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AGENDA ITEM
For meeting of November 14, 2013
SUBMITTED LATE

November 13, 2013

MEMORANDUM

TO: The Commission

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

Adav Noti *AN*
Acting Associate General Counsel

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Assistant General Counsel

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Attorney

Subject: AO 2013-15 (Conservative Action Fund) Drafts B and C

Attached are proposed drafts of the subject advisory opinion.

Members of the public may submit written comments on these draft advisory opinions. We are making these drafts available for comment until 9:00 am (Eastern Time) on November 14, 2013.

Members of the public may also attend the Commission meeting at which these drafts 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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DRAFT B

7

8 Paul D. Kamenar, Esq.
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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. 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.

7 ***Questions Presented***

8 Based on the facts presented above, the requestor asks 24 questions. These
9 questions generally fall into four categories: (1) whether the requestor may accept
10 Bitcoins as monetary and/or in-kind contributions; (2) how the requestor should deposit,
11 value, and report contributions made using Bitcoins; (3) whether the requestor may
12 contribute Bitcoins to other political committees; or (4) whether the requestor may
13 disburse Bitcoins to pay for goods or services.

14 ***Legal Analysis and Conclusions***

15 As discussed in more detail below, the Commission concludes that Bitcoins may
16 be generally accepted as in-kind contributions under valuation, reporting, and
17 disbursement procedures similar to those that the Commission has previously approved
18 for other in-kind contributions. Requestor may not, however, make disbursements using
19 Bitcoins directly from a Bitcoin wallet to make contributions or purchase goods or
20 services because the Act and Commission regulations require such disbursements to be
21 made from a “campaign depository.”

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

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 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. Deposits*⁷

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 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 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 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 (rather
5 than services it receives or goods to be consumed). Accordingly, the reporting of in-kind
6 contributions made using Bitcoins is governed by 11 C.F.R. § 104.13(b), which addresses
7 the reporting of in-kind contributions “to be liquidated.”

8 Under this regulation, as explained in Advisory Opinions 2000-30 (pac.com) and
9 1989-06 (Boehlert), if a committee receives a contribution in Bitcoin form and does not
10 liquidate the Bitcoins in the same reporting period, the committee should first report the
11 contribution during the reporting period in which it is received. The initial receipt of
12 Bitcoins should be reported on Schedule A supporting Line 11(a)(i) (Contributions from
13 Individuals) as a memo entry that includes the fair market value of the contribution (as
14 described above) and the required identification of the contributor. *See* Attachment 1; *see*
15 *also* 11 C.F.R. § 104.13(b)(1); Advisory Opinion 1989-06 (Boehlert), Attachment A

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?”).

1 (providing sample form for reporting fair market value of in-kind contribution of stock to
2 candidate's committee); Advisory Opinion 2000-30 (pac.com) at 8.¹⁵

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

13 In addition to the committee's initial receipt of the in-kind contribution made
14 using Bitcoins, the committee should also report its subsequent liquidation of the
15 Bitcoins. The requirements for such reporting at the time of the sale depend on whether
16 the purchaser is known or unknown to the committee. If the committee sells the Bitcoins
17 directly to a purchaser, and therefore knows the identity of that purchaser, the purchase is
18 itself considered to be a contribution. *See* 11 C.F.R. § 104.13(b)(2); Advisory Opinion
19 1989-06 (Boehlert) at 2; Advisory Opinion 2000-30 (pac.com) at 8-9. In that case, the
20 committee should report the dollar amount of the purchase as a monetary contribution by
21 the known purchaser on Schedule A supporting Line 11(a)(i) and should include the

¹⁵ 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 indicated in Attachment 3, substituting the name of the Bitcoin processor for the name of the exchange.

1 identifying information required by section 104.13(b)(2). *See* Attachment 2. The
2 committee should also use memo text to indicate the entry relates to the purchase of
3 Bitcoins. In addition, the committee should again identify (as a memo entry on Schedule
4 A) the original contributor of the Bitcoins and the fair market value of that in-kind
5 contribution at the time it was received. *See* Attachment 2; *see also* 11 C.F.R. §
6 104.13(b)(2)(ii); Advisory Opinion 1989-06 (Boehlert), Attachment B.

