a good or service, not currency.

CAF errs in basic statutory interpretation. Although [11 CFR 100.52](#)'s use of 'includes' does imply that the list is not exclusive, the principles of *ejusdem generis*⁷ and *noscitur a sociis*⁸ govern the interpretation of any ambiguous or implied elements of 100.52's list.

100.52 has very specific context: "currency of the United States or of any foreign nation". This makes any more general terms or implied elements restricted to the same class of thing, i.e., *currencies* of a recognized nation. CAF even admits this, in saying that "[m]onetary contributions *of other currencies* are specifically contemplated" (emphasis added).

100.52 *cannot* be read to include things of value that are not denominated in *currency*. "Checks, money orders, or any other negotiable instruments" are monetary equivalents, only because they are worth exactly their face value in (real) currency.

CAF's statement that "Bitcoins can be converted to U.S. Dollars", while true, argues *against* their claim that Bitcoins are 'monetary' or 'currency'. *Real* currency does not need to be '*converted*'. The fact that Bitcoins' value is *only* clear "upon conversion", rather than on its face (as with

⁷ "Where general words follow an enumeration of ... things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to ... things of the same general kind or class as those specifically mentioned." *Black's Law Dictionary*, 8th ed.

⁸ "An unclear word or phrase should be determined by the words immediately surrounding it." *Black's Law Dictionary*, 7th ed.

cash, currency, checks, money orders, and all other traditional "negotiable instruments"), shows that Bitcoin is a market-traded *commodity* and not a *currency*.

CAF errs in its interpretation of [AO 1980-125 Cogswell](#). *Cogswell* involved silver dollars, which are *official currency* (coins), issued by the United States, with a *face value* of \$1. Silver dollars also have market value *as a commodity* when melted (i.e. as silver bullion).

In *Cogswell*, the Commission held that "the value put upon a contribution of *currency*, which has the potential to be treated as either a contribution of money *or an in-kind contribution with a different value*, is to be determined by the manner in which the currency is treated" (emphasis added). This common-sense holding prevented a loophole: if *Cogswell* were to really use silver coins only at their *currency value* of \$1, they could; but if they were to ever use the coins at their *commodity value* (which is rather more plausible), they would be in-kind contributions valued at the market price.

Cogswell does not support the CAF's claim that they can choose freely whether to treat Bitcoin as monetary or as a commodity. Quite the opposite: the Commission held that *Cogswell* was *obliged* to treat silver dollars as in-kind contributions they were to use them in any way at their market value. *Cogswell* merely had the (implausible) option to treat silver coins at their face value as *real US \$1 coins* (i.e. as currency).

Bitcoin is not a *currency* and *has* no face value, and therefore *Cogswell* doesn't apply.

In short, CAF errs in *all* of its characterizations of court and Commission precedent in section I of its request, and its legal claims therein are completely without merit.

Accepting CAF's argument would permit PACs to ignore the FECA's different regulations for in-kind contributions, merely because a commodity market exists where they are *convertible* to currency. This would be completely inconsistent with the Commission's rulings that contributions of *anything* other than currency are in-kind contributions.

The Commission cannot avoid reaching the question of whether Bitcoin is or is not 'currency' for the purposes of the FECA. The Act regulates contributions very differently depending on which is the case,⁹ and answering *any* of CAF's questions mandates such a determination.

Therefore, the Commission should rule that Bitcoin is a 'good' and not 'currency' for the purposes of the FECA, completely deny CAF on its questions 1 ("May CAF lawfully accept Bitcoins as a monetary contribution?") and 3 ("May CAF decide how to treat these contributions?"), and treat questions 5-11 as moot.

⁹ See part 4 below for an example, not discussed by previous commenters, of a very serious case thereof.

2. *Determining the market value of Bitcoin for FEC reporting purposes*

In section III and questions 12-13, CAF asks how it should value Bitcoin if it is permitted to accept Bitcoins as an in-kind contribution.

Here, its interpretation of *Cogswell* and the FECA is more apt. CAF can choose to keep something it receives as an in-kind contribution. If it does, it must value the contribution at its fair market value, within one day of receipt, in US dollars, on whatever major market (e.g. mtgox.com) that CAF or its intermediaries (e.g. BitPay) primarily use.

The price could be determined at midnight (at the organization's location), or at transaction confirmation; both are reasonable choices, and CAF should be free to pick whichever is most convenient. So long as their method is reasonable, consistent, documented, and within one day of receipt, we see no need for the Commission to mandate a specific time.

Of course, if CAF converts Bitcoins to currency earlier than their regular daily valuation time (e.g. immediately before or after receipt), then their value is the actual buy/sale price. For later expenditures (e.g. to purchase goods or services with Bitcoin), the new price applies.

3. *Bitcoin refunds or exchanges to currency violate the FECA and possibly the BSA*

CAF says that it in some cases it "intends to refund the contributor ... in a monetary amount".

Because of inherent issues¹⁰ with Bitcoin, Bitcoins cannot be reliably returned to their contributor, and therefore any Bitcoin refund would violate the FECA.

The Commission and CAF should also be aware that FinCEN's regulations may apply here.

Quoting again from [FinCEN's guidance](#) (all emphasis original): "A user of virtual currency is **not** an MSB under FinCEN's regulations and therefore is not subject to MSB [money services business] registration, reporting, and recordkeeping regulations. However, an ... exchanger is an MSB under FinCEN's regulations, specifically, a money transmitter, unless a limitation to or exemption from the definition applies to the person..."

A *user* is a person that obtains virtual currency to purchase goods or services. An *exchanger* is a person engaged as a business¹¹ in the exchange of virtual currency for real currency, funds, or other virtual currency...

[A] person is an exchanger and a money transmitter if the person accepts ... de-centralized convertible virtual currency from one person and transmits it to another person as part of the

¹⁰ See part 5.

¹¹ It is possible that 527 non-profit PACs may not be "engaging as a business", but this is unclear.

acceptance and transfer of currency, funds, or other value that substitutes for currency."

Generally, PACs are not "money transmitters" if they are merely acting as FECA-regulated conduits (under [11 CFR 110.6](#) and [102.8](#)). Likewise, anyone merely using Bitcoins to purchase goods, or using a third party MSB to exchange them to currency, is also exempt.

However, if CAF accepts Bitcoins from someone and returns it (possibly to a third party) as real currency, FinCEN may deem that 'exchange' subject to MSB registration. FinCEN has not given clearer guidance about this situation. However, failure to register if one is required to do so is a felony ([31 CFR 1022.380\(e\)](#), [18 USC 1960](#)).

FinCEN's website¹² shows that no PAC (including CAF) has ever has registered as an MSB.

Considering the above problems, we urge the Commission not to sanction or permit *any* reimbursement of Bitcoins, or treatment of overage, other than transfer to a recipient permitted to receive unlimited anonymous contributions.¹³

4. Treating Bitcoin as 'cash' would allow unlimited, anonymous, hard money contributions

The FECA requires PACs to report the source of *all* contributions, with one narrow exception: [11 CFR 110.4\(c\)\(3\)](#) permits "anonymous cash contribution"s less than \$50. If the Commission were to permit Bitcoins to be treated as 'cash', then this would apply.

110.4 was not meant for truly *anonymous* contributions, but rather for *pseudonymous*, real-world, physical cash currency contributions where the recipient knows the contribution has come from a single person because they met the contributor, but doesn't know (or chooses not to report) the contributor's identity. Otherwise, the recipient would risk violation of the FECA, if they receive an aggregate cash contribution of more than \$50/year/person.

With Bitcoin, by contrast, transactions can be made extremely hard to trace to a real person.¹⁴

Furthermore, by splitting a payment into multiple Bitcoin transactions, a single person can make an *unlimited* number of "separate" Bitcoin contributions that *individually* have a market value of less than \$50, in a way that is extremely difficult to trace. The core Bitcoin protocol enables such splitting¹⁵, and online services make doing so (with further anonymization) trivially easy even for

¹² http://www.fincen.gov/financial_institutions/msb/msbstateselector.html

¹³ See part 6.

¹⁴ <https://en.Bitcoin.it/wiki/Anonymity>

¹⁵ <https://en.Bitcoin.it/wiki/Transactions#Output>

non-technical users.¹⁶

Unlike contributions made by text message, which are limited by the difficulty of obtaining unique cellphones *en masse* and which are registered to phone companies with information that can be traced to a real-world identity, Bitcoin has no such restrictions. Anyone can create *thousands* of new Bitcoin addresses in a matter of minutes.

If the Commission were to allow Bitcoin to be treated as 'cash', 'currency', or 'money', this would effectively allow PACs to receive *completely unlimited, anonymous, hard money contributions* (if contributors just split and launder their contributions appropriately).

This result is completely unacceptable as a matter of policy, and is a further reason why the Commission should completely deny CAF on its questions 1, 3, and 5-11.

5. Bitcoin transactions can be made untraceable, and attributing Bitcoin contributions is inherently problematic; therefore, Bitcoin contributions require special restrictions

Bitcoin transactions cannot easily be traced.¹⁷ There are no centralized, authoritative records of who owns what Bitcoin address, as there are with a bank knowing who owns every account. Knowing that a given Bitcoin transaction comes from a specific person depends primarily on asking them and just trusting their response.

The standard method that Bitcoin merchants (including BitPay) use to attribute incoming Bitcoin transactions to a given user is to create a distinct Bitcoin receiving address owned by the merchant that is disclosed to that user (a "linked address"). When *anyone* sends Bitcoins to the linked address, the merchant credits the associated user's account. The user can disclose their linked address to third parties if they want. If it receives any Bitcoins, the linked address

¹⁶ e.g. <http://app.bitlaundry.com/> or in general https://en.Bitcoin.it/wiki/Category:Mixing_Services

¹⁷ As the Bitcoin Foundation points out, the block chain is public, and in that sense, all transactions are publicly traceable. But as they also point out, "Bitcoin users can choose whether to reveal their identity". Bitcoin users can remain extremely difficult to identify, using techniques specifically designed to *prevent* the nominally transparent public block chain from revealing real underlying transactions or ownership. (In computer security terms, Bitcoin users are technically *pseudonymous*, not *anonymous*, but we use 'anonymous' in the FECA's legal sense.)

