



AOR 2013-15

August 13, 2013
OFFICE OF THE CLERK
FEDERAL ELECTION COMMISSION

Lisa Stevenson
Deputy General Counsel
Federal Election Commission
999 E Street NW
Washington, D.C. 20463

RE: Advisory Opinion Request of Conservative Action Fund PAC

Dear Ms. Stevenson:

Pursuant to 2 U.S.C. § 437f(a)(2), Conservative Action Fund PAC (“CAF”), a non-connected “Hybrid” political action committee, requests an Advisory Opinion from the Federal Election Commission (“FEC”) as to whether it may accept Bitcoins as contributions from individuals otherwise lawfully able to contribute and, if so, whether CAF may then itself contribute, sell, or directly spend these Bitcoins.

INTRODUCTION

Bitcoins are a new form of money. Based on the concept that money can be “any object, or any sort of record, accepted as payment for goods and services,” an anonymous creator designed this purely digital currency.² Bitcoins, designed as “electronic cash,” allow users to make online, peer-to-peer transfers of assets without utilizing a bank or other third party financial institution.³

Thus, Bitcoins are directly and nearly instantaneously transferred online, from one user’s “virtual wallet” to that of a receiving user. Multiple layers of cryptography ensure that only a Bitcoin user can actually spend his or her own Bitcoins. A user can be “anyone, anywhere in the world” who has registered a virtual wallet. Intermediate merchant services have developed to facilitate these Bitcoin transfers: the online merchant accepts the initial transfer, then directly transfers this amount to the receiving user in either Bitcoin or U.S. dollars.

The monetary value of Bitcoins depends purely upon merchants and others accepting Bitcoins as currency.⁴ As a result, their value is constantly in flux.⁵ But notwithstanding the worth of an individual Bitcoin, their general popularity is soaring. The total value of all Bitcoins in circulation is now over \$1.3 billion, and Bitcoins account for more than \$1 million of daily trade in the United States alone, distributed

¹ A Bitcoin is simply a number associated with a Bitcoin address. Physical Bitcoins, though rare, do exist, and can be any object—with the relevant number embedded inside. “The Bitcoin Wiki: FAQ,” available at <https://en.bitcoin.it/wiki/FAQ#General>.

² “About Bitcoin,” available at <http://bitcoin.org/en/about>.

³ Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System* at 1, available at <http://bitcoin.org/bitcoin.pdf>.

⁴ Jack Hough, “The Bitcoin Triples Again,” *The Wall Street Journal Online* (June 10, 2011), available at <http://www.smartmoney.com/invcst/stocks/the-bitcoin-triples-again-1307638613180/>. (“To recap, it’s a purely online currency with no intrinsic value; its worth is based solely on the willingness of holders and merchants to accept it in trade.”).

⁵ Timothy B. Lee, “An Illustrated History of Bitcoin Crashes,” *Forbes Online* (April 11, 2013), available at <http://www.forbes.com/sites/timothylee/2013/04/11/an-illustrated-history-of-bitcoin-crashes/> (describing Bitcoin’s history as a currency with fluctuating value).

across 40,000 transactions.⁶ Thousands of merchants and organizations already accept Bitcoin as payment for goods and services.⁷

As increasing numbers of individuals trade in Bitcoin, political parties and candidates also wish to accept and spend this new currency. The Libertarian Party now accepts Bitcoin contributions.⁸ Mark Warden, a recently re-elected New Hampshire State Representative, accepted Bitcoins in his recent campaign.⁹ Two former candidates also set up systems to accept Bitcoin contributions online: Eric Olson, a Libertarian candidate in North Dakota,¹⁰ and Jeremy Hansen, an independent state Senate candidate in Vermont.¹¹ CAF, a political action committee, wishes to do the same—while complying with all relevant campaign finance regulations.

LEGAL BACKGROUND

The Federal Election Campaign Act (“FECA”) defines “contribution” to include, in part, “any gift, ... deposit of money, or anything of value made for the purpose of influencing any election for Federal office.” 2 U.S.C. § 431(8); 11 CFR § 100.52(a). The term “money” includes “currency of the United States or of any foreign nation, checks, money orders, or any other negotiable instruments payable on demand.” 11 CFR § 100.52(c). The term “anything of value” includes in-kind contributions: the provision of any goods or services without charge, or at a charge which is less than the usual and normal charge for such goods or services. 11 CFR § 100.52(d)(1). In-kind contributions include “stocks, bonds, art objects, and other similar items to be liquidated.” 11 C.F.R. § 104.13(b).