7 If the committee sells the Bitcoins through an established market mechanism
8 where the purchaser is not known, the purchaser is not considered to have made a
9 contribution to the committee. *See* Advisory Opinion 1989-06 (Boehlert) at 2; 11 C.F.R.
10 § 104.13(b)(2). In that situation, the committee should report the dollar amount of the
11 purchase on Schedule A supporting Line 11(a)(i), listing the broker or market mechanism
12 and explaining that the amount is the proceeds from the sale of Bitcoins to an unknown
13 purchaser. *See* Attachment 3; *see also* Advisory Opinion 1989-06 (Boehlert),
14 Attachment C (as modified here). As a memo entry to that receipt, the committee should
15 report the same information regarding the original contributor that it would report for a
16 sale of Bitcoins directly to a known purchaser. *Id.*; Advisory Opinion 2000-30 (pac.com)
17 at 9.

18 ***C. Bitcoin Disbursements***¹⁶

19 The Act and Commission regulations require that all political committee
20 disbursements (except for petty cash disbursements) must be made by check or similar
21 drafts drawn on a campaign depository. *See* 2 U.S.C. § 432(h); 11 C.F.R. §§ 102.10,

¹⁶ 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?").

1 103.3(a); *see also* Advisory Opinion 1993-04 (Cox) (approving electronic bill payment
2 service from a campaign depository as “similar draft”). Funds may be transferred from a
3 campaign depository for investment purposes but “shall be returned to the depository
4 before such funds are used to make expenditures.” 11 C.F.R. § 103.3(a).

5 The Commission has previously concluded that 2 U.S.C. § 432(h) and 11 C.F.R.
6 § 103.3(a) prohibit a political committee from making expenditures with liquid assets it
7 holds outside of its campaign depositories. In Advisory Opinion 2000-30 (pac.com),
8 pac.com asked whether it could contribute to other political committees stock that
9 pac.com had received as contributions and was holding, unliquidated, in its securities
10 account. The Commission concluded that a committee is required to “sell the stocks and
11 deposit the proceeds into committee depository accounts, and then it may contribute the
12 funds” to the other committees. *Id.* at 8. Similarly, in Advisory Opinion 1986-18
13 (Bevill), a political committee wished to place its funds in an investment account and use
14 a credit card that would directly debit that account to make disbursements. The
15 Commission concluded that, pursuant to 11 C.F.R. § 103.3(a), committee funds could be
16 placed in the account only for investment purposes and not to make disbursements.
17 Before the funds could be used to make disbursements, they would have to be transferred
18 to a campaign depository. Advisory Opinion 1986-18 (Bevill) at 2; *see also* Advisory
19 Opinion 1993-04 (Cox) (discussing Advisory Opinion 1986-18 (Bevill)).¹⁷

¹⁷ 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

1 A Bitcoin wallet, as discussed above, is not a campaign depository. The
2 Commission therefore concludes that CAF's proposal to purchase goods or services or to
3 make contributions to other political committees directly from a Bitcoin wallet is not
4 permitted under the Act and Commission regulations. CAF must sell its Bitcoins and
5 deposit the proceeds in its campaign depositories before using the funds to make
6 contributions or disbursements for goods and services.¹⁸

7 This response constitutes an advisory opinion concerning the application of the
8 Act and Commission regulations to the specific transaction or activity set forth in your
9 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in
10 any of the facts or assumptions presented, and such facts or assumptions are material to a
11 conclusion presented in this advisory opinion, then the requestor may not rely on that
12 conclusion as support for its proposed activity. Any person involved in any specific
13 transaction or activity which is indistinguishable in all its material aspects from the
14 transaction or activity with respect to which this advisory opinion is rendered may rely on
15 this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note the analysis or
16 conclusions in this advisory opinion may be affected by subsequent developments in the
17 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

18

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.¹⁸ 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.

¹⁸ 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.