This is an evolving area of cryptography. There have been recent presentations within the security community about ways to counteract attempts at Bitcoin anonymity — e.g. by Kay Hamacher & Stefan Katzenbeisser: <http://www.mdpi.com/1999-5903/5/2/237>, <http://youtube.com/watch?v=hIWYtQL1hFA>.

Given the substantive national policy issues that are affected, the FEC must rule based on a maximally conservative approach, and should read any uncertainty in a negative light.

The question is not whether Bitcoins can be traced under naïve or cooperative use, but rather whether they can be *reliably* traced to a *specific person* intentionally trying to *thwart* restriction or detection, using only information available to an FEC auditor of ordinary technical skill. The answer is clearly 'no'.

automatically becomes *public* knowledge. It is impossible to prevent third parties from anonymously sending Bitcoins to a linked address if they know what it is.

For normal merchants, this is not a problem; they don't care *who* pays them, so long as *someone* does. However, in the context of the FECA, this uncontrollable activity by third parties would be "contribution in the name of another", which is illegal under [11 CFR 110.4\(b\)](#). PACs have a duty to take reasonable steps to prevent this (lest they be liable). Unlike normal bank transactions of traceable currency, even *detecting* this is very difficult.

Bitcoin payments can have multiple inputs which are *intentionally* hard to attribute.¹⁸

They can also (and frequently do) originate from an intermediary's address (e.g. MtGox's "green address"¹⁹), rather than an individual's. It is not viable to refund such transactions reliably, such that the Bitcoins return to the control of the person originally owning them.²⁰

These problems make Bitcoin-based transactions impossible to reliably attribute or refund.

We believe that in principle, Bitcoin *should* be permitted as a means of in-kind contribution for identified contributors, as it is (albeit unusual) a useful and valuable medium of exchange.

Therefore, we suggest that the Commission strike a balance and *permit* Bitcoin-based in-kind contributions to PACs, ameliorating the above problems with a few simple restrictions:

- A. PACs must *only* accept contributions made through a linked address,²¹ and must use any given linked address only once. Repeated contributions by the same contributor must go through a new linked address each time.
- B. PACs must collect complete identification from *all* Bitcoin contributors in accordance with [11 CFR 100.12](#) (i.e. name, address, occupation, and employer), regardless of the amount involved.
- C. Contributors must explicitly affirm that every Bitcoin-based contribution attributed to them originates solely from Bitcoins owned by them.
- D. PACs must maintain a record of the linked Bitcoin address for each transaction.

¹⁸ E.g. using CoinJoin: <https://bitcointalk.org/index.php?topic=279249.0>

¹⁹ https://en.bitcoin.it/wiki/Green_address

²⁰ There are currently proposals for higher-level refund mechanisms, e.g. https://en.bitcoin.it/wiki/BIP_0070. However, they are not currently widely implemented, and are not built to prevent "refunds" actually going to a third party, which would be illegal under the FECA. This might change in the future; if it does, the Commission should revisit the question.

²¹ e.g., they must not publish a general Bitcoin address, and must dispose of any Bitcoins sent to one outside of known linked-address transactions only by transfer to a recipient permitted to accept unlimited anonymous contributions

- E. Bitcoin-based contributions must be limited to \$100 per year²² per recipient per contributor, by an *as applied* interpretation [11 CFR 110.4\(c\)\(1-2\)](#) (which is intended to limit similarly attributed-but-untraceable contributions).
- F. Bitcoin-based contributions must not be refunded, ever.
- G. Any overage must go only to a recipient permitted to receive unlimited anonymous contributions.²³

To the extent that third party intermediaries such as BitPay know that they are serving a PAC, or their cooperation is necessary, they should be required to help enforce the above restrictions, under the same reasoning governing text message based contributions.

6. *Unlimited Bitcoin contributions for exclusive use in issue advocacy should be permitted*

Bitcoin is designed to be an *anonymously tradeable* commodity.

Under the FECA, anonymous contributions (other than *cash* up to \$50) are completely forbidden "for the purpose of influencing any election for Federal office" ([11 CFR 100.52\(a\)](#)). [McConnell v. FEC, 540 U.S. 93](#) extended this to state and local elections as well, because to do otherwise would permit *indirect* violation of 100.52(a).

However, the Supreme Court has long upheld that for pure *issue advocacy*, anonymity is an essential right, and foreign nationals have a right to participate. This makes Bitcoin an ideal medium for issue advocacy contributions.

Furthermore, it is easily possible for an anonymous third party to find out one of a PAC's Bitcoin addresses and send Bitcoins to that address. Because a PAC is not permitted to receive any anonymous contributions of Bitcoin, it would be required by the FECA to dispose of that anonymous contribution to a permitted recipient. This is completely unavoidable, and therefore, the Commission should give clear guidance about what recipients are permitted to receive such anonymous contributions, so that a PAC is not stuck illegally possessing an anonymous contribution without being able to dispose of it.

Therefore, although CAF has not asked this question directly, we urge the Commission to rule that a 501(c)4 organization *is* permitted to receive Bitcoins for genuine issue advocacy, provided that any such contributions must not, directly or indirectly, be used for the purpose of influencing any election (e.g. by being re-transmitted to a Super PAC's independent expenditures account or by being used in the kinds of 'sham' issue advocacy the Supreme Court condemned in

²² in aggregate of the fair market value at the time of each contribution

²³ See part 3 above and part 6 below.

McConnell).

If the Commission does not reach this question, we will have to ask it ourselves in a separate AOR. It would be more efficient for the Commission to address the question now, as it is necessarily implied by the questions on the record which force its resolution.

Answering this question would also address another implied aspect of CAF's questions — namely whether CAF, as a Super PAC, would be permitted to accept Bitcoin-derived contributions from a 501(c)4.

We urge the Commission to unequivocally rule that they may not, as allowing them to do so would create a giant loophole in the FECA permitting unlimited, anonymous, foreign-national originating contributions to be used (albeit 'independently') to influence elections, which is unquestionably illegal under a *McConnell* analysis of 100.52.

Re. the draft Advisory Opinion, [Agenda Document 13-45](#)

We concur almost completely with the draft AO, and especially with its analysis of Bitcoin's status as a commodity.

However, we disagree on a few points, and believe it has overlooked some serious special considerations the Commission should apply to Bitcoin, as we discuss below.

1. Valuation

We believe the draft AO gives one example of a very reasonable valuation method. However, as discussed in part 2 above, if CAF elects to hold on to Bitcoins²⁴ rather than to convert them immediately into currency, we believe it would *also* be reasonable to permit them to make valuations at a set time every day or some similar method.

We suggest that the Commission exercise judicial restraint, requiring only that a reasonable and consistent method be used that is specified in CAF's written policy, and that the market rate be based on a proper choice of exchange (as the draft AO describes).

The Commission should also address how to report Bitcoins that CAF has itself mined.

2. Refunds

As discussed in part 3 above, we believe that it would be very unwise for the Commission to sanction *any* exchange of Bitcoins to currency, as proposed in the draft AO, p 12. Allowing this might sanction violation of the FECA's mandate that refunds be made only to the contributor, and felony violation of FinCEN's money services business regulations.²⁵

PACs, unless they are also FinCEN registered MSBs (which CAF is not), may not be permitted under FinCEN regulation to 'exchange' Bitcoins for currency. If FinCEN decides that they are not, and if CAF refunds in currency a contribution that it received as Bitcoins, it would be committing a felony. If the Commission allows currency-denominated refunds, it would implicitly sanction such felonies.

²⁴ We note that investment income from holding Bitcoin is taxable; see [Internal Revenue Manual 7.27.11.1](#).

²⁵ We do not mean to imply any intent by CAF to commit these crimes.

Rather, we believe the draft AO has overlooked these loopholes and FinCEN regulations in suggesting that Bitcoins may be treated in the same manner as normal goods, which *can* be legally refunded at their dollar value at the time received. We want to ensure that the Commission's rules do not create loopholes for unlawful activity, sanction violation of the BSA, or violate public policy.

Even if not an 'exchange', *any* refund of Bitcoin opens many loopholes (see part 5 above).

PACs could effectively act as money laundering services, if a contributor claims as theirs a third party's contribution of Bitcoins which is then "refunded" to the supposed contributor in dollars — violating both the BSA and FECA.

By fixing the market value at the time of contribution (as the draft AO proposes), and later demanding a refund, a contributor could effectively use a PAC to hedge their Bitcoin investments. Even worse, the draft AO proposes that a PAC may issue a refund in Bitcoins or currency. Supposing that a PAC complies with a user's request either way, the contributor can *directly* exploit the PAC for Bitcoin based financial speculation — contributing a certain amount of Bitcoins and then withdrawing either their original market value (in currency) or their current value (in Bitcoins), whichever is higher (or lower, to make a stealth contribution).

Someone could contribute Bitcoins, wait for the market price to rise, and then demand the same amount of Bitcoins in return, costing the PAC money if it has liquidated the Bitcoins in the meantime. Done the other way around — asking for a "refund" in Bitcoins after they have *depreciated* in value — this would effectively give the PAC an unreported contribution equal to the difference in market price (equivalent to a loan of investment capital). Given Bitcoin's very high market price volatility, this could be a substantial amount.

Single Bitcoin transactions often originate from and/or are sent to multiple Bitcoin addresses. These might or might not be owned by the same person; there is no way to tell. "Refunds" could be used as *de facto* a Bitcoin mixing / laundering service, especially if the Bitcoins have been swept into a Bitcoin address which intermingles Bitcoins from multiple sources.

This is not *nearly* an exhaustive list of how these loopholes could be exploited, but only some of the most obvious cases. This is an unavoidable part of the nature of Bitcoin transactions.

Any form of Bitcoin refund or exchange into currency is exploitable, and may allow or even sanction PACs to commit felony violations of the BSA, participate in or be victim to investment speculation or financial fraud, receive unreported contributions or contributions in the name of another, "refund" money to someone other than its true source, etc.