Regulations mandate political action committees (“PACs”) treat monetary contributions and in-kind contributions differently. While the value of a monetary contribution is readily apparent, the amount of an in-kind contribution is equal to the “usual and normal value on the date it is received.” 11 C.F.R. § 104.13(a)(1). Goods are valued at their normal purchase price; services are valued at the prevailing commercial rate at the time the services are rendered.¹²

Retention and reporting requirements also differ. All money received by a political committee must be deposited in the PAC’s depository bank account within ten days of receipt or refunded to the contributor. 11 C.F.R. § 103.3(a); 2 U.S.C. § 432(h)(1). In contrast, the FEC has interpreted regulations to allow PACs to hold on to certain in-kind contributions longer without having to liquidate them within a set period. 11 CFR § 104.13(b); *See, e.g.,* Advisory Opinion (“AO”) 1989-06 (Eaehler).

Further, monetary contributions are reported in accordance with 11 CFR § 104.3(a). Each in-kind contribution is reported as a contribution and concurrently reported as an expenditure—unless the contribution is a stock, bond, art object, or other similar item to be liquidated. 11 CFR § 104.13(a). These

⁶ See “About Bitcoin”; *see also* “The Bitcoin Wiki: Trade,” available at <https://en.bitcoin.it/wiki/Trade>.

⁷ www.BitPay.com

⁸ The Libertarian Party, Membership, “Contribute with Bitcoin,” <http://www.lp.org/make-a-bitcoin-contribution>.

⁹ Re-elect Mark Warden State Rep, “Donate Bitcoins to the Campaign,” <http://www.markwarden.com/page/bitcoin-donation>.

¹⁰ Eric Olson for Congress, “Donate,” <http://ericolson2012.com/donate/>.

¹¹ Vitalik Buterin, “Bitcoin Usage for Political Donations Expands to Vermont,” Bitcoin Magazine (Oct. 3, 2012), available at <http://bitcoinmagazine.com/bitcoin-usage-for-political-donations-expands-to-vermont/>.

¹² FEC, Nonconnected Committees Guide at 15, available at www.fec.gov/pdf/nongui.pdf.



items, if not yet liquidated at the close of a reporting period, are reported as memo entries that record contributor information and the item's fair market value on the date received. 11 CFR § 104.13(b)(1). When the item is sold, the PAC records the proceeds and the purchaser's information if the item is purchased directly from the PAC—in which case the purchaser will be deemed to have made an in-kind contribution to the PAC. 11 CFR § 104.13(b)(2). The PAC also records the identity of the original contributor. *Id.* PACs can only sell the items for their usual, normal value; if less is charged, the difference between the two is deemed an in-kind contribution by the purchaser. 11 CFR § 100.52(d)(2).

FACTUAL BACKGROUND

CAF is a non-connected Hybrid PAC that wishes to accept online Bitcoin contributions from individuals and organizations that are otherwise lawfully able to contribute. CAF plans to accept Bitcoins as monetary contributions and in-kind contributions, and also intends to accept Bitcoins in its *Carey* and non-*Carey* accounts. *See Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011).

CAF intends to offer an online contribution page for Bitcoin contributors only. To process and accept these contributions, CAF intends to utilize a Bitcoin online merchant solution, such as BitPay.¹³ BitPay, or a similar company of CAF's choosing, would accept and clear the Bitcoin contributions.

On the Bitcoin contribution page, contributors would make a contribution by entering their relevant personal and employment information. A contributor then has two options. He or she can enter a certain number of Bitcoins to contribute and select the "submit" option, which would redirect the contributor to a BitPay web page. This page would display an invoice with the number of Bitcoins to be transferred to CAF's virtual wallet. Alternatively, the contributor can elect to contribute Bitcoins in their corresponding U.S. dollar amount. In that instance, the contributor would simply select a certain dollar amount to contribute, and BitPay would display a conversion rate valid for fifteen minutes. For instance, if a contributor wished to contribute \$1, the current conversion rate at the time of this writing is 0.0077 Bitcoins. To finalize the contribution, the contributor would have fifteen minutes to select "send 0.0077 Bitcoins" to CAF's virtual wallet. Upon choosing "send," BitPay would transfer these Bitcoins to CAF's virtual wallet.

