FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: **The Commission**

FROM: **Commission Secretary's Office**

DATE: **April 21, 2014**

SUBJECT: **Comments on Draft AO 2014-02**
(Make Your Laws PAC, Inc.)

Attached is a timely submitted comment received from Sai. This matter is on the April 23, 2014 Open Meeting Agenda.

Attachment

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

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

MYL PAC Comments re AO 2014-02 Drafts A and B

April 20, 2014

Dear Commissioners:

Please accept the following comments on behalf of Make Your Laws PAC, Inc. (MYL PAC) in response to AO 2014-02 Drafts A (14-24) and B (14-24-A).

We agree with the bulk of the reasoning in both drafts. We prefer certain aspects of each draft over the other, and suggest that combining them as follows would make for a reasonable compromise between the two drafts.

1. Bitcoin's cash-like properties and disbursement

   draft A, p 6 lines 11-12, p 7 lines 1-3; draft B, p 5 lines 15-21, p 6 lines 12-14, p 7 lines 8-21, pp 10-12 entirely: This is the careful distinction we tried to draw in our supplement, for substantially the same reasons given in the parts cited.

   We prefer draft B in this regard, as we would prefer to be *required* to obey the $100 limit than to have a merely *voluntary* limit (which could raise problems for us if a contributor claims that the Act obliges us to e.g. forward a >$100 earmarked Bitcoin contribution).

   We agree that Bitcoin is more like cash than check, in the narrow context of an as-applied reading *of the $100 limit* in 11 CFR 110.4(c). Our proposed system would meet the "best efforts" standard to *identify* contributors, but Bitcoin is currently less traceable[1] than more

[1] Bitcoin is not *un*traceable; it's just very *hard* to trace, against a moderately sophisticated opponent who wants to frustrate attempts to trace their transactions. We believe that some methods for Bitcoin usage will be developed in the future that have check-like auditability, by tying Bitcoin addresses to depository accounts — though mostly-anonymous usage will continue. When and if that happens, the Commission should reconsider this issue with respect to those specific methods.

traditional payment methods — enough so that it should be subject to the $100 limit.

However, this analogy of Bitcoin to cash is imperfect, and doesn't apply well to treatment of Bitcoin as "currency" under other parts of the Act. It isn't necessary to treat Bitcoin as a financial (vs in-kind) contribution to retain the as-applied analogy about its auditability.

Bitcoin is hard to trace, *like* cash, but Bitcoin is definitely *not* actual "currency", "cash", or "money"[2]. We suggest that a more accurate analogy is to gold or silver pieces that are denominated by weight only. Gold and silver pieces are, like Bitcoin, permissible in-kind contributions; hard to audit; commodities valued at a continuous market price; used (by at least some merchants) as a direct medium of exchange for goods and services; stored outside of depositories; valued primarily on belief and secondarily on *per se* utility; etc.

Therefore, while we agree that a Bitcoin wallet is not a "campaign depository", we must disagree with Draft B at p 8 lines 12-17. Nothing in prior AOs, including those cited by Draft B, prohibits storing *non-currency* contributions (including stocks, bonds, precious metals, and Bitcoin) in a non-depository account; to do so would essentially ban all in-kind contributions in the first place.[3] On this, we agree with Draft A, p 5 lines 7-13.

As this reasoning is crucial to Draft B's further conclusion that we may not disburse in-kind contributions of Bitcoin for the purposes we stated, we believe that Draft A part C(2), pp 11-13 is more sound, and that we should be permitted to hold and disburse non-liquidated Bitcoins received as in-kind contributions.

Therefore, we propose that as a compromise, we be prohibited from accepting more than

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[2] See authoritative FinCEN and IRS rulings, AO 2013-15 CAF draft A (13-45) p 5-7, and our comments on 2013-15, p 1-5. See p 7-8 for one disastrous conclusion under the Act if Bitcoin were treated as "cash" broadly, e.g. the sense of 11 CFR 110.4(c)(3)'s permission of *anonymous* contributions of <$50 in "cash".

This is the only issue in either draft that we *strongly* disagree with. We urge the Commission to *only* permit Bitcoins as *in-kind* contributions, and to *not* treat Bitcoin broadly as "currency" under the Act.

[3] Nor does the Act prohibit a PAC from holding *actual* physical cash. 11 CFR 102.11 permits committees to maintain a petty cash fund, so long as individual expenditures from it are no more than $100 (much like 110.4(c)'s limit). We would agree that 102.11 is amenable to the same "as applied" logic as 110.4(c).