We therefore urge the Commission to *absolutely* forbid *any* form of Bitcoin refund whatsoever. Any contribution that would otherwise need to be refunded must be disposed of by transfer to a recipient permitted to accept unlimited anonymous contributions.

Alternatively, the Commission should ask FinCEN about the above issues²⁶ *before* ruling, and

²⁶ We believe it is unclear under current FinCEN guidance whether CAF may even *conduit* Bitcoins; receiving Bitcoins that whose market value is then given as currency to an earmark recipient may be deemed 'exchange'. We notified FinCEN of the draft AO and our comment on Nov. 9th, and invited them to coordinate with the Commission on these issues.

warn CAF of its possible liability under the BSA as an "exchanger of virtual currency".

3. *Disbursements*

We concur with the draft AO that CAF should not be permitted to make payments to other FECA-regulated entities, nor for purposes of funding regulated categories of expenditure such as advertising, except using real currency and a registered depository.

However, we believe that the Commission *should* permit CAF to use Bitcoins (whether ones it has itself mined, held since acquiring them as an in-kind contribution, or purchased expressly for the purpose) as a means of payment for *bona fide* goods and services, rendered at their usual rate by other parties (e.g. employees, merchants, etc.), to the extent that doing so does not harm interests in public transparency and is adequately reported.

For instance, unlike payments for advertisements or contributions to FECA-regulated entities, we see no policy justification for a prohibition on paying employees using Bitcoin.

Likewise, we see no policy basis to prohibit CAF from using Bitcoin to pay for the kinds of goods and services it mentions in its email addendum (website design, food, and computer equipment). Nor do we see any reason why it would be unlawful to give or receive the kinds of discounts for Bitcoin-based payments that CAF describes, if that is the merchant's routine business practice, offered equally to non-political customers.

Any such payments should be valued and reported at the fair market rate at time of payment.

There are also two Bitcoin-specific technical problems with the draft AO's proposed rule.

First, in order for any Bitcoin transaction to be effective (including, for example, a transfer of someone's own Bitcoins to a Bitcoin exchange like MtGox for conversion to USD), it must be included by a Bitcoin miner in a new block. Miners are anonymous. As a *de facto* matter, miners refuse to do this unless they are paid a small amount of Bitcoin, called a "transaction fee"²⁷ — typically on the order of 0.0001 Bitcoins. This fee is nominally optional, but in practice it is not; the size of the fee determines the priority with which a transaction will be finalized, and zero-fee transactions won't usually be processed.

In order for anyone to actually use Bitcoins, they *must* pay such Bitcoin-denominated fees to anonymous third parties. Therefore, the Commission should permit PACs to do so, so long as the transaction fee is paid at the standard rate. We suggest that such transaction fees need be reported only in aggregate.

²⁷ https://en.bitcoin.it/wiki/Transaction_fees

If the PAC is trying to get rid of Bitcoins that it is not allowed to possess (e.g. contributions from an anonymous source), it should be permitted to spend some of that amount, at the normal transaction fee rate, as part of giving the Bitcoins to a permitted recipient.

Second, because the transaction cost to effectively *dispose* of a bitcoin is higher than the minimum amount one can receive, third parties can anonymously give a PAC Bitcoins that cost far more than they're worth to transfer (e.g. 'dust' transactions).²⁸ A malicious third party can create thousands of such transactions, which can't be disposed of without significant loss.

We propose the Commission find that Bitcoins that cost more than they're worth to spend are not a "thing of value" at all. This would prevent malicious third parties from forcing a PAC to spend Bitcoins in order to get rid of negative-value contributions that the PAC could not legally retain, or forcing a PAC to report many negative-value in-kind contributions.

4. Accounting requirements and contribution limits

As we discuss in part 5 above, we believe that the draft AO has overlooked and should require certain accounting procedures particular to Bitcoin (exclusive use of one-time-only linked addresses, recordkeeping of linked addresses used, affirmation of ownership, etc) to ameliorate problems with attributing and tracing Bitcoin-based transactions.

The Commission should also clearly specify what information should be collected from Bitcoin-based contributors, and whether there should be a \$100/yr/contributor limit to the amount of Bitcoin-based contributions a FECA-regulated entity may receive.

We believe the Commission should approach these questions with a great degree of caution, requiring the most stringent information collection and contribution limits, given the risks of anonymous third-party participation inherent to Bitcoin-based transactions.

5. Contributions to and from 501(c)4s

As we discuss in part 6 above, we believe the Commission must also address the questions of whether a 501(c)4 may receive Bitcoins (we believe 'yes', when confined to genuine issue advocacy), and whether a Super PAC such as CAF may accept Bitcoin-derived contributions from a 501(c)4 (we believe 'no').

²⁸ <https://code.google.com/p/bitcoin-wallet/wiki/DustTransactions>

See also <https://bitcointalk.org/index.php?topic=278122.0>, which creates similarly negative-value Bitcoins.

Conclusion

After we received requests from multiple people interested in contributing to us via Bitcoin, we began discussing this matter with the Bitcoin Foundation, the Cryptocurrency Legal Advocacy Group²⁹, the Bitcoin community, state candidates accepting Bitcoin, and others over a year ago, to carefully assess the legal, policy, practical, and other issues involved in Bitcoin-based political contributions. We had planned on submitting an AOR about substantially similar questions at a later date. However, CAF has beat us to it, so we respond now.

We concur with BitPay and the Bitcoin Foundation that, in principle, Bitcoin *should* be permitted as a means of political contribution. Bitcoin is a useful and evolving new medium of exchange, and permitting its use would encourage technological innovation. Like CAF, we too would like to accept Bitcoins. We believe that technologically sophisticated approaches to campaign finance have the potential to be of great benefit to the public.

However, we feel that in their desire to support Bitcoin, which we share, our fellow commenters overlooked nuances of the FECA. Therefore, we must disagree with them in how this principle should be applied. Given the serious policy issues that must be considered and protected in the Commission's ruling on this matter, we urge it to proceed with caution.

Both legally and as a matter of policy, for the purposes of the FECA, Bitcoin *must* be treated as an in-kind good, not any kind of currency, cash, or money.

PACs and other regulated recipients should be allowed to accept Bitcoin-based contributions, *if and only if* they meet restrictions, such as those we outlined in part 5 of the first section, designed to prevent illegal activity under the FECA and BSA that is an inherent risk of Bitcoin's anonymous design.

501(c)4s should be allowed to accept Bitcoin-based contributions without any FECA limit or reporting requirement, so long as such contributions are used *exclusively* for genuine issue advocacy (and never reach an account permitted to pay for express advocacy).

If you have any questions or comments, please do not hesitate to contact me at sai@makeyourlaws.org or (717) 469-5695. I would be happy to appear remotely at the Commission's hearing on this matter if I might be of any assistance.

Sincerely,
Sai
President & Treasurer
Make Your Laws PAC, Inc.
Make Your Laws Advocacy, Inc.

²⁹ <http://theclag.org>

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Re: AO 2013-15 Conservative Action Fund

November 13, 2013

Dear Commissioners:

Please accept this comment regarding AO 2013-15 Conservative Action Fund on behalf of Make Your Laws PAC, Inc. (MYL PAC) and Make Your Laws Advocacy, Inc. (MYL C4).

This comment supplements our previous comment, to address additional issues raised by AO drafts B & C in agenda document [13-45-A](#), posted earlier today.¹

p 5 fn 5 We agree that the FEC should not and cannot decide how Bitcoin is to be treated for the purposes of laws outside of its jurisdiction (such as those regulated by the IRS, FinCEN, and SEC).

However, an interpretation of *the FECA* requires reaching this question, as the Act has specific regulatory definitions of 'money', 'cash', 'currency', etc which dictate how contributions are treated differently. Though the Commission can find other agencies' interpretations of other laws' definitions persuasive to the extent that they are relevant, it does not need to *depend* on them (as the analysis of *Shavers* in both our previous comment and [draft 13-45](#) shows).

Likewise, other agencies will not need to depend on the Commission's finding; one federal agency's opinions are not binding precedent for other, unrelated agencies.

¹ We note that the public was given less than a day to respond to two new draft AOs, without the assistance of a redline or electronically comparable version — a day that was primarily taken up by an FEC seminar for non-connected PACs. This is not adequate notice under [5 USC 553](#)(b, c). In the future, we would appreciate being given a more reasonable amount of time to respond to new AO drafts, and publication of redlined changes between drafts would assist with that.

Also, we note that the version of our comment posted online was printed and scanned, thereby breaking its hyperlinks (some of which were quotative) and rendering it illegible to people with disabilities who rely on electronic formats. We ask that the Commission direct its staff to appropriately preserve electronic documents when posting them, so that their content is not harmed in this way.

In the meantime, our comments can be downloaded in their original form at <https://makeyourlaws.org/fec>.

The Commission could revisit this finding should circumstances change, but is faced with the question under *current* circumstances. Its closing caveat already says "the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law", which covers this issue.

p 7 fn 6 The Commission should not avoid the question of how CAF should determine whether a contributor is or is not eligible. Given the inherent problems with reliable attribution of Bitcoin transactions that we discussed in section 1 part 5 of our previous comment, without clear guidance, CAF could violate the FECA by failing to obtain adequate information or by "refunding" a contribution to a third party.

The question of what constitutes an adequate method of attribution is *central* to any acceptance of Bitcoin by a PAC. Bitcoins are *not* like phone contributions, where contributors' information can be obtained from the phone company (which in turn derives that information from sources such as bank and credit card payments, ID verification, physical mail, etc). Bitcoins' transaction anonymity is not merely incidental, but intrinsic to their design. It is not currently feasible for a PAC to determine a Bitcoin user's true identity, and this is the cause of multiple serious problems (see e.g. page 13 of our previous comment).

Some Bitcoin contributors' true and claimed identities *will* diverge, *undetectably*, and the Commission's ruling should account for this fact.

