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Washington, DC 20463

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AGENDA ITEM
For meeting of November 21, 2013
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November 20, 2013

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
Deputy General Counsel

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Acting Associate General Counsel

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Assistant General Counsel

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Attorney

Subject: AO 2013-15 (Conservative Action Fund) – Draft D

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00 am (Eastern Time) on November 21, 2013.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2013-15

2
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4 DB Capitol Strategies PLLC
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6 Alexandria, VA 22314

DRAFT D

7
8 Paul D. Kamenar, Esq.
9 Coolidge Reagan Foundation
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11 Washington, DC 20006
12

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 described
20 below. CAF may also use Bitcoins it receives to purchase goods and services or to make
21 contributions to other committees.

22 ***Background***

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

26 CAF is a nonconnected political committee that registered with the Commission
27 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. Gov't
4 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.* The requester states that Bitcoins "act as real world currency in that
8 users pay for real goods and services . . . with [B]itcoins as opposed to U.S. dollars or
9 other government issued currencies." *Id.* A user transfers Bitcoins from the user's online
10 Bitcoin "wallet" either to other users, to merchants who accept Bitcoins as payment, or
11 through "[t]hird-party exchanges [that] allow [B]itcoin users to exchange their [B]itcoins
12 back to government-issued currencies." *Id.* In these ways, Bitcoin users can engage in
13 online transactions without using a bank or other third-party financial institution. AOR at
14 1. Bitcoin transfers are made online and are nearly instantaneous. *Id.*

15 As an alternative to purchasing goods and services, Bitcoins may be exchanged
16 for U.S. dollars. Bitcoins' dollar exchange values are determined largely through the
17 exchanges on which many of these transfers are conducted. There are numerous online
18 exchanges on which potential buyers and sellers of Bitcoins post "bid" and "ask" prices
19 akin to those on securities exchanges. *See, e.g.,* <http://bitcoincharts.com/markets/> (last
20 visited Sept. 25, 2013) (collecting Bitcoin exchange data). The dollar exchange value of

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 Bitcoins “has been volatile”: Between May 2012 and May 2013, the value of one Bitcoin
2 ranged between \$5 and \$237. GAO 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”). To comply
10 with the relevant provisions of the Act and Commission regulations — such as those
11 regarding contribution limits and recordkeeping requirements — CAF represents that it
12 would acquire and record the “relevant” information regarding each contributor who
13 makes a contribution to CAF using Bitcoins, such as the contributor’s name, address,
14 occupation, and employer, as applicable. AOR at 3; AOR Supplement.

15 Once contributors finalize their contributions, Bitpay would transfer Bitcoins to
16 CAF’s Bitcoin wallet. AOR at 3. Upon receipt of Bitcoin contributions into its virtual
17 wallet, CAF indicates that it intends to either (1) “convert the Bitcoins into U.S. dollars
18 based on the conversion rate, and deposit the full amount in [its] depository bank account
19 within ten days;” (2) retain the Bitcoins in its Bitcoin wallet; or (3) refund the
20 contribution. *Id.* If CAF chooses to convert to the dollar equivalent of the Bitcoin
21 contribution, that amount will be forwarded to CAF’s bank account within one business

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).

1 day of the BitPay transaction. *See* Bitcoin Transaction Processing,
2 <https://bitpay.com/bitcoin-direct-deposit> (last visited Sept. 25, 2013). Alternatively, if
3 CAF retains Bitcoins in its Bitcoin wallet (*i.e.*, chooses not to convert Bitcoin
4 contributions to its dollar equivalent upon receipt), it intends to either (1) sell Bitcoins at
5 a later date; (2) spend them directly to purchase goods and services; or (3) use them to
6 make contributions to other political committees. AOR at 3. CAF indicates that it
7 wishes to take advantage of discounted rates that some vendors offer to any purchaser
8 who uses Bitcoins in the transaction. *Id.* at 8; AOR Supplement.

9 ***Questions Presented***

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

15 ***Legal Analysis and Conclusions***

16 As discussed in more detail below, the Commission concludes that Bitcoins may
17 be generally accepted as in-kind contributions under valuation, reporting, and
18 disbursement procedures similar to those that the Commission has previously approved
19 for other in-kind contributions. In addition, the requestor may spend Bitcoins directly
20 from a Bitcoin wallet to make contributions or purchase goods or services as described
21 below.

1 **A. Bitcoins as In-Kind Contributions³**

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

10 The Commission need not determine whether Bitcoins fit within the definition of
11 “money” as set forth in Commission regulations to resolve this advisory opinion request.⁵
12 Instead, the Commission will for practical reasons treat the receipt and contribution of

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?”).