Attachment 1 - Bitcoin not sold during reporting period

SCHEDULE A (FEC Form 3X)

ITEMIZED RECEIPTS

Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)	PAGE	OF
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NAME OF COMMITTEE (In Full)
XYZ Action Fund

Full Name (Last, First, Middle Initial) A. John Contributor		Date of Receipt <table border="1"> <tr> <td>M M</td> <td>/</td> <td>D D</td> <td>/</td> <td>Y Y Y Y</td> </tr> <tr> <td>08</td> <td>/</td> <td>09</td> <td>/</td> <td>2013</td> </tr> </table>	M M	/	D D	/	Y Y Y Y	08	/	09	/	2013
M M	/	D D	/	Y Y Y Y								
08	/	09	/	2013								
Mailing Address 123 First Street		Amount of Each Receipt this Period <table border="1"> <tr> <td>550.00</td> </tr> </table>	550.00									
550.00												
City Alexandria	State Zip Code VA 22314											
FEC ID number of contributing federal political committee. C	Name of Employer First Bank	In-kind: Bitcoin contr not sold during reporting period										
Occupation Teller												
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	Aggregate Year-to-Date ▼ <table border="1"> <tr> <td>550.00</td> </tr> </table>	550.00	[MEMO ITEM]									
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City	State Zip Code											
FEC ID number of contributing federal political committee. C	Name of Employer	Occupation										
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Attachment 2 - Bitcoin sold during reporting period to known purchaser

SCHEDULE A (FEC Form 3X)

ITEMIZED RECEIPTS

Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)	PAGE	OF
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NAME OF COMMITTEE (In Full)
XYZ Action Fund

Full Name (Last, First, Middle Initial) A. Jane Purchaser		Date of Receipt <table border="1"> <tr> <td>M M</td> <td>/</td> <td>D D</td> <td>/</td> <td>Y Y Y Y</td> </tr> <tr> <td>01</td> <td></td> <td>20</td> <td></td> <td>2014</td> </tr> </table>	M M	/	D D	/	Y Y Y Y	01		20		2014
M M	/	D D	/	Y Y Y Y								
01		20		2014								
Mailing Address 456 Main Street		Amount of Each Receipt this Period <table border="1"> <tr> <td>600.00</td> </tr> </table> Purchase of Bitcoin	600.00									
600.00												
City Arlington	State Zip Code TX 76006											
FEC ID number of contributing federal political committee. C		Aggregate Year-to-Date ▼ <table border="1"> <tr> <td>600.00</td> </tr> </table>	600.00									
600.00												
Name of Employer Memorial Hospital	Occupation Physician											
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼												

Full Name (Last, First, Middle Initial) B. John Contributor		Date of Receipt <table border="1"> <tr> <td>M M</td> <td>/</td> <td>D D</td> <td>/</td> <td>Y Y Y Y</td> </tr> <tr> <td>08</td> <td></td> <td>09</td> <td></td> <td>2013</td> </tr> </table>	M M	/	D D	/	Y Y Y Y	08		09		2013
M M	/	D D	/	Y Y Y Y								
08		09		2013								
Mailing Address 123 First Street		Amount of Each Receipt this Period <table border="1"> <tr> <td>550.00</td> </tr> </table> In-kind: Bitcoin contribution, previously disclosed [MEMO ITEM]	550.00									
550.00												
City Alexandria	State Zip Code VA 22314											
FEC ID number of contributing federal political committee. C		Aggregate Year-to-Date ▼ <table border="1"> <tr> <td></td> </tr> </table>										
Name of Employer First Bank	Occupation Teller											
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼												

Full Name (Last, First, Middle Initial) C.		Date of Receipt <table border="1"> <tr> <td>M M</td> <td>/</td> <td>D D</td> <td>/</td> <td>Y Y Y Y</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>	M M	/	D D	/	Y Y Y Y					
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Mailing Address		Amount of Each Receipt this Period <table border="1"> <tr> <td></td> </tr> </table>										
City	State Zip Code											
FEC ID number of contributing federal political committee. C		Aggregate Year-to-Date ▼ <table border="1"> <tr> <td></td> </tr> </table>										
Name of Employer	Occupation											
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼												

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Attachment 3 - Bitcoin sold during reporting period to unknown purchaser

SCHEDULE A (FEC Form 3X)

ITEMIZED RECEIPTS

Use separate schedule(s) for each category of the Detailed Summary Page		FOR LINE NUMBER: (check only one)	PAGE	OF
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<input type="checkbox"/>		<input type="checkbox"/>	16	<input type="checkbox"/>
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
<input type="checkbox"/>		<input type="checkbox"/>		17

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NAME OF COMMITTEE (In Full)
XYZ Action Fund