If the Commission accepts CAF's bald assertion that it will comply with identification requirements, without an explanation of *how* it intends to do so in the face of the many problems we noted, its opinion will not give enough clarity for PACs to rely on, and would require follow-up AORs to resolve these questions.

p 35-37 We believe that 13-45-A page 16 (and footnote 17) correctly refutes the legal argument presented here. We also note that page 37 lines 12-13 incorrectly quote [11 CFR 102.10](#), which says "all disbursements by a political committee" and not "all political committee *cash* disbursements" (emphasis added).

More to the point, we would like to remind the Commission that as a matter of policy, contributions to political committees — like payments for advertising — require *more* scrutiny than payments for ordinary goods and services, not less.

Would the Commission approve of (for instance) a suitcase of gold bullion as an

appropriate means for PAC-to-PAC transfers? (Bitcoin transactions can be far *less* traceable than gold bullion.)

Would the Commission approve of a PAC-to-PAC transfer with no properly auditable paper trail? (See pages 9-10 of our previous comment for a solution.)

Allowing a PAC to contribute to another PAC through an anonymous medium of exchange like Bitcoin, without adequate protections and documentation requirements, would harm the public interest in transparency of campaign finance which the Commission was created to enforce.

Not allowing a PAC to disburse Bitcoins for services (e.g. miner transaction fees) would prevent its use of Bitcoins at all. (See page 14 of our previous comment.)

We would like to emphasize that *none* of the three draft AOs published so far address any of the serious problems we discussed (and proposed solutions for) in our previous comment.

We therefore urge the Commission to vote *against* drafts A, B, and C, and to ask its legal staff to prepare a draft that addresses the problems and solutions we discussed.

Again, if you (or your staff) have any questions or comments, please do not hesitate to contact me at sai@makeyourlaws.org or (717) 469-5695.

Sincerely,
Sai
President & Treasurer
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MYL PAC and MYL C4
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Re: AO 2013-15 Conservative Action Fund

November 16, 2013

Dear Commissioners:

Please accept this comment regarding AO 2013-15 Conservative Action Fund on behalf of Make Your Laws PAC, Inc. (MYL PAC) and Make Your Laws Advocacy, Inc. (MYL C4).

This comment supplements our previous comments, to address the issues discussed in the Commission's [meeting](#) on November 14th, as invited by the Chair Weintraub.

1. Investments vs depreciating or constant-value assets

Assets such as cases of paper, prepaid cell phones, computers, gift cards and frequent flier miles are either fixed in value, depreciate, or are worth less when converted to currency. They are also much harder to transfer anonymously *en masse* than Bitcoin.

We agree with Mr. Backer that it is entirely reasonable to permit PAC-to-PAC transfers of such non-investment, less easily abused assets without first requiring their liquidation.

Bitcoin, like stock, is not an ordinary asset of that sort. Given the very wide fluctuation in its market price, holding on to Bitcoin (rather than converting it immediately to currency) represents an *extremely* speculative investment.¹ Requiring the liquidation of investments — especially ones whose transfer is difficult to audit — would be entirely appropriate. The slight transaction cost is well worth the increase in transparency and decrease in financial speculation.

¹ Currently, Bitcoin markets are overwhelmingly dominated by speculation. Because there is not enough Bitcoin-denominated exchange of goods and services to form an adequate Bitcoin-only marketplace, Bitcoin users have to use currency to purchase most goods and services (e.g. a restaurant that accepts Bitcoin still has to pay its own suppliers with currency). This imbalance between Bitcoin's use as a speculative trading commodity and its use as a *bona fide* medium of exchange is what largely drives its market volatility.

If Bitcoin becomes *primarily* used as a bona fide medium of exchange — and in part, the Commission's decision about whether to permit PACs to purchase ordinary goods and services with Bitcoins will affect that — its market price volatility will go down, becoming more based on real value and less on speculation.

We suggest that investment vs non-investment assets, and traceable vs non-traceable assets, are two good ways that the Commission could draw lines between the kinds of in-kind contributions it discussed. We *don't* believe that tangible vs intangible is a useful distinction.

We would like to mention again that we *agree* with CAF that they should be permitted to purchase ordinary goods and services using Bitcoin, and to take advantage of merchant discounts for Bitcoin usage (which is a more efficient medium of exchange because it cuts out most of the intermediaries of current financial transactions).

It is also simply a technical *necessity* to disburse Bitcoin to anonymous third party Bitcoin miners (albeit in very small amounts) in order to conduct any Bitcoin based transactions. If the Commission forbids *all* disbursement of Bitcoins, it forbids all *outgoing* transactions of Bitcoins; any PAC that receives an anonymous Bitcoin contribution would be forced to choose between illegally possessing the Bitcoins or illegally disbursing them to an anonymous miner.

However, we do *not* believe it appropriate to permit a PAC to directly use Bitcoins to fund independent expenditures, FECA contributions, or any other things that deserve heightened scrutiny and traceability.

2. *Disclosure of PACs' Bitcoin addresses and transaction IDs*

If, against our advice, the Commission decides that PACs *are* allowed to transfer Bitcoins to recipients subject to heightened scrutiny, they should at the very least be required to adequately report such transfers — namely, to document the Bitcoin block chain transaction ID and the Bitcoin addresses of both the sending and receiving PACs. (This is *in addition to* all of the accounting standards that we proposed in section 1 part 5 of our initial comments.)

Without appropriate Bitcoin-specific transaction records, PAC transactions of Bitcoin would be completely unauditale.

3. *Contribution vs non contribution accounts*

As a hybrid Super PAC itself, MYL PAC must *strongly* disagree with Mr. Backer's claim that Super PACs are subject to any less scrutiny, public record, or public interest in disclosure. *All* contributions and expenditures that are used to influence elections have an extremely high bar for disclosure in the public interest. If anything, given that a Super PAC can receive *unlimited* contributions, it is *more* important that those contributions can be reliably traced.

If the Commission permits a Super PAC to receive Bitcoins without adequate protections, or *any* Bitcoin-derived contributions via a 501(c)4, it would create a giant loophole in the FECA that would permit unlimited, anonymous, foreign national sourced contributions to be used to

influence elections, which is completely unacceptable under [McConnell](#) (as we discussed in section 1 part 6 of our initial comments).

4. *Identification of Bitcoin donors*

As Mr. Backer mentioned, PACs are required to make a "best effort" to identify contributors, not to do so with absolute certainty. They are however *also* required to take reasonable precautions to deter unlawful activity, especially if they know something is liable to abuse. Our proposal in section 1 part 5 of our initial comments was based on and consistent with the Commission's prior rulings on this issue, and strikes an appropriate balance.

A PAC should be required to collect full information from the purported donor; the donor should be required to attest that the Bitcoins contributed belong to them and not to a third party; the amount contributed to a PAC (as opposed to a 501(c)4) should be limited to \$100 when it is in a medium of exchange that has serious inherent problems with traceability (as is true of cash); Bitcoin-based contributions to a PAC should use the one-time linked-address method exclusively; and PACs should keep records of linked addresses & transaction IDs.

If a PAC fails to get adequate information on the donor, gets an unattributed contribution or a contribution outside of the one-time linked address system, or gets a contribution (or aggregate set of contributions) that is suspicious, the Commission should mandate that the PAC dispose of them to an entity permitted to receive unlimited anonymous contributions — and prohibit *all* Bitcoin refunds. Mr. Backer said that this is also what he would advise.

Mr. Backer's analogy to prepaid credit cards is apt in certain respects. Prepaid cards have *some* anonymity when purchased with cash. However, they can be traced at least to a specific store where they were bought, it's hard to buy *thousands* of dollars worth of prepaid cards with cash, and it's hard for someone overseas to send thousands of dollars (or hundreds of thousands, in the case of CAF's non-contribution account) using prepaid cards.

The degree of anonymity, laundering, and foreign sourcing possible with Bitcoin completely dwarfs what is possible with prepaid credit cards — even ones bought with cash — and that is where Mr. Backer's analogy fails. Bitcoins can be created by anyone in the world.² The end of an audit trail for a prepaid card is, at worst, a physical location and video surveillance; the end of a Bitcoin audit trail, even *with* our proposed accounting, is potentially nothing at all. There is *far* greater potential for abuse with Bitcoin than with prepaid cards, which is why we believe that Bitcoin contributions to PACs should be subject to the \$100/yr/contributor/recipient limit.

There can and should be Bitcoin-specific accounting (just like there is check and credit card specific accounting) which creates at least some minimal degree of audit trail. We proposed

² A successful Bitcoin miner receives 25 bitcoins — currently worth ~\$11,250 — and is virtually impossible to trace to an actual person if they take appropriate precautions for network anonymity.

appropriate methods in section 1 parts 5-6 of our [initial comments](#).

5. *It is not possible to reliably refund Bitcoins to the control of the person who sent them.*

We addressed this repeatedly in our initial comments. The underlying Bitcoin protocol simply does not have a mechanism to reliably determine what address an incoming transaction originated from (it may originate from many addresses — or from none, if made by a miner). Even if it did, the address *sending* Bitcoins does not necessarily belong to the user *controlling* the transaction. If a Bitcoin exchange user buys bitcoins, it is the exchange's own wallet that sends them to whatever address the user specifies; "returning" the Bitcoins would give them to the *exchange*, not back to the originating user.³

In previous drafts of our initial comments, we tried to create *some* "safe harbor" scenario by which Bitcoins might be reliably refunded to their owner. Unfortunately, we discovered a way to easily subvert *all* such scenarios (even extremely restrictive ones). It is simply not currently possible to reliably "refund" Bitcoins to their original owner, and it probably never will be. Even the "refund" mechanisms being developed now rely on the original owner *designating* their desired refund-to address, which could actually be controlled by a third party.

6. *Mr. Backer is factually incorrect on several points:*

- a. It is not possible to reliably know what country a given Bitcoin user is from.
- b. It is not possible to refund, refuse, prevent, or screen Bitcoin contributions from an unwanted source.
- c. It is not possible to determine the contact information of a Bitcoin user, nor to even *verify* a contributor's claim that they own a Bitcoin address.⁴
- d. Bitcoins do not have a "serial number" like a dollar bill.
- e. Bitcoins do not all originate from a single computer; new Bitcoins originate from anonymous computers dispersed throughout the world, every few minutes.
- f. Bitcoins are not "stored value" denominated in US dollars; they are *traded for* currency on highly fluctuating open markets.