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 The Commission’s goal in this advisory opinion is to provide practical guidance to the requestor regarding its proposed conduct. Bitcoins may constitute a private medium of exchange and may share many common elements with the traditional monetary mediums of exchange enumerated in the Commission’s regulation. However, it is unclear at this time if Bitcoins are of a similar enough kind to constitute a private form of “money.” The Commission acknowledges that virtual and other private currencies are the subject of complex legal and philosophical debates regarding their status as “money.” *See, e.g., SEC v. Shavers*, No. 4:13-CV-416, 2013 WL 4028182, at *2 (E.D. Tex. Aug. 6, 2013); 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 (2013), *available at* http://fincen.gov/statutes_regs/guidance/pdf/FIN-2013-G001.pdf. However, the Commission does not believe it is necessary to resolve this question to address the specific conduct proposed by the Requestor. Nonetheless, as a policy matter, the Commission has decided to treat Bitcoins as in-kind contributions to facilitate accurate reporting. 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.

1 Bitcoins as in-kind contributions. First of all, Bitcoins cannot be deposited into a
2 political committee's campaign depository; thus, they cannot be cash on hand.
3 Additionally, because the U.S. dollar exchange value of Bitcoins can fluctuate
4 dramatically, treating Bitcoins as "money" would complicate a committee's reporting of
5 cash on hand. Therefore, at this time, the most practical way for the Commission to
6 categorize Bitcoins is as in-kind contributions.

7 Nothing in the Act or Commission regulations prohibits a political committee
8 from accepting Bitcoins as in-kind contributions. The Commission has issued numerous
9 advisory opinions addressing permissible contributions of non-monetary items "of
10 value," such as public stocks, private stocks, commodities, and computer equipment.
11 *See, e.g.,* Advisory Opinion 1996-29 (Cannon) (computer equipment); Advisory Opinion
12 2000-30 (pac.com) (stock); Advisory Opinion 1980-125 (Cogswell) (commodities).
13 Although the receipt of contributions in Bitcoin form presents certain unique
14 considerations with regard to complying with the Act's disclosure requirements, none of
15 these bars the acceptance of Bitcoins, and CAF states that it will comply with all
16 applicable disclosure requirements in the context of in-kind contributions made using
17 Bitcoins.⁶ *See* Advisory Opinion 2012-30 (Revolution Messaging) (permitting

⁶ 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

1 contributions by text message and noting requestor's indication that it would obtain
2 necessary contributor information).

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

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

5 ***1. Deposits⁷***

6 Commission regulations require a political committee to deposit all of its receipts
7 into a campaign depository within 10 days of receipt. 11 C.F.R. § 103.3(a); *see also*
8 2 U.S.C. § 432(h). A campaign depository is an account at a state bank, a federally
9 chartered depository institution (including a national bank), or a depository institution
10 with accounts insured by certain federal agencies. 2 U.S.C. § 432(h); 11 C.F.R. § 103.2.

11 Under the BitPay model described above, if CAF opts to exchange Bitcoins for
12 U.S. dollars upon receipt, the transaction would comply with the deposit requirement as
13 long as the dollars are deposited into campaign depositories within 10 days. If, however,
14 CAF opts to receive Bitcoins into its Bitcoin wallet, it will not be holding the Bitcoins in
15 a campaign depository. The Commission has concluded that securities accounts and
16 similar brokerage accounts do not qualify as campaign depositories, even if the account-
17 holder can disburse funds directly from them. *See* Advisory Opinion 2000-30 (pac.com)
18 (securities account), Advisory Opinion 1986-18 (Bevill) ("cash management account").

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.

⁷ 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?").

1 Like those accounts, a Bitcoin wallet is not held at a state or federal bank, and it is not
2 insured by any government agency, so it does not meet the criteria of a “campaign
3 depository.” *See* 2 U.S.C. § 432(h).

4 Notwithstanding these campaign-depository provisions, section 104.13(b) of the
5 Commission’s regulations establishes procedures for political committees to receive and
6 report contributions of “stocks, bonds, art objects, and other similar items to be
7 liquidated” at a later date. The Commission has concluded that this provision implicitly
8 allows a committee to accept such assets as contributions and hold those assets until later
9 sale (for more than 10 days) as investments outside campaign depositories. Advisory
10 Opinion 2000-30 (pac.com) at 8 (citing Advisory Opinions 1989-06 (Boehlert) and 1980-
11 125 (Cogswell)). For example, when a committee receives stock as a contribution, the
12 Commission does “not require the liquidation of the stock within any set time period after
13 its receipt by the committee; nor [does] it require the deposit of the proceeds in the
14 committee’s depository account within any prescribed period.” *Id.* at 5 (discussing
15 Advisory Opinion 1989-06 (Boehlert)).