Full Name (Last, First, Middle Initial) A. ABC Bitcoin Exchange, Inc.		Date of Receipt MM / DD / YYYY 01 / 20 / 2014
Mailing Address 789 West Street		Amount of Each Receipt this Period 600.00
City New York	State Zip Code NY 10005	
FEC ID number of contributing federal political committee. C		Bitcoin sale via ABC Exchange - Purchaser unknown
Name of Employer	Occupation	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	Aggregate Year-to-Date ▼ 600.00	

Full Name (Last, First, Middle Initial) B. John Contributor		Date of Receipt MM / DD / YYYY 08 / 09 / 2013
Mailing Address 123 First Street		Amount of Each Receipt this Period 550.00
City Alexandria	State Zip Code VA 22314	
FEC ID number of contributing federal political committee. C		In-kind: Bitcoin contribution, previously disclosed
Name of Employer First Bank	Occupation Teller	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	Aggregate Year-to-Date ▼	

[MEMO ITEM]

Full Name (Last, First, Middle Initial) C.		Date of Receipt MM / DD / YYYY
Mailing Address		Amount of Each Receipt this Period
City	State Zip Code	
FEC ID number of contributing federal political committee. C		
Name of Employer	Occupation	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	Aggregate Year-to-Date ▼	

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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 C

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 also contribute Bitcoins to other federal political committees
21 as in-kind contributions within the applicable source prohibitions and amount limitations.
22 CAF may not, however, make disbursements for the purchase of goods and services
23 using Bitcoins. Instead CAF must sell its Bitcoins and deposit the proceeds in its
24 campaign depositories before making disbursements for the purchase of goods and
25 services.

26 ***Background***

27 The facts presented in this advisory opinion are based on your letter dated August
28 13, 2013 (“AOR”), email dated August 26, 2013 (“AOR Supplement”), and public
29 disclosure reports filed with the Commission.

1 CAF is a nonconnected political committee that registered with the Commission
2 in May 2011. CAF has notified the Commission that it maintains a non-contribution
3 account.¹ CAF wishes to accept contributions in Bitcoins for both its contribution and
4 non-contribution accounts.

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

17 As an alternative to purchasing goods and services, Bitcoins may be exchanged
18 for U.S. dollars. Bitcoins’ dollar exchange values are determined largely through the
19 exchanges on which many of these transfers are conducted. There are numerous online
20 exchanges on which potential buyers and sellers of Bitcoins post “bid” and “ask” prices
21 akin to those on securities exchanges. *See, e.g.,* <http://bitcoincharts.com/markets/> (last

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 visited Sept. 25, 2013) (collecting Bitcoin exchange data). The dollar exchange value of
2 Bitcoins “has been volatile”: Between May 2012 and May 2013, the value of one Bitcoin
3 ranged between \$5 and \$237. GAO Report at 8.²

4 CAF proposes to offer an online contribution page for those wishing to make
5 contributions to CAF using Bitcoins. CAF represents that it intends to use a “Bitcoin
6 online merchant solution, such as BitPay,” to process, accept, and clear Bitcoin
7 contributions. AOR at 3. Under the BitPay model, a contributor could choose to
8 denominate her contribution either in Bitcoins (*e.g.*, contribute “10 Bitcoins”) or in U.S.
9 dollars with a conversion rate established by BitPay at the time of the transaction (*e.g.*,
10 contribute “\$1200 in Bitcoins” at a rate of “1 Bitcoin (BTC) = 124 USD”). To comply
11 with the relevant provisions of the Act and Commission regulations — such as those
12 regarding contribution limits and recordkeeping requirements — CAF represents that it
13 would acquire and record the “relevant” information regarding each contributor who
14 makes a contribution to CAF using Bitcoins, such as the contributor’s name, address,
15 occupation, and employer, as applicable. AOR at 3; AOR Supplement.

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

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 contribution, that amount will be forwarded to CAF's bank account within one business
2 day of the BitPay transaction. *See* Bitcoin Transaction Processing,
3 <https://bitpay.com/bitcoin-direct-deposit> (last visited Sept. 25, 2013). Alternatively, if
4 CAF retains Bitcoins in its Bitcoin wallet (*i.e.*, chooses not to convert Bitcoin
5 contributions to its dollar equivalent upon receipt), it intends to either (1) sell Bitcoins at
6 a later date; (2) spend them directly to purchase goods and services; or (3) use them to
7 make contributions to other political committees. AOR at 3.