To explain why these are true, we need to give some more background on how Bitcoins work.

Technically, there *are* no "bitcoins" *per se*. The Bitcoin system has *addresses* (which are a type of public key⁵); *transactions* (which authorize the transfer of Bitcoins to whoever can prove they

³ This would violate the FECA (by returning a contribution to a third party).

⁴ It is *technically* possible for a Bitcoin user to cryptographically sign a statement of this sort, but this is completely outside the reach of all but very highly advanced users to either make or verify.

⁵ http://en.wikipedia.org/wiki/Public-key_cryptography. Even more technically, a transaction can designate things other than a Bitcoin address as ways to prove that one is allowed to control the output of a

control a given public key); and *blocks* (which form the public history of the Bitcoin network by authenticating the previous block, any other transactions its miner wants to, and one transaction of 'new' Bitcoins that the miner gets for creating the block).

Bitcoins originate from a Bitcoin miner, in an amount and rate given by the Bitcoin protocol (currently 25BTC / block and 1 block every ~6 min). They are not actually a thing or number that is "transferred" from one computer to another. Bitcoin users sign transactions, and miners include those transactions in the public blockchain, all using public key cryptography. The *transactions* are transferred among the peer-to-peer network of Bitcoin users.

Anything that is included in a block (i.e. all transactions and all public keys that have been designated as receiving Bitcoins) is public knowledge. A Bitcoin user's "wallet" stores the *private* keys of a set of Bitcoin addresses (and a ledger of its transactions & current "balance" for user convenience), thus enabling the user to control whatever amount of Bitcoins that the history of previous transactions have credited to the associated *public* key.

It is simply by tracing the *entire* transaction history from its very beginning (i.e. dead reckoning) that everyone knows how many Bitcoins every address "owns". And while Bitcoin *transactions* are public, the *transactors* are not identified by *anything* other than by a cryptographic public key. The various methods for laundering Bitcoins try to ensure that even the public transactions do not reveal *actual* underlying exchanges of ownership.

Bitcoins are not atomic (unlike dollar bills), and do not have serial numbers. A transaction can be for any increment of 0.00000001 Bitcoins.⁶ *Transactions* have ID numbers that are public.⁷

A Bitcoin user can control any arbitrary number of Bitcoin addresses. Many transactions transfer Bitcoins between multiple addresses simultaneously; there is no way to distinguish "which" address gave to which recipient. There is no easy way even to know reliably what set of Bitcoin addresses are controlled by a single person (without using sophisticated network traffic analysis — and even then, the conclusions are generally fuzzy at best).

Because transfers of Bitcoin are made based *only* on the authorization of the sender, not the receiver, it is not possible to "screen" or refuse an incoming transaction. Once the transaction to your Bitcoin address is signed by the sender and incorporated into the public blockchain, it is public knowledge that you own those Bitcoins, regardless of your consent. See section 1 parts 5-6 and section 2 part 3 of our initial comments for the policy implications of this.

Because the blockchain does not store IP addresses, and a computer *transmitting* a given

transaction (and this is how future improvements on Bitcoin are built, that would eg designate a "refund" address or "contracts"), but currently, a Bitcoin address is the overwhelmingly most common mechanism.

⁶ Bitcoin is currently traded at ~\$450 per 1 Bitcoin. It would be infeasible *not* to have fractional transactions, or to have a separate "serial number" for each hundred-millionth of a Bitcoin.

⁷ E.g. <http://blockexplorer.com/t/6DxJkqkhnP>

transaction is not necessarily operated by the the user *initiating* that transaction, it is not possible to know the country of a Bitcoin user without doing sophisticated network traffic analysis.⁸ Most Bitcoin clients have built-in support for the Tor anonymizing network,⁹ which makes tracing the true source of a network request to its owner's IP more or less impossible.

7. Separate schedule for in-kind contributions and assets

We agree that it would be a good idea for the Commission to establish a distinct reporting method for in-kind contributions — and for that matter, for *all* assets owned by a PAC — which would be able to more clearly account for things such as appreciation, depreciation, re-investment, transaction records, type of asset, persistent asset identifiers, etc. that do not really fit in the current reporting forms.

We also agree with Mr. Backer that in the meantime, there should be a line item for the appreciation or depreciation in value of assets that are held.

8. Re. the technological modernization notice of proposed rulemaking

We believe it would be an *excellent* idea to include Bitcoin in the Commission's upcoming rulemaking on technological modernization.¹⁰

9. Re. punting on implicit questions

If the Commission's final AO on this matter punts on any of the questions that we have raised in our comments (re. accounting and information gathering standards, transaction limits, disbursements to bitcoin miners, valuation of Bitcoins having a higher cost to transact than they are worth, reporting of PAC-mined bitcoins, and contributions to/from 501(c)4s), we will have to immediately file an AOR to explicitly ask those questions — to ensure that there is a clear safe harbor policy for appropriate handling of Bitcoin contributions, together clear mandates for

⁸ See <http://www.slideshare.net/dakami/black-ops-of-tcpip-2011-black-hat-usa-2011> for an in-depth technical discussion by Dan Kaminsky, one of the leading experts in computer security. Again, this is an evolving area, with techniques being developed on both sides. However, it does not pass the simple test of being auditable by someone of ordinary technical skill vs someone using even moderately good precautions.

⁹ <https://www.torproject.org/about/overview.html.en>

¹⁰ If the Commission wishes, I would be happy to testify for its hearings therein. I believe that someone with my combination of technical background and campaign finance law knowledge could provide an unusual contribution by being able to bridge the often large divide between law and technology.

Helping with the NPRM would also align well with MYL's goals of systemically improving our political system through technological modernization.

appropriate, auditable accounting that are adequate to deter abuse.

We suggest that it would be more efficient (and easier on its already overburdened legal staff) for the Commission to address these issues now.

I realize that the above discussion of how Bitcoin operates is somewhat technical. I have tried to balance precision with understandability and explanation in terms of practical effects.

If you, your staff, or Mr. Backer have any questions or comments, please do not hesitate to contact me at sai@makeyourlaws.org or (717) 469-5695.

Sincerely,
Sai
President & Treasurer
Make Your Laws PAC, Inc.
Make Your Laws Advocacy, Inc.

P.S. Since Chair Weintraub mentioned that nobody present at the meeting had ever actually *used* Bitcoins, and even Mr. Backer seems to have several fundamental misunderstandings about how Bitcoin works, I feel I should mention my own background here.

I have personally used Bitcoin to pay for goods and services on multiple occasions; given a guest talk on Bitcoin and Tor based anonymous transactions to UC Berkeley Boalt law school Prof. Chris Hoofnagle's class on computer crime law; published independent research about machine learning based de-anonymization techniques¹¹ that directly contributed to fixing flaws in the technical standards of the World Wide Web Consortium; and worked in computer security and web development¹² for several years.

My comments about security issues with Bitcoin, and ways to address them, are based on my professional expertise, coupled with my legal knowledge of the FECA. (I am not a lawyer, but I did write the entirety of our initial comments, including all of the legal analysis and research therein.) I consulted with Bitcoin developers and computer security colleagues to find *any* way how the issues we raised might be overcome by less stringent means than those we proposed; we concluded that there were none. I also consulted with them on both our initial comment and this comment, to ensure their technical precision.

¹¹ <http://s.ai/presentations/css%20history.pdf>

¹² <http://s.ai/work>

1 ADVISORY OPINION 2013-15

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DRAFT

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13

14 Dear Messrs. Backer and Kamenar:

15 We are responding to the advisory opinion request you submitted on behalf of
16 Conservative Action Fund (“CAF”) concerning CAF’s acceptance and disbursement of
17 Bitcoins under the Federal Election Campaign Act of 1971, as amended (the “Act”), and
18 Commission regulations. The Commission concludes that CAF may accept Bitcoins as
19 in-kind contributions under valuation, reporting, and disbursement procedures, as
20 described below. CAF may not, however, make disbursements using Bitcoins. Instead
21 CAF must sell its Bitcoins and deposit the proceeds in its campaign depositories before
22 using the funds.

23 ***Background***

24 The facts presented in this advisory opinion are based on your letter dated August
25 13, 2013 (“AOR”), email dated August 26, 2013 (“AOR Supplement”), and public
26 disclosure reports filed with the Commission.

27 CAF is a nonconnected political committee that registered with the Commission
28 in May 2011. CAF has notified the Commission that it maintains a non-contribution

1 account.¹ CAF wishes to accept contributions in Bitcoins for both its contribution and
2 non-contribution accounts.