If it would make those Commissioners preferring Draft B more willing to accept our compromise proposal, we suggest that the Commission could limit both contributions *and* expenditures of Bitcoin to $100 — per election/recipient/contribution for Bitcoin contributions by analogy to 110.4(c), and per purchase/transaction for (unliquidated) Bitcoin expenditures by analogy to 102.11 — but still treated as *in-kind* contributions.

$100 worth of Bitcoin per election/recipient[4]/contributor (as in draft B), but permitted to hold Bitcoin contributions unliquidated and to disburse[5] such unliquidated contributions for the limited purposes we listed in our request (as in draft A), and treat Bitcoin as in-kind.

We would like to note that it is not a requirement that the Commission rule on Bitcoin's cash-like properties or our own "as applied" reasoning in order to rule on our request; draft A does not reach the question. This was intentionally given as background (not as a question), in order to avoid possible deadlock on this issue.

2. draft B, p 13 lines 19-22: We agree with this, and it addresses an issue that draft A does not (namely, the unavoidable possibility of anonymous contributions of Bitcoin that we will need to dispose of). We would prefer that it be included in the final draft.

3. draft A, p 9; draft B, p 9 fn 14, p 14: We believe that draft A is clearer and simpler with regard to how Bitcoin should be valued and when it should be considered received. Draft B's valuation method would expose us to market risk even when we wish to avoid it and make accounting more complicated. Draft A's valuation, permitting a contemporaneous conversion to dollars to govern valuation when a Bitcoin contribution is not held for later sale or disbursement, prevents both issues, and is more practical.

4. draft B, p 12 lines 12-18, p 13 lines 1-7: We intend to require the same affirmations as would be required of any usual contribution, including e.g. that the contributor is not a foreign national, etc., and of course would act on any actual knowledge that such affirmation is false. We believe that this meets the "best efforts" standard in previous AOs, and that it would not be reasonable (or even feasible) to require Bitcoin-specific mechanisms to trace the true source of a Bitcoin contribution as foreign or not.

5. draft B, attachment; draft A, attachment 1: We believe that draft B gives a clearer and simpler reporting method for the case of contemporaneous conversion of Bitcoin contributions to currency than draft A.

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[4] for earmarks, the recipient would not be MYL PAC, so the limit would apply separately per recipient

[5] Although not a legal consideration under the Act, we note that if the Commission approves the use of Bitcoins for disbursement and not just investment, this would help to stabilize the Bitcoin economy, by making more of its value driven by use and less by investment speculation.

Technical issues with both drafts

Aside from the above differences between the two drafts, there are a few technical issues that both drafts share that we request that the Commission address in its final opinion:

1. draft A, p 2 line 1; draft B, p 2 line 4: Although both drafts are clear in not opining on Bitcoin's general status as currency, we feel that the Commission should avoid using the unqualified term "currency", to prevent any confusion with a definition under the Act.

   Therefore, we suggest that the Commission instead use the term "(de-centralized) virtual currency", as this is the term used by both FinCEN (FIN-2013-G001) and the IRS (Notice 2014-21), is more accurate, and does not invoke any defined term under the Act.

2. draft A, p 11 lines 3-20 & p 16 lines 7-9; draft B, p 6 lines 3-6, p 15 lines 9-11, p 16 lines 14-16: As discussed in our AOR at p 4, it is *de facto* infeasible to transfer Bitcoins, even for the purpose of MYL PAC's own purchase, holding, intra-MYL PAC transfer[6], and liquidation thereof, without paying anonymous Bitcoin miners a small "transaction fee"[7].

   When using a Bitcoin processor like BitPay or Coinbase, this amount is typically incorporated as part of their own (larger) fee, which is also paid in Bitcoin as a deduction from the amount credited to us. If MYL PAC transacts Bitcoins directly, we would need to pay Bitcoin miners directly to make *any* transfer of Bitcoins.

   Therefore, we suggest that the opinion clarify that Bitcoin-denominated disbursements for normal (market rate) transaction fees (to Bitcoin miners and/or processors):

   1. are permissible regardless of the source of the Bitcoins,
   2. count as "operating expenditures", and
   3. may be reported as an aggregate total per reporting period, rather than line items per transaction (which could more than double the number of line item reports).

   We would also appreciate an example attachment illustrating the reporting of such

[6] Using multiple Bitcoin addresses / processors, even for a single type of account, is the rule (and good security practice), not the exception. If we maintain Bitcoin directly, we intend to have multiple wallets and addresses per account type for security reasons. Such transfers would obey the usual requirements, e.g. the prohibition on transfers from an independent expenditures account to a contribution account.

[7] http://bitcoinfees.com has a nice illustrated explanation of Bitcoin-internal transaction fees.

transaction fees in the context of multiple contributions, both to an anonymous miner and to a Bitcoin processor, and for both direct and earmarked contributions.