8 ***Questions Presented***

9 Based on the facts presented above, the requestor asks 24 questions. These
10 questions generally fall into four categories: (1) whether the requestor may accept
11 Bitcoins as monetary and/or in-kind contributions; (2) how the requestor should deposit,
12 value, and report contributions made using Bitcoins; (3) whether the requestor may
13 contribute Bitcoins to other political committees; or (4) whether the requestor may
14 disburse Bitcoins to pay for goods or services.

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. Requestor may contribute Bitcoins to other political
20 committees subject to applicable source prohibitions and amount limitations. Requestor
21 may not, however, make disbursements using Bitcoins directly from a Bitcoin wallet to
22 purchase goods or services because the Act and Commission regulations require such
23 disbursements to be made from a "campaign depository."

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

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).⁴ “Anything of
9 value” includes “all in-kind contributions.” *See* 11 C.F.R. § 100.52(d)(1).⁵

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.⁶

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 Under basic canons of statutory interpretation, the term “includes” connotes a non-exclusive list. *See, e.g., Federal Land Bank of St. Paul v. Bismark Lumber, Co.*, 314 U.S. 95, 100 (1941) (“the term ‘including’ is not one of all-embracing definition, but connotes simply an illustrative application of the general principle.”); *U.S. v. Philip Morris USA, Inc.*, 566 F. 3d 1095, 1114 (D.C. Cir. 2009) (“[T]he use of the word ‘includes’ indicates that [the statute’s] list of ‘enterprises’ is non-exhaustive.”); *Richardson v. Nat’l Bank of Evansville*, 141 F. 3d 1228, 1232 (7th Cir. 1998) (“‘Include’ is a word of illustration, not limitation.”). Thus the term “money” as defined in Commission regulation extends beyond the enumerated examples to include other items of similar kind.

⁵ *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”).

⁶ 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 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*

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

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

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.

⁷ 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

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. Deposits*⁸

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

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.

⁸ 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 similar brokerage accounts do not qualify as campaign depositories, even if the account-
2 holder can disburse funds directly from them. *See* Advisory Opinion 2000-30 (pac.com)
3 (securities account), Advisory Opinion 1986-18 (Bevill) (“cash management account”).
4 Like those accounts, a Bitcoin wallet is not held at a state or federal bank, and it is not
5 insured by any government agency, so it does not meet the criteria of a “campaign
6 depository.” *See* 2 U.S.C. § 432(h).

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

19 As noted previously, Bitcoins can appreciate or depreciate over time. In this key
20 respect, Bitcoins are “similar items” to the “stocks, bonds, [and] art objects” described in
21 11 C.F.R. § 104.13(b). Thus, the Commission concludes that in-kind contributions of
22 Bitcoins are excepted from campaign depository requirements under section 104.13(b).
23 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 them.⁹

3 *2. Valuation*¹⁰

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.¹¹ 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

⁹ 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).

¹⁰ 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?”).

¹¹ 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 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.¹²

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.¹³ 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.¹⁴

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

¹² 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.

¹³ *See, e.g.*, Bitcoin charts, <http://bitcoincharts.com/charts/> (last visited Sept. 25, 2013) (listing global and local exchanges in several currencies).

¹⁴ *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*¹⁵

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

8 Under this regulation, as explained in Advisory Opinions 2000-30 (pac.com) and
9 1989-06 (Boehlert), if a committee receives a contribution in Bitcoin form and does not
10 liquidate the Bitcoins in the same reporting period, the committee should first report the
11 contribution during the reporting period in which it is received. The initial receipt of
12 Bitcoins should be reported on Schedule A supporting Line 11(a)(i) (Contributions from
13 Individuals) as a memo entry that includes the fair market value of the contribution (as
14 described above) and the required identification of the contributor. *See* 11 C.F.R. §
15 104.13(b)(1); Advisory Opinion 1989-06 (Boehlert), Attachment A (providing sample

¹⁵ 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 form for reporting fair market value of in-kind contribution of stock to candidate's
2 committee); Advisory Opinion 2000-30 (pac.com) at 8.¹⁶