Upon receiving Bitcoins to its wallet, CAF intends to either: 1) Treat the contribution as a monetary contribution, convert the Bitcoins into U.S. dollars based on the conversion rate, and deposit the full amount in CAF's depository bank account within ten days or otherwise refund the contribution to the contributor; or 2) Treat the contribution as an in-kind contribution and retain the Bitcoins in CAF's Bitcoin wallet for future disposition. From the Bitcoin wallet, CAF may later sell these Bitcoins, spend them directly to purchase goods and services, or make its own contributions using Bitcoins.

CAF seeks confirmation that these activities will comply with FECA and relevant FEC regulations. Further, CAF seeks specific guidance on valuing, retaining, selling, spending, and contributing Bitcoins received as contributions.

¹³ BitPay is used for example purposes only. Additional information is available at <https://bitpay.com/>.



DISCUSSION

The FEC has consistently interpreted both FECA and FEC regulations “in a manner consistent with contemporary technological innovations . . . where the use of the technology would not compromise the intent of the Act or regulations.” AO 1999-09 (Bradley for President).

Along these lines, as technology progresses, the FEC has continually permitted the use of emerging electronic technology to make contributions. Individuals may automatically transfer funds from their bank accounts, AO 1989-26 (Bond for Congress), and can contribute online with a credit card, AO 1995-09 (NewtWatch), or using an electronic check. AO 1999-36 (Campaign Advantage). A contributor may even contribute via text message. AO 2012-28 (CTIA).

Further, it is well-established that an individual may contribute money—or *anything* of value. *See* 2 U.S.C. § 431(8); 11 CFR § 100.52(a). Thus, permissible contributions include electronic transfers of intangible currency, *see, e.g.*, AO 1989-26 (Bond for Congress), as well as contributions of intangible goods. 11 C.F.R. § 104.13(b) (permitting contribution of stocks and bonds).

Accordingly, the FEC should have no concern in permitting individuals to make online Bitcoin contributions to CAF. Indeed, Bitcoins represent a contemporary technological innovation: a new, purely electronic currency that can be immediately transferred online. *See* AO 1999-09 (Bradley for President). And nothing suggests that online contributions of Bitcoins would in any way compromise the intent of either FECA or current FEC regulations. *See id.* Bitcoins simply provide individuals another means to contribute money or, alternatively, a thing of value to those PACs which best represent their interests.

I. CAF Should Have Full Discretion in Determining Whether to Treat Bitcoin Contributions as Monetary or In-Kind Contributions

Bitcoin is an electronic currency that can be used to directly purchase items, goods, and services. *See Nakamoto, supra* note 3. Bitcoins are widely accepted as money, and can be exchanged for other currencies, including U.S. dollars. Recognizing these facts, at least one court has conclusively held that “Bitcoin is a currency or form of money.” *SEC v. Shavers*, 2013 U.S. Dist. LEXIS 110018, at *5 (E.D. Tex. Aug. 6, 2013).

Although Bitcoin is not an official U.S. government currency, the FECA does not require contributions in this form. 2 U.S.C. § 431(8); 11 CFR § 100.52(a). Indeed, the opposite is true. Monetary contributions of other currencies are specifically contemplated: “the term *money* includes currency of the United States or of any foreign nation, checks, money orders, or any other negotiable instruments payable on demand.” 11 CFR § 100.52(c). Because the definition of money simply “includes” the enumerated types of currency (and other methods of payment), nothing suggests this list is exclusive, and the statute certainly does not preclude accepting Bitcoins—a universal digital currency—as monetary contributions. Further, because Bitcoins can be converted to U.S. dollars, their value as monetary contributions is immediately clear upon conversion. *See* AO 1982-08 (BARTERPAC).

However, because Bitcoins have fluctuating values and can be bought and sold, they are also properly viewed as intangible goods with their own value. 11 CFR § 100.52(d)(1). Thus, CAF should have full discretion in classifying Bitcoins as monetary contributions or as in-kind contributions—and Bitcoins should be valued accordingly. 11 CFR § 100.52(c)-(d).

