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Comment on AOR 2013-15

September 16, 2013

**BY HAND DELIVERY**

Shawn Woodhead Werth  
Office of the Commission Secretary  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

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FEDERAL ELECTION  
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2013 SEP 17 AM 11:41  
OFFICE OF GENERAL  
COUNSEL

**RE: Comments on Advisory Opinion Request 2013-15 (Conservative Action Fund)**

Dear Secretary Werth:

BitPay, Inc. ("BitPay") appreciates the opportunity to comment on the Conservative Action Fund PAC's ("CAF") August 15, 2013 Federal Election Commission ("Commission") Advisory Opinion Request (the "Request"). BitPay agrees with CAF that bitcoin donations may be processed and accepted in a manner that fully complies with applicable law, and urges the Commission to grant CAF's request and confirm that bitcoin contributions are permissible. Indeed, many campaigns and committees are *already* successfully accepting bitcoin contributions, including the national Libertarian Party, and various federal and state political campaigns.

**STATEMENT OF INTEREST**

BitPay provides a payment processing system that facilitates the acceptance of bitcoin by online merchants and other organizations, including non-profits and political campaigns. Stated simply, BitPay enables its clients to accept payment for goods and services in the form of bitcoin with the same (if not more) ease and security as that associated with credit cards, debit cards, and PayPal.<sup>1</sup> BitPay currently provides online payment support services to approximately 10,000 merchants.

While BitPay generally charges "merchant" clients for its payment processing services, BitPay's policy is to offer its services free of charge to not-for-profit organizations. BitPay has enabled bitcoin contributions for several political campaigns and parties including the national Libertarian Party, Mark Warden's New Hampshire State Representative campaign, and Eric Olson's North Dakota Congressional campaign. BitPay believes that by providing non-profit

<sup>1</sup> BitPay only provides its services to its merchant clients, and does not operate a bitcoin wallet service or any other consumer-facing service.

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organizations and political campaigns with the ability to accept bitcoin contributions, it helps them to broaden their donation base.

BitPay offers each client the ability to accept donations by providing a donation button that can be added to the client's website. Depending on client preferences, payment amounts may be entered in bitcoins or in U.S. Dollars. BitPay clients may also (and routinely do) design and implement individualized security controls to limit acceptance of their bitcoin transfers to those which comport with applicable legal or regulatory requirements, including federal and state campaign contribution laws. Each client is able to choose what personal and verification information is collected from buyers/donors, can set one or more purchase/donation limits, and can tailor the information collected for each tier. Although BitPay does not undertake to independently verify the personal information supplied by bitcoin users, clients are provided with the information associated with each transfer in order to enable them to do so where necessary or appropriate. Finally, each transfer initiated through BitPay's system is directed to a unique bitcoin address, which allows BitPay to refund the donation if necessary.

### DISCUSSION

Federal election law requires political committee treasurers to "keep an account of (1) all contributions received by or on behalf of such political committee; (2) *the name and address of any person who makes any contribution in excess of \$50*, together with the date and amount of such contribution by any person; [and] (3) *the identification of any person who makes a contribution or contributions aggregating more than \$200* during a calendar year, together with the date and amount of any such contribution." 2 U.S.C. 432(c)(1)-(3). The treasurer must also "examin[e] all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed . . . contribution limitations." 11 C.F.R. 103.3(b).

The Commission has consistently taken a flexible approach to the manner in which political committees collect both contributions, and the information they are required to report. The Commission has allowed committees to accept donations in variable forms, despite the fact that donor identities may not be facially apparent, so long as that facially apparent information may be supplemented when required. *See generally*, Adv. Op. 2012-30 (Sept. 4, 2012) (permitting political committees to accept contributions over \$50 per month and \$200 per year or election cycle via text message); Adv. Op. 1999-36 (Jan. 14, 2000) (permitting contributions via electronic check); Adv. Op. 1995-9 (Apr. 21, 1995) (permitting contributions via new "electronic means"); Adv. Op. 1989-26 (Dec. 1, 1989) (permitting committees to accept contributions in the form of electronic fund transfers).

Just recently, in fact, the Commission examined and approved of the acceptance of contributions via mobile phone text messages, subject only to the condition that committees engage third-party payment processors to collect identifying information not available from texting platforms. *See* Adv. Op. 2012-30. Building upon Commission precedent allowing committees to accept small contributions from donors who could only be identified by reference to their mobile phone numbers, the Commission concluded that political committees could accept text contributions exceeding \$50 per month and \$200 per year or election cycle from donors who provided personal information such as their names, addresses, employers, and occupations, and attested to their qualification to contribute via a third-party data aggregation platform. *Id*; *see also* Adv. Op. 2012-17; Adv. Op. 1999-9 (concluding that, if donors were required to complete a separate

electronic form providing detailed personal information and attesting to the fact that they meet all legal requirements to make political contributions, donations collected via electronic means should be eligible for federal fund matching); Adv. Op. 1995-9 (condoning the use of the internet to collect credit card and other "electronic" contributions so long donors were required to provide personal identifying information and attest to their qualification to donate).

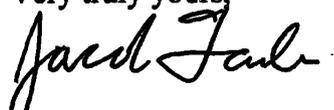
CAF's Request outlines its intention to engage the services of an automated Bitcoin payment processing service, like BitPay, to accept and clear bitcoin contributions. As explained above, BitPay's flexible platform allows each committee to specify the information that must be provided by donors and to create one or more donation limit tiers to ensure compliance with data collection requirements. Among other things, committees can require donors who wish to contribute more than \$50 a month and/or \$200 a year or election cycle to provide all of the personal information required by U.S.C. 432(c)(1)-(3). In addition, committees can confirm (to a level already acknowledged as sufficient by the Commission in Adv. Op. 2012-17) that donors are qualified to contribute by requiring each individual to check electronic attestation boxes regarding their citizenship, etc.<sup>2</sup> The system will reject all contributions for which the required personal information or attestations are not provided or complete. All collected information is then provided to the committee so that it can monitor the sources and amounts of its bitcoin donations, provide identifying information as required by election law, and return any contributions which exceed federal limits, or which otherwise are impermissible.

In short, because BitPay's services enable recipients to accept and process bitcoin transactions in the same manner as credit cards and other electronic means, and the Commission has already approved of the acceptance of electronic and credit card contributions when the data collection measures contemplated by CAF and provided by BitPay are put in place, BitPay sees no reason why the Commission should not similarly conclude that federal political committees may lawfully accept bitcoin contributions.

### CONCLUSION

BitPay urges the Commission to conclude that bitcoin contributions processed in accordance with the protocol outlined above comport with all requirements established by federal election law, thereby rendering them permissible.

Very truly yours,



Jacob S. Farber  
Ezra W. Reese  
Hillary B. Levun  
Counsel to BitPay, Inc.

JSF:DA

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<sup>2</sup> Although the Bitcoin protocol is a decentralized network available for use by individuals worldwide (accounting for BitPay's general policy allowing users to process transactions with reference to any number of foreign currencies), BitPay can limit available currency conversions to the U.S. dollar on committee pages in order to further discourage foreign nationals from attempting to contribute.