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

13 In addition to the committee's initial receipt of the in-kind contribution made
14 using Bitcoins, the committee should also report its subsequent liquidation of the
15 Bitcoins. The requirements for such reporting at the time of the sale depend on whether
16 the purchaser is known or unknown to the committee. If the committee sells the Bitcoins
17 directly to a purchaser, and therefore knows the identity of that purchaser, the purchase is
18 itself considered to be a contribution. *See* 11 C.F.R. § 104.13(b)(2); Advisory Opinion
19 1989-06 (Boehlert) at 2; Advisory Opinion 2000-30 (pac.com) at 8-9. In that case, the
20 committee should report the dollar amount of the purchase as a monetary contribution by
21 the known purchaser on Schedule A supporting Line 11(a)(i) and should include the

¹⁶ 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 identifying information required by section 104.13(b)(2). The committee should also use
2 memo text to indicate the entry relates to the purchase of Bitcoins. In addition, the
3 committee should again identify (as a memo entry on Schedule A) the original
4 contributor of the Bitcoins and the fair market value of that in-kind contribution at the
5 time it was received. *See* 11 C.F.R. § 104.13(b)(2)(ii); Advisory Opinion 1989-06
6 (Boehlert), Attachment B.

7 If the committee sells the Bitcoins through an established market mechanism
8 where the purchaser is not known, the purchaser is not considered to have made a
9 contribution to the committee. *See* Advisory Opinion 1989-06 (Boehlert) at 2; 11 C.F.R.
10 § 104.13(b)(2). In that situation, the committee should report the dollar amount of the
11 purchase on Schedule A supporting Line 11(a)(i), listing the broker or market mechanism
12 and explaining that the amount is the proceeds from the sale of Bitcoins to an unknown
13 purchaser. *See* Advisory Opinion 1989-06 (Boehlert), Attachment C (as modified here).
14 As a memo entry to that receipt, the committee should report the same information
15 regarding the original contributor that it would report for a sale of Bitcoins directly to a
16 known purchaser. *Id.*; Advisory Opinion 2000-30 (pac.com) at 9.

17 ***C. In-Kind Contributions of Bitcoins to Other Federal Political Committees¹⁷***

18 As noted above, the Commission has determined that Bitcoins may be accepted as
19 in-kind contributions. An item received as an in-kind contribution by a political
20 committee does not lose its in-kind character upon receipt by the committee.

¹⁷ This section addresses CAF's question 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 Accordingly, a Bitcoin maintains its in-kind character after being accepted into the
2 Requestor's Bitcoin wallet.

3 Political committees may make in-kind contributions. No law prohibits political
4 committees from making in-kind contributions to other political committees.¹⁸ Indeed,
5 such contributions among political committees is common practice. This practice is
6 acknowledged and countenanced in the Commission's *Federal Election Commission*
7 *Campaign Guide for Nonconnected Committees* 25 (May 2008), which advised the public
8 that "[i]n addition to contributing money, a nonconnected committee may donate goods
9 or services to candidates and their committees."

10 Because Bitcoins are in-kind contributions, political committees may make in-
11 kind contributions of them to other committees, including federal candidate committees.
12 Accordingly, the CAF may contribute Bitcoins directly from its Bitcoin account or virtual
13 wallet to a PAC, candidate or committee provided such contribution complies with
14 applicable source and amount limitations.¹⁹

15 This conclusion is consistent with the Commission's statement in Advisory
16 Opinion 1982-8 (Barter PAC). In Advisory Opinion 1982-8 (Barter PAC), the
17 Commission examined a proposal by a political committee to make contributions to
18 federal candidates in the form of "credit units" which could later be redeemed for goods
19 and services on a "barter basis." The Commission concluded that "while nothing in the

¹⁸ 11 C.F.R. § 104.13(b) addressing the disclosure of the receipt and consumption of stocks, bonds, works of art and "other similar items to be liquidated" is not to the contrary. That regulation expresses no prohibition against the in-kind contribution of such property.

¹⁹ In assessing the value of an in-kind contribution of Bitcoins to determine compliance with any applicable amount limitations, the Requestor should apply the same valuation methodology outlined above.