In *Cogswell*, the FEC considered whether a contribution of silver dollar coins to a campaign committee should be treated as a monetary contribution or as an in-kind contribution, and how the coins should be valued. AO 1980-125. Because the contributor had not specified how his or her contribution was to be used, the FEC concluded that the committee could treat the contribution as either a monetary contribution or an in-kind contribution with a different value. *See id.* at 1-2. The proper procedures for valuing and retaining the currency depended upon how the committee chose to treat the currency, and the value procured therefrom. *Id.* at 2.

In *BARTERPAC*, the FEC similarly concluded that intangible “credit units” used for bartering purposes were like currency but also resembled “typical” in-kind contributions. AO 1982-08 at 5. There, the FEC considered barter exchanges, where members purchased goods and services on a barter basis. *Id.* at 1. If one member bartered for the goods of another member, but the latter did not wish to obtain the goods of the former in exchange, an otherwise valueless “credit unit” was used to denote a receivable due. *Id.*

According to the FEC, credit units “resemble in-kind contributions under the Act in that their value can be determined with certainty only when they are exchanged, [but] they nevertheless are like cash in that they function as a medium of exchange.” *Id.* at 4. Thus, because credit units did not need to be converted into cash to obtain goods and services, they were indisputably “like cash.” *Id.* at 4. But because credit units had their own indeterminate value, they would also constitute in-kind contributions. *Id.* at 5. In light of the credit units’ dual roles, the FEC concluded that *BARTERPAC* could simply devise “a reasonable method for valuing a contribution of credit units.” *Id.* at 4.

Bitcoins, like silver dollar coins and credit units, have value both as currency and as an intangible good with their own value. Thus, Bitcoins are like cash, but they also have an indeterminate value, rendering them comparable to in-kind contributions. Accordingly, CAF should be permitted to treat Bitcoins as either monetary or in-kind contributions.

II. If CAF May Treat Bitcoin Contributions as Monetary Contributions, CAF Requires FEC Guidance on the Application of Campaign Finance Laws

If CAF may treat Bitcoins as monetary contributions, CAF will convert the contributed Bitcoins to U.S. dollars and deposit their corresponding value in CAF’s bank account within ten days or otherwise refund them, per 11 CFR § 103.3(a) and 2 U.S.C. § 432(h)(1). *See Cogswell* at 2. Yet, due to the possible time lag inherent in this process, a question arises for valuation purposes. To comply with campaign finance law, CAF requires FEC guidance on when and how to value all Bitcoins received as monetary contributions.

A contribution is considered “made” when the contributor relinquishes control. 11 CFR § 110.1(b)(6); AO 1995-09 (*NewtWatch*). Thus, Bitcoins will have a dollar value when the contribution is made. But a

contribution is “received” when the person receiving the contribution on behalf of the PAC obtains possession of it. 11 CFR § 102.8(a). Accordingly, though a contributor may elect to contribute a certain number of Bitcoins, since the value of Bitcoins is in flux, by the time this contribution is “received” on behalf of CAF, their dollar value may have changed.

Additionally, FEC regulations require a PAC treasurer to regularly examine contributions and ensure that those received from a single contributor to a non-*Carey* account remain within the applicable contribution limits. 11 CFR § 103.3(b). If a PAC receives a contribution that is excessive on its face or that exceeds the limit when aggregated with prior contributions from the same contributor, the PAC must return the excessive portion of the contribution, per 11 CFR § 103.3(b)(3). Alternatively, the PAC may request the contributor’s permission to re-designate the contribution or reattribute the excessive portion of the contribution to a joint contributor, as appropriate. *Id.* But in order for CAF to issue an accurate refund or properly re-designate or reattribute an excess contribution, CAF must first be able to calculate the value of the contributed Bitcoins.

After receiving FEC guidance on valuation, CAF intends to directly spend and contribute Bitcoins received as monetary contributions. A PAC can use monetary contributions to pay for other goods and services. *See, e.g., Cogswell.* And PACs can permissibly contribute in varying amounts to candidates and candidate committees; to national party committees; to state, district, and local party committees; and to other PACs.¹⁴ 2 U.S.C. § 441a(a)(1); 11 CFR § 110.1. Because CAF will convert all Bitcoins treated as monetary contributions to U.S. dollars, CAF can directly spend and contribute these converted Bitcoins in U.S. dollar amounts. *See id.*

CAF also intends to fully comply with its reporting obligations under 11 CFR § 104.3(s)—but such compliance again requires FEC guidance on calculating Bitcoins’ value.