3 Bitcoin is a privately issued “digital currency” that was created in 2009. U.S.
4 Gov’t Accountability Office, GAO-13-516, Virtual Economies and Currencies 5 (2013),
5 available at <http://www.gao.gov/assets/660/654620.pdf> (“GAO Report”). Bitcoins are
6 purely digital, “exist[ing] only as a long string of numbers and letters in a user’s
7 computer file.” *Id.* Nonetheless, the requestor states that Bitcoins “act as real world
8 currency in that users pay for real goods and services . . . with [B]itcoins as opposed to
9 U.S. dollars or other government issued currencies.” *Id.* A user transfers Bitcoins from
10 the user’s online Bitcoin “wallet” either to other users, to merchants who accept Bitcoins
11 as payment, or through “[t]hird-party exchanges [that] allow [B]itcoin users to exchange
12 their [B]itcoins back to government-issued currencies.” *Id.* In these ways, Bitcoin users
13 can engage in online transactions without using a bank or other third-party financial
14 institution. AOR at 1. Bitcoin transfers are made online and are nearly instantaneous.
15 *Id.*

16 Bitcoins’ values are determined largely through the exchanges on which many of
17 these transfers are conducted. There are numerous online exchanges on which potential
18 buyers and sellers of Bitcoins post “bid” and “ask” prices akin to those on securities
19 exchanges. *See, e.g.*, <http://bitcoincharts.com/markets/> (last visited Sept. 25, 2013)
20 (collecting Bitcoin exchange data). The value of Bitcoins “has been volatile”: Between

¹ See Press Release, FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

1 May 2012 and May 2013, the value of one Bitcoin ranged between \$5 and \$237. GAO
2 Report at 8.²

3 CAF proposes to offer an online contribution page for those wishing to make
4 contributions to CAF using Bitcoins. CAF represents that it intends to use a “Bitcoin
5 online merchant solution, such as BitPay,” to process, accept, and clear Bitcoin
6 contributions. AOR at 3. Under the BitPay model, a contributor could choose to
7 denominate her contribution either in Bitcoins (*e.g.*, contribute “10 Bitcoins”) or in U.S.
8 dollars with a conversion rate established by BitPay at the time of the transaction (*e.g.*,
9 contribute “\$1200 in Bitcoins” at a rate of “1 Bitcoin (BTC) = 124 USD”). Under the
10 BitPay model, CAF could choose whether to receive the contribution in the form of
11 Bitcoins transferred to CAF’s Bitcoin wallet, or in the form of U.S. dollars transferred to
12 CAF’s bank account. *See* Bitcoin Transaction Processing, [https://bitpay.com/bitcoin-](https://bitpay.com/bitcoin-direct-deposit)
13 [direct-deposit](https://bitpay.com/bitcoin-direct-deposit) (last visited Sept. 25, 2013). If CAF chooses to receive the dollar
14 equivalent of the Bitcoin contribution, that amount will be forwarded to CAF’s bank
15 account within one business day of the BitPay transaction. *Id.*

16 To comply with the relevant provisions of the Act and Commission regulations —
17 such as those regarding contribution limits and recordkeeping requirements — CAF
18 represents that it would acquire and record the “relevant” information regarding each
19 contributor who makes a contribution to CAF using Bitcoins, such as the contributor’s
20 name, address, occupation, and employer, as applicable. AOR at 3; AOR Supplement.

² *See also* Benjamin Wallace, *The Rise and Fall of Bitcoins*, Wired, Dec. 2011, available at http://www.wired.com/magazine/2011/11/mf_bitcoin/all/; Bitcoin charts, <http://bitcoincharts.com/charts/> (last visited Sept. 25, 2013) (providing historical valuation data from more than 100 Bitcoin exchanges, including more than 35 Bitcoin-to-dollar exchanges).

CAF wishes to retain the Bitcoins it receives in its Bitcoin wallet for later disposition. AOR at 3. CAF intends to either sell Bitcoins at a later date, spend them directly to purchase goods and services, or use them to make contributions to other political committees. *Id.*

Questions Presented

Based on the facts presented above, the requestor asks 24 questions. These questions generally fall into three categories: (1) whether the requestor may accept Bitcoins as monetary and/or in-kind contributions; (2) how the requestor should deposit, value, and report contributions made using Bitcoins; and (3) whether the requestor may disburse Bitcoins to pay for goods or services or to make contributions to other committees.

Legal Analysis and Conclusions

As discussed in more detail below, the Commission concludes that Bitcoins are not “money” within the meaning of Commission regulations, but that the requestor may generally accept Bitcoins as in-kind contributions under valuation, reporting, and disbursement procedures similar to those that the Commission has previously approved for other in-kind contributions. The requestor may not, however, make disbursements using Bitcoins directly from a Bitcoin wallet because the Act and Commission regulations require such disbursements to be made from a “campaign depository.”

A. Bitcoins as In-Kind Contributions³

³ This section addresses CAF’s questions 1 (“May CAF lawfully accept Bitcoins as a monetary contribution?”), 2 (“May CAF lawfully accept Bitcoins as an in-kind contribution?”), and 3 (“May CAF decide how to treat these contributions?”).

1 The Act defines a “contribution” to include “any gift, subscription, loan, advance,
2 or deposit of money or anything of value made by any person for the purpose of
3 influencing any election for Federal office.” 2 U.S.C. § 431(8)(A)(i); *see also* 11 C.F.R.
4 § 100.52(a). Commission regulations identify two general categories of contributions:
5 “money” and “anything of value.” *See* 11 C.F.R. § 100.52(c), (d). “[M]oney” includes
6 “currency of the United States or of any foreign nation, checks, money orders, or any
7 other negotiable instruments payable on demand.” 11 C.F.R. § 100.52(c). “Anything of
8 value” includes “all in-kind contributions.” *See* 11 C.F.R. § 100.52(d)(1).⁴

9 Bitcoins do not meet the Commission’s regulatory definition of “money.”
10 Bitcoins are not currency of the United States or any other nation,⁵ and they are not
11 negotiable instruments like the checks and money orders listed in 11 C.F.R. § 100.52(c).
12 The Uniform Commercial Code defines a “negotiable instrument” as “an unconditional
13 promise or order to pay a fixed amount of money” payable to a bearer or order on
14 demand or at a definite time. U.C.C. § 3-104(a); *see also* U.C.C. § 1-201(b)(24)
15 (defining “money” as “a medium of exchange currently authorized or adopted by a
16 domestic or foreign government”). Unlike checks and money orders, Bitcoins do not
17 grant their holders an “unconditional” right to be paid in currency. Instead, Bitcoins may

⁴ *See also* Fed. Election Comm’n, Explanation and Justification for Amendments to Federal Election Campaign Act of 1971, H.R. Doc. No. 95-44, at 46 (1977), *available at* http://www.fec.gov/law/cfr/ej_compilation/1977/95-44.pdf (characterizing “in-kind contributions” as “contributions other than cash or check”).

⁵ *See* GAO Report at 5 (“Unlike U.S. dollars and other currencies, [B]itcoin is not government issued and does not have a physical coin or bill associated with its circulation, such as a Federal Reserve note”); U.S. Dep’t of the Treasury, FIN-2013-G001, Financial Crimes Enforcement Network, Guidance: Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies 1 (2013), *available at* http://fincen.gov/statutes_regs/guidance/pdf/FIN-2013-G001.pdf (concluding that “virtual currency” is not “currency,” defined under FinCEN regulations as “the coin and paper money of the United States or of any other country,” because computer or virtual currency “does not have legal tender status in any jurisdiction”).

1 be exchanged for currency only to the extent that another private party is willing to buy
2 them on an exchange or in a peer-to-peer transaction. Additionally, Bitcoins do not
3 represent a “fixed amount of money” in the currency of any nation, as their value
4 constantly fluctuates relative to government-backed currencies.⁶

5 Thus, because Bitcoins are neither the currency of any country nor negotiable
6 instruments, Bitcoins are not “money” under Commission regulations. Therefore, a
7 political committee that receives Bitcoin contributions may not treat them as monetary
8 contributions.⁷

9 Nothing in the Act or Commission regulations, however, prohibits a political
10 committee from accepting Bitcoins as in-kind contributions. The Commission has issued
11 numerous advisory opinions addressing permissible contributions of non-monetary items
12 “of value,” such as public stocks, private stocks, commodities, and computer equipment.

⁶ CAF cites a recent opinion in which a federal magistrate judge concluded that Bitcoins are a “currency or form of money” for purposes of securities law. *See SEC v. Shavers*, No. 4:13-CV-416, 2013 WL 4028182, at *2 (E.D. Tex. Aug. 6, 2013). The *Shavers* opinion, which appears to be the first federal or state judicial opinion to examine Bitcoins, found that Bitcoins are money because they “can be used to purchase goods or services” and “can also be exchanged for conventional currencies.” *Id.* As noted above, however, the Commission’s regulatory definition of “money” is more limited, encompassing only government-issued currencies and negotiable instruments. Because *Shavers* applied a significantly broader definition of “money” than the Commission has promulgated, that decision is inapposite here. The Commission expresses no opinion regarding the application of federal securities law, tax law, or other law outside the Commission’s jurisdiction to CAF’s proposed activities.

CAF and a commenter on the request (the Bitcoin Foundation) urge the Commission to allow CAF the discretion to determine for itself whether to treat Bitcoins as monetary or in-kind contributions, citing Advisory Opinions 1982-08 (Barter PAC) and 1980-125 (Cogswell). In Advisory Opinion 1982-08 (Barter PAC), however, the Commission merely observed that the “credit units” at issue in that opinion both “resembled in-kind contributions” and were “like cash.” *Id.* at 4. The Commission did not state that the requestor would have the option of how to treat them under the Act and Commission regulations. And in Advisory Opinion 1980-125 (Cogswell), the Commission’s conclusion that the requestor could decide how to treat U.S. silver dollars was premised on the fact that they were both money (currency) and commodities (on the silver market). *Id.* at 2. That reasoning does not apply here because Bitcoins, unlike silver dollars, are not the currency of any nation.

⁷ In light of this conclusion, the Commission does not answer CAF’s questions 5-11, which are premised on “treating Bitcoins as monetary contributions.”

1 *See, e.g.*, Advisory Opinion 1996-29 (Cannon) (computer equipment); Advisory Opinion
2 2000-30 (pac.com) (stock); Advisory Opinion 1980-125 (Cogswell) (commodities).

3 Although the receipt of contributions in Bitcoin form presents certain unique
4 considerations with regard to complying with the Act’s disclosure requirements, none of
5 these bars the acceptance of Bitcoins, and CAF states that it will comply with all
6 applicable disclosure requirements in the context of in-kind contributions made using
7 Bitcoins.⁸ *See* Advisory Opinion 2012-30 (Revolution Messaging) (permitting
8 contributions by text message and noting requestor’s indication that it would obtain
9 necessary contributor information).

10 In sum, CAF may accept Bitcoins as in-kind contributions.

11 ***B. Bitcoin Contribution Deposits, Valuation, and Reporting***

12 *1. Deposits*⁹

⁸ The Act and Commission regulations impose certain requirements on political committee treasurers, including the responsibilities to keep accounts of the requisite contributor information and to “examin[e] all contributions received for evidence of illegality.” 11 C.F.R. § 103.3(b); *see also* 2 U.S.C. § 432(c)(1)-(3), 11 C.F.R. § 110.4. That is, a political committee is “responsible for determining the eligibility of its contributors.” Advisory Opinion 2012-26 (Cooper, m-Qube, Inc., and ArmourMedia, Inc.) (discussing identification of contributors by text message).