16 As noted previously, Bitcoins can appreciate or depreciate over time. In this key
17 respect, Bitcoins are “similar items” to the “stocks, bonds, [and] art objects” described in
18 11 C.F.R. § 104.13(b). Thus, the Commission concludes that in-kind contributions of
19 Bitcoins are excepted from campaign depository requirements under section 104.13(b).

20 Like securities that a political committee may receive into and hold in a brokerage

1 account, Bitcoins may be received into and held in a Bitcoin wallet until the committee
2 liquidates or disburses them.⁸

3 *2. Valuation*⁹

4 Bitcoin contributions should be valued as in-kind contributions. The amount of
5 an in-kind contribution is the usual and normal value of the contribution on the date
6 received.¹⁰ 11 C.F.R. § 104.13(a); Advisory Opinion 1989-06 (Boehlert) (applying this
7 method of valuation to contribution of stock).

8 The proper method of determining this valuation depends upon the type of item
9 being contributed. For example, the Commission has concluded that the value of a
10 contribution of publicly traded stock is the closing price of the stock on the day of the
11 Committee's receipt. Advisory Opinion 2000-30 (pac.com). If the stock is traded on

⁸ 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).

⁹ 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?").

¹⁰ 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 2608-08 (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 more than one exchange, “[t]he price would be the price of that particular class of
2 [publicly traded] stock on the exchange on which the stock is principally dealt.” *Id.* at 5.
3 For items whose value cannot readily be determined through a market mechanism, such
4 as private stocks, the Commission has instructed committees to look to other outside
5 valuation methods, such as tax-related calculations and independent appraisals. *See*
6 *Advisory Opinion 2000-30 (pac.com)* at 7.

7 Like foreign currencies and some public stocks, Bitcoins can be exchanged for
8 U.S. dollars on multiple public exchanges. Although Bitcoins do not have closing times
9 or prices — because Bitcoin exchanges operate 24 hours per day, *see AOR* at 7 — the
10 going rate for Bitcoins can be determined on a specific exchange at any given moment.
11 This distinguishes Bitcoins from private stocks, whose valuation is inherently more
12 difficult and subjective. Accordingly, despite the lack of a singular daily “closing price,”
13 the valuation of Bitcoins is similar to that of stocks or commodities that are publicly
14 traded on multiple exchanges.

15 The availability of public exchange rates provides a reliable and objective method
16 of valuing Bitcoin contributions. Thus, the Commission concludes that a political
17 committee that receives a contribution in Bitcoins should value that contribution based on
18 the market value of Bitcoins at the time the contribution is received. To assess this
19 market value, the committee should first rely on any contemporaneous determination
20 provided by the entity that processes the Bitcoin contribution. If that processor provides
21 an exchange rate for the specific transaction in question — or if the committee opts to
22 receive a Bitcoin contribution from its processor in the form of dollars — the committee

1 should use this rate or dollar amount to value the contribution.¹¹

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

10 Upon being valued, an in-kind contribution made using Bitcoins might exceed the
11 contributor's annual contribution limit of \$5,000. 2 U.S.C. § 441a(a)(1)(C); *see also*
12 11 C.F.R. §§ 110.1(d), 110.2(d). The Commission has previously determined that a
13 committee may return an excessive in-kind contribution "either in the form given," or in
14 a dollar amount "equal to the excess" of the in-kind contribution when it was received.
15 Advisory Opinion 1980-125 (Cogswell); *see also* 11 C.F.R. § 103.3(b)(3). Accordingly,
16 if an in-kind contribution made using Bitcoins would exceed the contributor's limit, the
17 committee may return the excessive amount either by refunding the quantity of excessive

¹¹ 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.

¹² *See, e.g.*, Bitcoin charts, <http://bitcoincharts.com/charts/> (last visited Sept. 25, 2013) (listing global and local exchanges in several currencies).

¹³ *See id.* (showing some high-volume exchanges publishing rates every 15 minutes and other lower-volume exchanges publishing rates daily).

1 Bitcoins, or by refunding a dollar amount equal to the excessive portion of the
2 contribution, as calculated at the time of the in-kind contribution is received.