III. If CAF May Treat Bitcoin Contributions as In-Kind Contributions, CAF Requires FEC Guidance on the Application of Campaign Finance Laws

If CAF may treat Bitcoins as an in-kind contribution, 11 CFR § 104.13 (b) would apply, and the Bitcoins’ value would be equal to the “usual and normal value”—their fair market value—on the date received. 11 CFR § 104.13(a)(1); *see* 11 CFR § 104.13(b)(1). Thus, to comply with campaign finance law, CAF requires FEC guidance on when and how to calculate the fair market value of all Bitcoins received as in-kind contributions.

In *Cogswell*, the FEC determined that the contributed coins’ value would be equal to “whatever the fair market value of those silver coins was on the day the coins were received by the Committee,” which “would be determined by the price of silver coin on the silver commodities market.” AO 1980-125 at 2. The FEC, perhaps recognizing that a commodity’s price may change throughout the day on which it is received, more specifically defined value for purposes of contributed stock. In *pac.com*, the FEC followed *Cogswell* to explain that, for publicly-traded stock, the contribution would be valued “at the closing price of the stock on the day of the committee’s receipt.” AO 2000-30 at 5. Thus, the stock’s price “would be

¹⁴ FEC, Contribution Limits 2013-2014, available at <http://www.fec.gov/pages/brochures/contriblimits.shtml>.

the price of that particular class of corporate stock on the exchange on which the stock is principally dealt.” *Id.*

Alternatively, the FEC permitted BARTERPAC to simply attach a reasonable value to each contributed credit unit. AO 1982-08. Valuing each unit as one dollar was “not unreasonable.” *Id.* at 4. Further, “since the purchasing power and cash value of credit units is actually less than one dollar,” valuing the units as such did not “threaten the integrity of the Act’s contribution limitations.” *Id.*

Much like silver coins and stock, and unlike credit units, the value of Bitcoins fluctuates and depends on the relevant market. Thus, CAF cannot accurately attach a reasonable value to each contributed Bitcoin. *See BARTERPAC.* Instead, when CAF treats Bitcoins as in-kind contributions, their value must be determined by the price of Bitcoins on the day they are received by CAF. But unlike silver and stock, Bitcoins have no daily closing price: the market for Bitcoins is 24 hours. Accordingly, assuming CAF “receives” the Bitcoins on the day they are transferred to CAF’s digital wallet, CAF requires clarification regarding the specific point at which to set the value of this in-kind contribution—and how it may do so, absent a fixed market price.

CAF also wishes to retain Bitcoins for disposition at a later time. While all receipts must be deposited or refunded within ten days, the FEC has repeatedly indicated that a PAC may receive certain items that it intends to liquidate at a later date and hold those items for more than ten days without liquidating them. *See, e.g., Cogswell. In Boehlert,* the FEC concluded that a PAC could accept in-kind contributions of stocks. AO 1989-06. Importantly, the FEC did not require the PAC to liquidate the stock within any set time period after its receipt, nor did the FEC require the PAC to deposit the proceeds in the PAC’s account within any specific period. *See id.* In *pac.com*, the FEC confirmed that PACs can hold stocks in a securities account for disposition at a later time. AQ 2000-30 at 8. And PACs can do the same for all items listed in 11 CFR § 104.13(b): stocks, bonds, art objects, and other similar items to be liquidated. *See id.* Thus, CAF believes it may receive in-kind contributions of Bitcoins and hold these Bitcoins in either its virtual wallet (or another account as the FEC deems fit) for disposition at a later time.