Bitcoin is a potentially anonymous or pseudonymous method of exchange, “since all that is needed to complete a transaction is a [B]itcoin address, which does not contain any personal identifying information.” GAO Report at 8. As noted above, CAF states that it will collect the information required of its contributors, such as name, address, and employer. CAF does not specify how it will obtain that information, and it does not ask whether its intended method of doing so is consistent with the Act and Commission regulations. For example, CAF does not indicate how it intends to proceed when a pseudonymous online “identity” associated with a Bitcoin user diverges from that user’s actual identity. For purposes of this advisory opinion, the Commission assumes that CAF will comply with its disclosure obligations and its responsibility to “determin[e] the eligibility of its contributors,” and nothing in this advisory opinion should be construed to relieve CAF of those requirements.

⁹ This section addresses CAF’s questions 4 (“Do these answers, or answers to subsequent questions, change depending upon whether the contribution is made to a [contribution] or non-[contribution] account?”) and 14 (“Can CAF hold the Bitcoins indefinitely in either its virtual wallet, or another account as the FEC deems fit, for disposition at a later time?”).

Commission regulations require a political committee to deposit all of its receipts into a campaign depository within 10 days of receipt. 11 C.F.R. § 103.3(a); *see also* 2 U.S.C. § 432(h). A campaign depository is an account at a state bank, a federally chartered depository institution (including a national bank), or a depository institution with accounts insured by certain federal agencies. 2 U.S.C. § 432(h); 11 C.F.R. § 103.2.

Under the BitPay model described above, if CAF opts to receive the dollar equivalent of a Bitcoin contribution forwarded to its bank accounts, the transaction would comply with the deposit requirement as long as the dollars are deposited into campaign depositories within 10 days. If, however, CAF opts to receive Bitcoins into its Bitcoin wallet, it will not be holding the Bitcoins in a campaign depository. The Commission has concluded that securities accounts and similar brokerage accounts do not qualify as campaign depositories, even if the account-holder can disburse funds directly from them. *See* Advisory Opinion 2000-30 (pac.com) (securities account), Advisory Opinion 1986-18 (Bevill) (“cash management account”). Like those accounts, a Bitcoin wallet is not held at a state or federal bank, and it is not insured by any government agency, so it does not meet the criteria of a “campaign depository.” *See* 2 U.S.C. § 432(h).

Notwithstanding these campaign-depository provisions, section 104.13(b) of the Commission’s regulations establishes procedures for political committees to receive and report contributions of “stocks, bonds, art objects, and other similar items to be liquidated” at a later date. The Commission has concluded that this provision implicitly allows a committee to accept such assets as contributions and hold those assets until later sale (for more than 10 days) as investments outside campaign depositories. *Advisory Opinion 2000-30 (pac.com)* at 8 (citing *Advisory Opinions 1989-06 (Boehlert)* and *1980-*

1 125 (Cogswell)). For example, when a committee receives stock as a contribution, the
2 Commission does “not require the liquidation of the stock within any set time period after
3 its receipt by the committee; nor [does] it require the deposit of the proceeds in the
4 committee’s depository account within any prescribed period.” *Id.* at 5 (discussing
5 Advisory Opinion 1989-06 (Boehlert)).

6 As noted previously, Bitcoins are not “money,” have no fixed value in any
7 nation’s currency, and might appreciate or depreciate over time. In these key respects,
8 Bitcoins are “similar items” to the “stocks, bonds, [and] art objects” described in 11
9 C.F.R. § 104.13(b). Thus, for purposes of campaign-depository requirements, the
10 Commission concludes that in-kind contributions of Bitcoins are governed by section
11 104.13(b). Like securities that a political committee may receive into and hold in a
12 brokerage account, Bitcoins may be received into and held in a Bitcoin wallet until the
13 committee liquidates them.¹⁰

14 2. Valuation¹¹

¹⁰ This conclusion does not depend on whether the Bitcoins are received into a contribution account or a non-contribution account. Provided that the Bitcoin contributions are not from prohibited sources, CAF may divide its Bitcoin receipts between its contribution and non-contribution accounts as it may other contributions. See <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>; AOR question 9 (“May CAF bifurcate its treatment of a Bitcoin contribution between its [contribution] or [non-contribution] accounts?”). If, however, CAF opts to receive and hold Bitcoins, it must maintain separate Bitcoin wallets for its contribution and non-contribution accounts. See <http://www.fec.gov/press/Press2011/20111006postcarey.shtml> (requiring committees to segregate accounts).

¹¹ This section addresses CAF’s questions 12 (“If CAF treats Bitcoins as an in-kind contribution under 11 C.F.R. §104.13(a)(1), how should CAF value the Bitcoins: based on their market price, or based on another formula?”), 13 (“When should CAF value the Bitcoins received on a certain day: at the exact moment the Bitcoins are received in CAF’s wallet, at the time general stock markets close that day, or, since trade in Bitcoins does not ‘close’ at day’s end, at midnight, or at another time?”), and 15 (“If CAF issues a refund of an excessive contribution in Bitcoins, how many Bitcoins should CAF refund: the excess amount which reflects the value of Bitcoins based on the date of their receipt, an amount that reflects the value of Bitcoins at the time of refund, or another amount?”).

1 Bitcoin contributions should be valued as in-kind contributions. The amount of
2 an in-kind contribution is the usual and normal value of the contribution on the date
3 received.¹² 11 C.F.R. § 104.13(a); Advisory Opinion 1989-06 (Boehlert) (applying this
4 method of valuation to contribution of stock).

5 The proper method of determining this valuation depends upon the type of item
6 being contributed. For example, the Commission has concluded that the value of a
7 contribution of publicly traded stock is the closing price of the stock on the day of the
8 Committee's receipt. Advisory Opinion 2000-30 (pac.com). If the stock is traded on
9 more than one exchange, "[t]he price would be the price of that particular class of
10 [publicly traded] stock on the exchange on which the stock is principally dealt." *Id.* at 5.
11 For items whose value cannot readily be determined through a market mechanism, such
12 as private stocks, the Commission has instructed committees to look to other outside
13 valuation methods, such as tax-related calculations and independent appraisals. *See*
14 Advisory Opinion 2000-30 (pac.com) at 7.

15 Like some public stocks, Bitcoins are traded on multiple public exchanges.
16 Although Bitcoins do not have closing times or prices — because Bitcoin exchanges
17 operate 24 hours per day, *see* AOR at 7 — the going rate for Bitcoins can be determined
18 on a specific exchange at any given moment. This distinguishes Bitcoins from private
19 stocks, whose valuation is inherently more difficult and subjective. Accordingly, despite

¹² For the purposes of contribution limits, "a contribution [is] considered to be made when the contributor relinquishes control." 11 C.F.R. § 110.1(b)(6). The Commission has previously determined that an online contribution by credit card is "made" on the date that the credit card number is presented online and "received" on the date that the committee is notified of the contributor's action. *See, e.g.*, Advisory Opinion 2008-08 (Zucker); Advisory Opinion 1995-09 (NewtWatch) at 3. Following that reasoning, the Commission concludes that a Bitcoin contribution is "made" when the contributor authorizes the transfer of Bitcoins, and it is "received" when the committee is notified of the contribution. *See* Comment on AOR by Bitcoin Foundation at 3-4 (describing transfer-validation process).

1 the lack of a singular daily “closing price,” the valuation of Bitcoins is most akin to that
2 of stocks that are publicly traded on multiple exchanges.

3 The availability of public exchange rates provides a reliable and objective method
4 of valuing Bitcoin contributions. Thus, the Commission concludes that a political
5 committee that receives a contribution in Bitcoins should value that contribution based on
6 the market value of Bitcoins at the time the contribution is received. To assess this
7 market value, the committee should first rely on any contemporaneous determination
8 provided by the entity that processes the Bitcoin contribution. If that processor provides
9 an exchange rate for the specific transaction in question — or if the committee opts to
10 receive a Bitcoin contribution from its processor in the form of dollars — the committee
11 should use this rate or dollar amount to value the contribution.¹³

12 If, however, a contributor makes a contribution through an entity that does not
13 provide an exchange rate for that contribution, then the recipient committee may value
14 the contribution using another reasonable exchange rate of Bitcoins for dollars. For an
15 exchange rate to be reasonable, it should be a publicly available rate of Bitcoins traded
16 for dollars on a high-volume public Bitcoin exchange that is open to transactions within
17 the United States.¹⁴ For each Bitcoin transaction, the committee should use the rate
18 established by the chosen exchange closest in time to receipt of the in-kind contribution

¹³ For example, as noted above, BitPay permits a Bitcoin contributor to denominate a transaction in dollars. Thus, if BitPay were to notify the committee that a contributor had sent \$1000 in the form of 7.25 Bitcoins, the committee would value the contribution at \$1000, regardless of whether the committee then opted to receive the contribution in dollars or in Bitcoins.

¹⁴ See, e.g., Bitcoin charts, <http://bitcoincharts.com/charts/> (last visited Sept. 25, 2013) (listing global and local exchanges in several currencies).

1 for the transaction being valued.¹⁵

2 Upon being valued, an in-kind contribution made using Bitcoins might exceed the
3 contributor's annual contribution limit of \$5,000. 2 U.S.C. § 441a(a)(1)(C); *see also*
4 11 C.F.R. §§ 110.1(d), 110.2(d). The Commission has previously determined that a
5 committee may return an excessive in-kind contribution "either in the form given," or in
6 a dollar amount "equal to the excess" of the in-kind contribution when it was received.
7 Advisory Opinion 1980-125 (Cogswell); *see also* 11 C.F.R. § 103.3(b)(3). Accordingly,
8 if an in-kind contribution made using Bitcoins would exceed the contributor's limit, the
9 committee may return the excessive amount either by refunding the quantity of excessive
10 Bitcoins, or by refunding a dollar amount equal to the excessive portion of the
11 contribution, as calculated at the time of the in-kind contribution is received.