3 *3. Reporting*¹⁴

4 Bitcoins are in-kind contributions that the committee will ultimately sell,
5 contribute, or exchange for goods or services, either in the same reporting period as they
6 are received, or in a later period. At the time a committee receives Bitcoins, the
7 committee may not know how it will ultimately dispose of them. That is, the committee
8 may not know whether and when it will liquidate the Bitcoins or whether it will disburse
9 some or all of its Bitcoins to make a contribution or to purchase goods or services. In
10 these respects, Bitcoins have characteristics of in-kind contributions governed by two
11 different reporting sections: 11 C.F.R. § 104.13(a), which addresses the reporting of most
12 in-kind contributions, and 11 C.F.R. § 104.13(b), which addresses the reporting of in-
13 kind contributions to be liquidated in a later reporting period. Because Bitcoins have
14 aspects of both types of in-kind contributions, the Commission concludes that a modified
15 approach that takes into account aspects of both provisions is appropriate and practical.¹⁵

¹⁴ 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?").

¹⁵ The reporting approach described here modifies the approach taken in two earlier advisory opinions that addressed the reporting of stock to be liquidated. See Advisory Opinions 2000-30 (pac.com) and 1989-06 (Boehlert).

1 The initial receipt of Bitcoins, regardless of subsequent disposition, should be
2 reported like in-kind contributions described in 11 C.F.R. § 104.13(a). Attachment 1 to
3 this advisory opinion provides an example of this reporting. Attachment 1 shows, on the
4 first page, the reporting of the receipt of the Bitcoins as a contribution and, on the second
5 page, the simultaneous reporting of the Bitcoins as a disbursement.

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

16 The reporting of the subsequent disposition of the Bitcoins depends on whether
17 the Committee liquidates them or disburses them to make contributions or to purchase
18 goods or services. Attachments 2(A) and (B) to this advisory opinion provide examples
19 for reporting the liquidation of Bitcoins. Attachments 3(A) and (B) provide examples for
20 reporting the disbursement of Bitcoins.

21 If the Committee liquidates the Bitcoins, the reporting depends on whether the
22 purchaser is known or unknown to the committee. If the committee sells the Bitcoins
23 directly to a purchaser, and therefore knows the identity of that purchaser, the purchase is

1 itself considered to be a contribution. *See* 11 C.F.R. § 104.13(b)(2); Advisory Opinion
2 1989-06 (Boehlert) at 2; Advisory Opinion 2000-30 (pac.com) at 8-9. Attachment 2(A)
3 illustrates how a committee should report the sale of Bitcoins to a known purchaser. If
4 the committee sells the Bitcoins through an established market mechanism where the
5 purchaser is not known, the purchaser is not considered to have made a contribution to
6 the committee. *See* Advisory Opinion 1989-06 (Boehlert) at 2; 11 C.F.R. § 104.13(b)(2).
7 Attachment 2(B) illustrates how a committee should report the sale of Bitcoins to an
8 unknown purchaser.¹⁶

9 If the committee disburses the Bitcoins to obtain goods or services from a vendor,
10 as discussed below, the committee should report the disbursement as an operating
11 expenditure as indicated in Attachment 3(A). If the committee disburses the Bitcoins to
12 make a contribution to another committee, as discussed below, the committee should
13 report the transaction as indicated in Attachment 3(B). Attachment 3(B) contains two
14 pages, with the first page showing an offsetting entry to the second page, which shows
15 the in-kind contribution.

16

¹⁶ If the committee opts to immediately liquidate the Bitcoin contribution and receive its equivalent in dollars from the processor at the time of receipt, the committee should report the initial receipt as indicated in Attachment 1 described above and should also report the liquidation as indicated in Attachment 2(B), substituting the name of the Bitcoin processor for the name of the exchange.

1 **C. Bitcoin Disbursements**¹⁷

2 As a corollary to the rule that a political committee must deposit all of its receipts
3 into a campaign depository, the Act and Commission regulations also require that all
4 political committee disbursements (except for petty cash disbursements) must be made by
5 check or similar drafts drawn on a campaign depository. *See* 2 U.S.C. § 432(h); 11
6 C.F.R. §§ 102.10, 103.3(a); *see also* Advisory Opinion 1993-04 (Cox) (approving
7 electronic bill payment service from a campaign depository as “similar draft”).