3. draft A, p 8 lines 7-17; draft B, p 13 lines 8-17: We specified that we will not make refunds in Bitcoin, due to multiple problems associated with that which are not currently feasible to address (see our comments on AO 2013-15). As such, most refunds would be made by check to the name and address given by the contributor. We believe it would be unfair to require us to bear the cost of such refunds, since it is technically impossible for us to prevent an excess contribution, and the fault would be solely with the contributor.

   Therefore, we suggest that we may deduct our direct costs for issuing such refunds (e.g. $2.25 to lob.com to issue a check) from the amount refunded, and if the cost to issue the refund would exceed the amount of the refund, that we may dispose of the excess in the manner specified at draft B, p 13 lines 19-22.

4. draft A, p 15 lines 4-13; draft B, p 18 lines 7-16: We request clarification as to how this applies to earmarks, which we expect to constitute the majority of our activity.

   MYL PAC will instruct our Bitcoin processor to immediately[6] convert earmarked contributions to US dollars and transfer them our depository account, from which we would then disburse to the earmarked recipient by normal means.

   Although, as an earmark conduit, we may process such a contribution and possess it temporarily, we have no direction or control over it, nor are we its beneficiary or owner.

   Therefore, we suggest that we report such earmarks as being at the full value of the amount contributed, but deduct directly related transaction fees from the amount actually disbursed to the recipient. This is consistent with both drafts' opinion that although the full amount is

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[6] As with all financial transactions, this is not actually "immediate". It requires transfer of the Bitcoins to a Bitcoin market, sale on the market, and transfer of US dollars (typically by direct deposit or ACH) to MYL PAC's account. Overall, this process typically takes about two business days to complete, though some processors only settle on e.g. a 7-day rolling basis (as is e.g. Stripe's policy). There may be other delays as well, e.g. if a Bitcoin market or processor freezes accounts, or if the processor requires a minimum amount for settlement (in the case of Bitpay, $20).

Since we are required to disburse contributions to committees from our depository account, we understand our 10-day obligation to disburse to an earmark recipient to begin only once the funds are actually *in* our depository account and available to us to do so — assuming that we make best efforts to ensure that this transfer is as expedient as possible.

reportable as the contribution, the actual amount that the (recipient) committee will receive is lessened by such fees. This would avoid creating a contribution of any kind from MYL PAC to the recipient, and avoid the complexity of paying transaction fees with MYL PAC's own funds or Bitcoins, rather than with the contribution itself.

5. draft A, attachment 2(A): This appears to envision that a sale of Bitcoins will be tied with a memo entry to a specific Bitcoin contribution.

   Bitcoin transactions are based on a set of inputs tied to a set of outputs; there is no tie between any *individual* input or output. Because of this, if we receive and hold multiple Bitcoin contributions from different people, and then e.g. sell half of the accumulated Bitcoins, it may not be possible to specify "whose" Bitcoins we sold.

   In FEC terms, Bitcoins owned by a single address are generally[9] intermingled in the process of any transfer (including transfer to a Bitcoin market for sale). This is especially the case if one uses a Bitcoin processor (which often keeps customers' Bitcoins in its *own* addresses and wallets, maintains a ledger account of how much belongs to each customer, and completely scrambles any individual customer's received and sold Bitcoins in the process).

   To give an analogy, this is somewhat similar to receiving cash donations, having a petty cash box which intermingles them, and then purchasing something with some of that cash. It isn't easy to say "whose" cash was used for that purchase.

   Therefore, we suggest that reporting a Bitcoin sale not require a memo entry tying it to any specific contribution(s). The driving purpose for this is already covered by reporting contributions/expenditures with both the amount of Bitcoin and their contemporaneous dollar value.

[9] It is technically possible to avoid this intermingling, but doing so requires a degree of technical expertise that most people lack, is not supported by typical payment processors, and would be unreasonable to require of a treasurer.

Conclusion

Considering the overall technical complexity involved in this request, I consider it a rather positive sign that there are so few technical issues that merit comment. I am also glad to see that the differences between Drafts A and B are very amenable to compromise.

I hope that the Commission will move to adopt the compromises and clarifications we suggest above. This would resolve the current uncertainty on this issue by creating a viable and conservative "safe harbor" policy.

I look forward to talking with the Commission on Wednesday, and to the public discussion of this request. As always, I am available for any questions or comments.

Sincerely,
Sai
President & Treasurer
Make Your Laws PAC, Inc. (MYL PAC)

sai@makeyourlaws.org
https://makeyourlaws.org/fec/bitcoin