Additionally, CAF seeks to reattribute excess Bitcoin contributions to CAF’s non-Carey account. 11 CFR § 103.3(b). If reattribution is impossible, or if reattribution permission is not granted, CAF intends to refund the contributor either in Bitcoins or in a monetary amount equal to the excess value. *See Cogswell* at 3. In *Cogswell*, the FEC concluded that, if the committee received a contribution of silver with a value that exceeded individual contribution limits, the excess should be returned to the contributor “either in the form given, i.e. silver dollars, or in an amount equal to the excess which reflects the value of the silver dollars on the date of receipt by the Committee.” AO 1980-125 at 3. But should CAF refund the contributor in Bitcoins, if the Bitcoins’ value changes between the time a contribution is made and the time of refund, CAF is unsure precisely how many Bitcoins it should return to the contributor.

CAF may also wish to sell some or all of the Bitcoins it receives. The FEC has determined that a PAC can treat in-kind contributions as commodities to be liquidated and sell them on the market. *See Cogswell; Boehlert; pac.com.* In these instances, the goods have “a value equal to the usual and normal value on the date received.” 11 CFR § 104.13(a)(1). Accordingly, after the FEC provides guidance on Bitcoins’ proper valuation, CAF intends to sell Bitcoins—and spend them directly to purchase goods and services.

A PAC can permissibly use contributions of goods to pay for other goods and services. *See, e.g.,* Cogswell. The FEC has allowed a PAC to pay employee salaries in contributed silver dollars, and has similarly allowed PACs to pay vendors or service providers with contributed credit units. *Id.*; BARTERPAC. But to avoid making an in-kind contribution, the individual providing services cannot charge less than the normal or usual charge for services rendered. 11 CFR § 100.52(d). In BARTERPAC, the FEC determined that PACs could use contributed credit units to pay vendors for goods or services. AO 1982-08 at 5. To avoid making an in-kind contribution, the vendor must simply charge “the usual and normal charge of credit units for the goods or services he provides.” *Id.* Similarly, CAF anticipates paying the normal and usual charge of Bitcoins for goods purchased or services rendered.

Further, if some vendors or service providers extend discounted rates to those paying for goods or services in Bitcoin, CAF may wish to take advantage of these lower rates, but is unsure whether doing so would result in the vendor making an in-kind contribution. In the past, the FEC has concluded that purchasing goods or services at a discount does not result in an in-kind contribution if the discounted goods were also made available to other purchasers on equal terms, or as part of a pre-existing business relationship. *See* AOs 1992-24 (Pilzer); 1989-14 (Anthony’s Pier 4); 1987-24 (Hyatt). Thus, if a vendor extends discounts to CAF on the same terms as it extends discounts to all other (political and non-political) purchasers of goods who pay in Bitcoin, CAF believes that taking advantage of this discount will not result in an in-kind contribution. *See id.*

CAF also intends to contribute Bitcoins directly from its virtual Bitcoin wallet, or from another Bitcoin account. PACs can permissibly contribute in varying amounts to candidates and candidate committees; to national party committees; to state, district, and local party committees; and to other PACs.¹⁵ 2 U.S.C. § 441a(a)(1); 11 CFR § 110.1. In BARTERPAC, the FEC established that, if a PAC received credit units as contributions, the PAC could in turn contribute those credit units directly to a candidate, PAC, or party committee. AO 1982-08 at 4. The FEC recognized that nothing in either FECA or FEC regulations would prohibit contributions in the form of credit units, which were clearly a “thing of value.” *Id.* Accordingly, such contributions were permissible, provided they fell within the contribution limits. *Id.*

But in *pac.com*, the FEC concluded that, if a PAC received stock as an in-kind contribution, the PAC could not contribute those stocks directly from the PAC’s securities account to other political committees. AO 2000-30 at 8. Instead, the PAC had to first sell the stocks and deposit the proceeds in the PAC’s depository account; then, the PAC could contribute up to the permissible limits from this account. *Id.*

Bitcoins, like credit units, are an intangible “thing of value” that can be used to purchase goods and services (like cash) and can also be treated as in-kind contributions and exchanged. *See* BARTERPAC at 4. Unlike stocks, Bitcoins are not purely “committee investments.” *See pac.com* at 8. Thus, though the FEC prohibits PACs from directly contributing stocks, Bitcoins are easily distinguishable. The FEC should have no concern in permitting CAF to contribute Bitcoins directly from its virtual wallet or Bitcoin account to other PACs, candidates, and committees to the full extent of the law. 2 U.S.C. 441a(a)(1); 11 CFR § 110.1.

