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AGENDA DOCUMENT NO. 13-45
AGENDA ITEM
For meeting of November 14, 2013

November 7, 2013

MEMORANDUM

TO: The Commission

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

Adav Noti *AN*
Acting Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Jessica Selinkoff *JS by RMK*
Attorney

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

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 12:00 pm (Eastern Time) on November 13, 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

3 Dan Backer, Esq.
4 DB Capitol Strategies PLLC
5 717 King Street, Suite 300
6 Alexandria, VA 22314

DRAFT

7

8 Paul D. Kamenar, Esq.
9 Coolidge Reagan Foundation
10 1629 K Street, NW, Suite 300
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, as
20 described below. CAF may not, however, make disbursements using Bitcoins. Instead
21 CAF must sell its Bitcoins and deposit the proceeds in its campaign depositories before
22 using the funds.

23 ***Background***

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

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

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

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

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

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

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

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

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

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

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

5 ***Questions Presented***

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

12 ***Legal Analysis and Conclusions***

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

20 ***A. Bitcoins as In-Kind Contributions***³

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 *1. Deposits*⁹

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

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

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

1 Commission regulations require a political committee to deposit all of its receipts
2 into a campaign depository within 10 days of receipt. 11 C.F.R. § 103.3(a); *see also*
3 2 U.S.C. § 432(h). A campaign depository is an account at a state bank, a federally
4 chartered depository institution (including a national bank), or a depository institution
5 with accounts insured by certain federal agencies. 2 U.S.C. § 432(h); 11 C.F.R. § 103.2.

6 Under the BitPay model described above, if CAF opts to receive the dollar
7 equivalent of a Bitcoin contribution forwarded to its bank accounts, the transaction would
8 comply with the deposit requirement as long as the dollars are deposited into campaign
9 depositories within 10 days. If, however, CAF opts to receive Bitcoins into its Bitcoin
10 wallet, it will not be holding the Bitcoins in a campaign depository. The Commission has
11 concluded that securities accounts and similar brokerage accounts do not qualify as
12 campaign depositories, even if the account-holder can disburse funds directly from them.
13 *See* Advisory Opinion 2000-30 (pac.com) (securities account), Advisory Opinion 1986-
14 18 (Bevill) (“cash management account”). Like those accounts, a Bitcoin wallet is not
15 held at a state or federal bank, and it is not insured by any government agency, so it does
16 not meet the criteria of a “campaign depository.” *See* 2 U.S.C. § 432(h).

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

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

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

14 2. Valuation¹¹

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

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

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

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

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

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

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

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

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

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

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

1 for the transaction being valued.¹⁵

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

12 3. Reporting¹⁶

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

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

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

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

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

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

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

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

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

3 ***C. Bitcoin Disbursements***¹⁸

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

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

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

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

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

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

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

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

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

7 On behalf of the Commission,
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9

10
11 Ellen L. Weintraub
12 Chair