1 Act or the Commission’s regulations would prohibit the making of contributions in the
2 form of credit units, such contributions would be subject to the contribution limits set
3 forth at 2 U.S.C. 441a.” AO 1982-8 at 4. Thus, in Advisory Opinion 1982-8, the
4 Commission concluded that a political committee could make contributions consistent
5 with the Act through a non-monetary medium of exchange that “resemble[d] in-kind
6 contributions under the Act.”²⁰ *Id.*

7 Thus, the Commission concludes that there is nothing in the Act or Commission
8 Regulations which prohibits the requestor from making in-kind contributions to other
9 federal political committees using Bitcoins, provided such contributions otherwise
10 comply with applicable source and amount limitations.

11 ***D. Bitcoin Disbursements for the Purchase of Goods and Services***²¹

12 The Act and Commission regulations require that all political committee cash
13 disbursements (except for petty cash disbursements) must be made by check or similar
14 drafts drawn on a campaign depository. *See* 2 U.S.C. § 432(h); 11 C.F.R. §§ 102.10,

²⁰ The situation at hand is distinguishable from Advisory Opinion 2000-30 (Pac.com) and Advisory Opinion 1986-18 (Bevill) because there is no indication that the requestor will hold or spend any U.S. dollars in or from its Bitcoin wallet. In Advisory Opinion 2000-30 (Pac.com), the Commission required the Requestor to liquidate stocks before making a contribution to other political committees. While the Commission’s regulations permit the approach required in order to obtain the protection offered by Advisory Opinion 2000-30 (Pac.com), the Commission does not believe that its regulations mandate this approach for the situation at hand. In Advisory Opinion 2000-30, the Commission relied heavily on Advisory Opinion 1986-18 (Bevill). Advisory Opinion 1986-18 prohibited the Requestor from making a expenditures from liquid funds held in a securities account based on the premise that such accounts were not campaign depositories defined by the Act and Commission regulations. AO 1989-18 at 2. Advisory Opinion 2000-30 built upon this conclusion, reasoning that if the requestor could not make a contribution with liquid funds in a security account, it could not make a contribution of stocks held in the same account. AO 2000-30 at 8 (“[T]he Commission has applied the regulations to permit political committees to invest committee receipts in securities accounts, but does not permit committee expenditures from those accounts. As committee investments, the stocks received as contributions are in essentially the same position as those securities.”). The requestor’s Bitcoin wallet will contain only in-kind contributions, *i.e.*, Bitcoins, and cannot serve as an alternative source of cash disbursements.

²¹ This section addresses CAF’s question 17 (“Can CAF pay directly for goods and services using Bitcoins?”).

1 103.3(a); *see also* Advisory Opinion 1993-04 (Cox) (approving electronic bill payment
2 service from a campaign depository as “similar draft”). Funds may be transferred from a
3 campaign depository for investment purposes but “shall be returned to the depository
4 before such funds are used to make expenditures.” 11 C.F.R. § 103.3(a).

5 The Commission has previously concluded that 2 U.S.C. § 432(h) and 11 C.F.R.
6 § 103.3(a) prohibit a political committee from making expenditures with liquid assets it
7 holds outside of its campaign depositories. A Bitcoin wallet, as discussed above, is not a
8 campaign depository. The Commission therefore concludes that CAF’s proposal to
9 purchase goods or services directly from a Bitcoin wallet is not permitted under the Act
10 and Commission regulations. CAF must sell its Bitcoins and deposit the proceeds in its
11 campaign depositories before using the funds to make disbursements for the purchase of
12 goods and services.²²

13 This response constitutes an advisory opinion concerning the application of the
14 Act and Commission regulations to the specific transaction or activity set forth in your
15 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in
16 any of the facts or assumptions presented, and such facts or assumptions are material to a
17 conclusion presented in this advisory opinion, then the requestor may not rely on that
18 conclusion as support for its proposed activity. Any person involved in any specific
19 transaction or activity which is indistinguishable in all its material aspects from the
20 transaction or activity with respect to which this advisory opinion is rendered may rely on
21 this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note the analysis or

²² 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 conclusions in this advisory opinion may be affected by subsequent developments in the
2 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
3 The cited advisory opinions are available from the Commission's Advisory Opinion
4 searchable database at <http://www.fec.gov/searchao>.

5 On behalf of the Commission,
6
7
8

9 Ellen L. Weintraub
10 Chair