¹⁵ FEC, Contribution Limits 2013-2014, available at <http://www.fec.gov/pages/brochures/contriblimits.shtml>.

CAF intends to comply fully with FEC reporting requirements. Under 11 CFR § 104.3(a), in-kind contributions are reported as contributions but must also be concurrently reported as expenditures at the same usual and normal value on the appropriate expenditure schedule under § 104.3(b). 11 CFR § 104.13(a)(2). But an in-kind contribution of “a stock, bond, art object, or other similar item to be liquidated” is reported differently. 11 CFR § 104.13(b). These items, if not yet liquidated at the close of a reporting period, are reported as memo entries that record contributor information and the items’ fair market value on the date received. 11 CFR § 104.13(b)(1). When the item is sold, the PAC must record the proceeds and the identification of the original contributor. 11 CFR § 104.13(b)(2). Any expenses related to the sale must also be reported. 11 CFR §§ 104.13(b)(2)(i) and (b)(4)(i).

Further, if the contributed item is purchased directly from the PAC, the PAC must also record the purchaser’s personal information, as the purchaser will be deemed to have made a contribution to the PAC. 11 CFR § 104.13(b)(2). But if the purchaser is not known, the FEC has suggested that such a sale does not amount to a contribution. *See pac.com* at 9. In *pac.com*, the FEC decided that stocks sold through a broker on the market, where the purchaser was not known, did not amount to contributions. AO 2000-30 at 9. In those instances, “the dollar total of the purchase should be reported as an ‘other receipt’ listing the broker and explaining that the amount is the proceeds from the sale to an unknown purchaser.” *Id.*

Should CAF sell Bitcoins to a known purchaser, CAF intends to record the purchaser’s personal information and report the sale as a contribution. 11 CFR § 104.13(b)(2). But if CAF sells Bitcoins on the market, or in a capacity where CAF does not know the purchaser’s identity, CAF is unsure whether to treat the sale as a contribution—or report the dollar total as an “other receipt,” per *pac.com*.

QUESTIONS PRESENTED

Accepting Bitcoin Contributions

1. May CAF lawfully accept Bitcoins as a monetary contribution?
2. May CAF lawfully accept Bitcoins as an in-kind contribution?
3. May CAF decide how to treat these contributions?
4. Do these answers, or answers to the subsequent questions, change depending upon whether the contribution is made to a *Carey* or non-*Carey* account?

Treating Bitcoins as Monetary Contributions

5. If CAF treats Bitcoins as a monetary contribution, how should CAF value the Bitcoins: as the U.S. dollar amount selected by the contributor, as the Bitcoins’ value in U.S. dollars at the time CAF deposits them into CAF’s depository bank account, or as another amount?
6. Must CAF deposit the relevant U.S. dollar amount in CAF’s depository bank account within ten days?
7. In the event CAF receives an excessive contribution of Bitcoins, can CAF seek permission from the contributor to reattribute the excess amount under 11 CFR § 103.3(b)(3)?

8. If the contributor does not grant such reattribution permission within 60 days, can CAF choose to refund the contributor either in Bitcoins or in a dollar amount?
9. May CAF bifurcate its treatment of a Bitcoin contribution between its *Carey* and non-*Carey* accounts?
10. In the case of a monetary refund of an excess contribution, what dollar amount should CAF refund: the excess amount which reflects the value of those Bitcoins based on the date of their receipt, an amount that reflects the value of Bitcoins at the time of refund, or another amount?
11. How and when should CAF calculate the Bitcoins' value for reporting purposes, and should CAF simply follow the reporting guidelines in 11 CFR § 104.3(a)?

Treating Bitcoins as In-Kind Contributions

12. If CAF treats Bitcoins as an in-kind contribution under 11 CFR §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?
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?
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?
16. If CAF treats Bitcoins as commodities to be liquidated and sells them on the market, are Bitcoins valued based on their date received, 11 CFR §104.13(a)(1), and if so, when are the Bitcoins "received," and how should CAF calculate their value? (*See Valuation and Retention, Questions 5 and 6*)
17. Can CAF pay directly for goods and services using Bitcoins?
18. When paying for goods and services in Bitcoin, in order to avoid charging an individual less than the normal or usual charge for services rendered, 11 CFR § 100.52(d), so the individual would be deemed to have made an in-kind contribution, how should CAF calculate the usual or normal charge for services rendered?
19. When paying for goods and services in Bitcoin, if a vendor or service provider offers CAF a discounted rate for using Bitcoin, will the vendor or service provider be deemed to have made an in-kind contribution if the vendor or service provider offers the same discount to all other purchasers who pay in Bitcoin?
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?
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 CFR § 104.13(a)(2), or should CAF follow the reporting guidelines in 11 CFR § 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 CFR § 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)?
24. How should CAF report the expenses, if any, relating to the sale of the Bitcoins, such as commissions or fees?