8 The Commission has implicitly recognized that in-kind contributions are exempt
9 from the campaign depository disbursement requirement. Commission guidance has
10 noted that political committees may make in-kind contributions to other political
11 committees and may spend in-kind contributions in their in-kind form to procure goods
12 or services. In Advisory Opinion 1980-125 (Cogswell), the Commission approved a
13 committee’s payment of an employee’s salary via silver coins it had received as a
14 contribution. In approving this disbursement, the Commission noted that the
15 disbursement could be made from outside a campaign depository as long as the coins
16 were valued as commodities, rather than as money. In Advisory Opinion 1982-08 (Barter
17 PAC), the Commission examined a proposal by a political committee to use “credit units”
18 — which could be redeemed for goods and services on a “barter basis” — to make

¹⁷ This section addresses CAF’s questions 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 C.F.R. §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 Bitcoins, will the vendor or servicer be deemed to have made an in-kind contribution if the vendor or servicer offers the same discount to all other purchasers who pay in Bitcoin?”), 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 contributions to candidates and to procure goods and services from vendors. The
2 Commission approved these transactions, concluding that “nothing in the Act or the
3 Commission’s regulations would prohibit the making of contributions in the form of
4 credit units.”¹⁸ *Id.* Consistent with these opinions, the Commission’s current guidance
5 notes that committees may make in-kind contributions to other committees. *See*
6 *Campaign Guide for Nonconnected Committees 25* (May 2008),
7 <http://www.fec.gov/pdf/nongui.pdf> (“In addition to contributing money, a nonconnected
8 committee may donate goods or services to candidates and their committees.”). Such
9 transactions would not be permissible if the campaign depository rule were interpreted to
10 require every contribution or thing of value disbursed by a committee to be spent from a
11 traditional bank account.

12 Because the Commission has long permitted committees to make in-kind
13 contributions, the Commission now reaffirms that the campaign depository requirements
14 in 2 U.S.C. § 432(h) and 11 C.F.R. § 102.10 apply only to “transactions which *can* be
15 accomplished by check or similar draft.” Advisory Opinion 1982-08 (Barter PAC) at 6
16 (emphasis added). These requirements do not apply to transactions that, by their nature,

¹⁸ In another advisory opinion, the Commission required a committee to liquidate stocks in a securities account before using the value of those assets to make contributions to other political committees. *See* Advisory Opinion 2000-30 (pac.com). This conclusion largely “followed” an earlier advisory opinion, Advisory Opinion 1986-18 (Bevill), concerning funds already on deposit in a campaign depository that were subsequently transferred to a non-campaign-depository securities investment account. Under Commission regulations, such transferred and invested funds must “be returned to the depository before such funds are used to make expenditures.” 11 C.F.R. § 103.3(a); *see also* Advisory Opinion 1986-18 (Bevill) (concluding that funds transferred to an investment account may not be spent from the investment account to make disbursements but instead must first be transferred back to a campaign depository). Because the Bitcoins that CAF receives as in-kind contributions and disburses in Bitcoin form will not be converted to money or otherwise pass through a campaign depository before being disbursed, the reasoning of Advisory Opinions 1986-18 (Bevill) and 2000-30 (pac.com) does not apply here.

1 cannot be conducted from a bank account and therefore cannot be accomplished by check
2 or similar draft.

3 A Bitcoin wallet, as discussed above, is not a campaign depository. Bitcoins
4 received into a Bitcoin wallet cannot be deposited into a campaign depository without
5 first being liquidated.¹⁹ Because Bitcoins are in-kind contributions that cannot be
6 deposited into or spent from a campaign depository, CAF may use the Bitcoins it receives
7 to make in-kind contributions to other political committees and to purchase goods and
8 services from vendors who accept Bitcoins as payment. CAF may do so directly from its
9 Bitcoin wallet, provided that such contributions and purchases comply with the
10 applicable source and amount limitations²⁰ and recordkeeping requirements²¹ of the Act
11 and Commission regulations. To determine the value of in-kind contributions or
12 purchases made by CAF with Bitcoins, CAF should apply the same valuation
13 methodology described above for the receipt of Bitcoins. That is, CAF should rely on
14 any contemporaneous determination provided by the entity that processes the Bitcoin
15 contribution or payment, if provided, or use a reasonable exchange rate of Bitcoins for
16 dollars closest in time to the payment being valued. For purchases made with Bitcoins,
17 this valuation method will be used to determine whether CAF paid the vendor a usual and
18 normal charge.²²

¹⁹ The Commission is aware of no bank that meets the campaign depository requirements and currently accepts deposits of Bitcoins.

²⁰ See Advisory Opinion 1982-08 (BarterPAC) at 4 & n.5 (discussing contribution limits for in-kind contributions).

²¹ See *supra* n.6.

²² In some circumstances, a vendor makes a contribution to a committee if it provides goods or services at less than the usual and normal charge, *i.e.*, the price of those goods or services in the market