12 3. *Reporting*¹⁶

13 Bitcoins are in-kind contributions that the committee will ultimately sell (rather
14 than services it receives or goods to be consumed). Accordingly, the reporting of in-kind
15 contributions made using Bitcoins is governed by 11 C.F.R. § 104.13(b), which addresses
16 the reporting of in-kind contributions "to be liquidated."

¹⁵ *See id.* (showing some high-volume exchanges publishing rates every 15 minutes and other lower-volume exchanges publishing rates daily).

¹⁶ This section addresses CAF's questions 16 ("If CAF treats Bitcoins as a commodities to be liquidated and sells them on the market, are Bitcoins valued based on their date received, 11 C.F.R. § 104.13(a)(1), and, if so, when are the Bitcoins 'received,' and how should CAF calculate their value?"), 21 ("For reporting purposes, how and when should CAF calculate the Bitcoins' value, and should CAF report the Bitcoins as a contribution and an expenditure under 11 C.F.R. § 104.13(a)(2), or should CAF follow the reporting guidelines in 11 C.F.R. § 104.13(b)?"), 22 ("If CAF sells Bitcoins to a known purchaser, must CAF treat the sale as a contribution and follow the reporting requirements in 11 C.F.R. § 104.13(b)(2)?"), 23 ("If CAF sells the Bitcoins to an unknown purchaser, will the purchaser not be deemed to have made a contribution to CAF, and should CAF follow the reporting requirements outlined in AO 2000-30 (pac.com)?"), and 24 ("How should CAF report the expenses, if any, relating to the sale of Bitcoins, such as commissions or fees?").

1 Under this regulation, as explained in Advisory Opinions 2000-30 (pac.com) and
2 1989-06 (Boehlert), if a committee receives a contribution in Bitcoin form and does not
3 liquidate the Bitcoins in the same reporting period, the committee should first report the
4 contribution during the reporting period in which it is received. The initial receipt of
5 Bitcoins should be reported on Schedule A supporting Line 11(a)(i) (Contributions from
6 Individuals) as a memo entry that includes the fair market value of the contribution (as
7 described above) and the required identification of the contributor. *See* 11 C.F.R. §
8 104.13(b)(1); Advisory Opinion 1989-06 (Boehlert), Attachment A (providing sample
9 form for reporting fair market value of in-kind contribution of stock to candidate's
10 committee); Advisory Opinion 2000-30 (pac.com) at 8.¹⁷

11 Any usual and normal fees deducted by the Bitcoin processor from an in-kind
12 contribution made using Bitcoins prior to its transfer to the recipient committee should
13 not be deducted from in the reported value of the contribution. That is, "the Committee
14 must treat the full amount of the donor's contribution as the contributed amount for
15 purposes of the limits and reporting provisions of the Act, even though the Committee
16 will receive a lesser amount because of [the] fees." Advisory Opinion 1995-09
17 (NewtWatch) at 3. The committee should report the usual and normal fees and
18 commissions that it pays an online processor as operating expenditures pursuant to 2
19 U.S.C. §§ 432(c)(5), 434(b)(5)(A) and 11 C.F.R. §§ 102.9(b), 104.3(b)(3), (4). *See*
20 Advisory Opinion 1995-09 (NewtWatch) at 3.

¹⁷ If the committee opts to immediately liquidate the Bitcoin contribution and receive its equivalent in dollars from the processor, the committee should report the contribution as in Advisory Opinion 1989-06 (Boehlert), Attachment C, but on Schedule A supporting Line 11(a)(i), substituting the name of the Bitcoin processor for the name of the stock broker.

1 In addition to the committee's initial receipt of the in-kind contribution made
2 using Bitcoins, the committee should also report its subsequent liquidation of the
3 Bitcoins. The requirements for such reporting at the time of the sale depend on whether
4 the purchaser is known or unknown to the committee. If the committee sells the Bitcoins
5 directly to a purchaser, and therefore knows the identity of that purchaser, the purchase is
6 itself considered to be a contribution. *See* 11 C.F.R. § 104.13(b)(2); Advisory Opinion
7 1989-06 (Boehlert) at 2; Advisory Opinion 2000-30 (pac.com) at 8-9. In that case, the
8 committee should report the dollar amount of the purchase as a monetary contribution by
9 the known purchaser on Schedule A supporting Line 11(a)(i) and should include the
10 identifying information required by section 104.13(b)(2). The committee should also use
11 memo text to indicate the entry relates to the purchase of Bitcoins. In addition, the
12 committee should again identify (as a memo entry on Schedule A) the original
13 contributor of the Bitcoins and the fair market value of that in-kind contribution at the
14 time it was received. *See* 11 C.F.R. § 104.13(b)(2)(ii); Advisory Opinion 1989-06
15 (Boehlert), Attachment B.

16 If the committee sells the Bitcoins through an established market mechanism
17 where the purchaser is not known, the purchaser is not considered to have made a
18 contribution to the committee. *See* Advisory Opinion 1989-06 (Boehlert) at 2; 11 C.F.R.
19 § 104.13(b)(2). In that situation, the committee should report the dollar amount of the
20 purchase on Schedule A supporting Line 11(a)(i), listing the broker or market mechanism
21 and explaining that the amount is the proceeds from the sale of Bitcoins to an unknown
22 purchaser. *See* Advisory Opinion 1989-06 (Boehlert), Attachment C (as modified here).
23 As a memo entry to that receipt, the committee should report the same information

1 regarding the original contributor that it would report for a sale of Bitcoins directly to a
2 known purchaser. *Id.*; Advisory Opinion 2000-30 (pac.com) at 9.

3 ***C. Bitcoin Disbursements***¹⁸

4 The Act and Commission regulations require that all political committee
5 disbursements (except for petty cash disbursements) must be made by check or similar
6 drafts drawn on a campaign depository. *See* 2 U.S.C. § 432(h); 11 C.F.R. §§ 102.10,
7 103.3(a); *see also* Advisory Opinion 1993-04 (Cox) (approving electronic bill payment
8 service from a campaign depository as “similar draft”). Funds may be transferred from a
9 campaign depository for investment purposes but “shall be returned to the depository
10 before such funds are used to make expenditures.” 11 C.F.R. § 103.3(a).

11 The Commission has previously concluded that 2 U.S.C. § 432(h) and 11 C.F.R.
12 § 103.3(a) prohibit a political committee from making expenditures with liquid assets it
13 holds outside of its campaign depositories. In Advisory Opinion 2000-30 (pac.com),
14 pac.com asked whether it could contribute to other political committees stock that
15 pac.com had received as contributions and was holding, unliquidated, in its securities
16 account. The Commission concluded that a committee is required to “sell the stocks and
17 deposit the proceeds into committee depository accounts, and then it may contribute the
18 funds” to the other committees. *Id.* at 8. Similarly, in Advisory Opinion 1986-18
19 (Bevill), a political committee wished to place its funds in an investment account and use
20 a credit card that would directly debit that account to make disbursements. The
21 Commission concluded that, pursuant to 11 C.F.R. § 103.3(a), committee funds could be

¹⁸ This section addresses CAF’s questions 17 (“Can CAF pay directly for goods and services using Bitcoins?”) and 20 (“Can CAF contribute Bitcoins directly from its Bitcoin account or virtual wallet to another PAC, candidate, or committee to the full extent of the law?”).

1 placed in the account only for investment purposes and not to make disbursements.
2 Before the funds could be used to make disbursements, they would have to be transferred
3 to a campaign depository. Advisory Opinion 1986-18 (Bevill) at 2; *see also* Advisory
4 Opinion 1993-04 (Cox) (discussing Advisory Opinion 1986-18 (Bevill)).¹⁹

5 A Bitcoin wallet, as discussed above, is not a campaign depository. The
6 Commission therefore concludes that CAF's proposal to purchase goods or services or to
7 make contributions to other political committees directly from a Bitcoin wallet is not
8 permitted under the Act and Commission regulations. CAF must sell its Bitcoins and
9 deposit the proceeds in its campaign depositories before using the funds to make
10 contributions or disbursements for goods and services.²⁰

11 This response constitutes an advisory opinion concerning the application of the
12 Act and Commission regulations to the specific transaction or activity set forth in your
13 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in
14 any of the facts or assumptions presented, and such facts or assumptions are material to a
15 conclusion presented in this advisory opinion, then the requestor may not rely on that
16 conclusion as support for its proposed activity. Any person involved in any specific
17 transaction or activity which is indistinguishable in all its material aspects from the

¹⁹ In Advisory Opinions 1982-08 (Barter PAC) and 1980-125 (Cogswell), the Commission permitted a committee to purchase goods and services with disbursements from outside the committee's campaign depository. In Advisory Opinion 2000-30 (pac.com), however, the Commission concluded that 2 U.S.C. § 432(h) and 11 C.F.R. § 103.3(a) compelled the opposite result, and the Commission distinguished Advisory Opinion 1980-125 (Cogswell) as relating only to "how the contribution should be valued." Advisory Opinion 2000-30 (pac.com) at 5 & n.11. The approach to disbursements taken in Advisory Opinion 1982-08 (Barter PAC) has never been cited or followed in any other advisory opinion, and it is less consistent with the text of the Act and Commission regulations (which include no exceptions to the depository requirement) than the contrary conclusions reached by the later advisory opinions discussed above.

²⁰ Because of this conclusion, the Commission does not answer CAF's questions 18 and 19, which concern the valuation and potential discounting of Bitcoins when disbursed for such purchases.

1 transaction or activity with respect to which this advisory opinion is rendered may rely on
2 this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note the analysis or
3 conclusions in this advisory opinion may be affected by subsequent developments in the
4 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
5 The cited advisory opinions are available from the Commission's Advisory Opinion
6 searchable database at <http://www.fec.gov/searchao>.

7 On behalf of the Commission,
8
9

10
11 Ellen L. Weintraub
12 Chair