CONCLUSION

CAF wishes to accept Bitcoins as monetary and in-kind contributions from individuals and organizations otherwise lawfully able to contribute. CAF also intends to sell, spend, and directly contribute these Bitcoins. These actions are similar to those permitted by other Advisory Opinions, including BARTERPAC and Cogswell, and the FEC should have no concern in permitting them. So CAF can ensure compliance with FECA and FEC regulations, CAF seeks guidance on valuing, retaining, selling, spending, and contributing Bitcoins received as contributions.

Respectfully Submitted,

DAN BACKER, ESQ.

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RE: AO request: Conservative Action Fund
 Dan Backer
 to:
 JSelinkoff
 08/26/2013 06:26 PM
 Cc:
 rknop
 Hide Details
 From: "Dan Backer" <DBacker@DBCapitolStrategies.com>
 To: <JSelinkoff@fec.gov>,
 Cc: <rknop@fec.gov>
 History: This message has been forwarded.

Ms. Selinkoff,

Thank you for your email and for taking the time to speak with me earlier.

Per our conversation, I would like to confirm that where the AOR refers to acquiring or recording contributor information, we meant in compliance with FEC regulations governing our best efforts to capture name, address, occupation, and name of employer of contributors aggregating in excess of \$200 per election cycle. Naturally, identifying which contributors have in fact crossed that threshold turns on the answers to the AOR with respect to valuation.

In addition, we have while we did not identify them specifically in the AOR, one of the Bitcoin vendors whose goods and services CAF may utilize (provided sufficient bitcoinage is acquired), and which are offered at a discount, is Picobarn. Based in Athens, Georgia, Picobarn offers a range of website services for small-budget businesses, including custom website design. Picobarn offers a 25% discount on all orders made using Bitcoin. The discount is described here: <http://picobarn.com/buy-niobile-website-bitcoins-picobarn-begins-accepting-digital-currency/>

Additionally, from the perspective of our fundraising activities and providing donor recognition items or hosting high-dollar donor events, 5 Diamond Delicacies is a U.S. based company that sells truffles, caviar, and other gourmet food. The company offers a 20% discount on all products for users who pay in Bitcoin. (information available at <http://www.5DiamondDelicacies.com>). JJGames.com is an online retailer of used video games, consoles, and accessories. The site offers a 5% discount on orders paid for with Bitcoin. (information available at <http://www.jjgames.com/page/bitcoin>). CAF's ability to take advantage of the services and corresponding Bitcoin discounts offered by these companies is dependent on multiple factors, including acquiring sufficient bitcoinage and the complexity of valuation based on the answers to the AOR, the general practice of offering discounts to Bitcoin users is not rare and in fact increasingly common. CAF would like to take advantage of any such discount as it develops Bitcoin holdings in a compliant manner.

I hope this answers your questions.

Regards,

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 202-210-5431 office
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DB Capitol Strategies PLLC

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From: JSelinkoff@fec.gov [<mailto:JSelinkoff@fec.gov>]

Sent: Monday, August 26, 2013 3:16 PM

To: dbacker@dbcapitolstrategies.com

Cc: rknop@fec.gov

Subject: AO request: Conservative Action Fund

Mr. Backer,

It was good to speak with you today about CAF's AO request. As I mentioned, you can email me at your convenience when you find the information about the vendor(s) who may be interested in offering CAF a discount on goods and services if CAF were to pay in bitcoin (as discussed on page 8 and in questions 18 and 19 of the request). You may include the other information we discussed – whether the committee would seek a contributor's actual vs. bitcoin identity -- in the same email.

If you wish to discuss your request, or have any questions, please do not hesitate to call me.

Sincerely,
Jessica

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