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For meeting of April 23, 2014
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April 17, 2014

MEMORANDUM

TO: The Commission

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

Adav Noti *AN*
Acting Associate General Counsel

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Assistant General Counsel

Jessica Selinkoff *JS*
Attorney

Subject: AO 2014-02 (Make Your Laws PAC) – Draft B

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 April 22, 2014.

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 2014-02

2
3 Sai

DRAFT B

4 Make Your Laws PAC, Inc.

5 122 Pinecrest Rd.

6 Durham, NC 27705

7
8 Dear Sai:

9 We are responding to the advisory opinion request you submitted on behalf of
10 Make Your Laws PAC, Inc. (“MYL”) concerning MYL’s proposed acceptance, purchase,
11 and disbursement of bitcoins under the Federal Election Campaign Act of 1971, as
12 amended (the “Act”), and Commission regulations. The Commission concludes that
13 MYL may not accept bitcoins as in-kind contributions or spend bitcoins to acquire goods
14 or services. MYL may, however, accept bitcoins in an amount up to \$100 in value per
15 contributor per election if MYL both exchanges those bitcoins into U.S. dollars and
16 deposits the dollars in its campaign depository within 10 days of receiving the
17 contribution. Moreover, MYL may purchase bitcoins for investment purposes, but MYL
18 must sell the bitcoins it purchases and deposit the proceeds into its campaign depository
19 before spending those funds.

20 ***Background***

21 The facts presented in this advisory opinion are based on your advisory opinion
22 request dated February 10, 2014 (“AOR”), email dated February 21, 2014 (“AOR
23 Supplement”), and public disclosure reports filed with the Commission.

24 MYL is a nonconnected political committee that registered with the Commission
25 in September 2012. MYL has notified the Commission that it maintains a non-

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

3 *Bitcoin*

4 Bitcoin is a privately issued currency that was created in 2009.² Bitcoins are
5 purely digital, “exist[ing] only as a long string of numbers and letters in a user’s
6 computer file.”³ A bitcoin, which is divisible to the eighth decimal point, “is not a claim
7 to a physical object or to a currency; it aims to be itself a currency and replace the
8 physical object with a computer file.”⁴ Bitcoins “act as real world currency in that users
9 pay for real goods and services . . . with bitcoins as opposed to U.S. dollars or other
10 government issued currencies.”⁵ A user transfers bitcoins from the user’s online bitcoin
11 “wallet” (essentially, an encrypted computer file) either to other users, to merchants who
12 accept bitcoins as payment, or through “[t]hird-party exchanges [that] allow bitcoin users
13 to exchange their bitcoins back to government-issued currencies.”⁶

14 Each bitcoin transaction is public in that it is added to a “block chain,” which is a
15 public ledger of all bitcoin transactions ever made. See AOR at 2. The block chain
16 protocol “ensures that the transaction by which [the transferor] cede[s] ownership of the

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>.

² U.S. Gov’t Accountability Office, GAO-13-516, Virtual Economies and Currencies 5 (2013), available at <http://www.gao.gov/assets/660/654620.pdf> (“GAO Report”).

³ *Id.*

⁴ Fed. Reserve of Chicago, Chicago Fed Letter 317, Bitcoin: A Primer 1 (Dec. 2013), available at http://www.chicagofed.org/digital_assets/publications/chicago_fed_letter/2013/cfldecember2013_317.pdf (“Fed Letter”).

⁵ GAO Report at 5.

⁶ *Id.*; see also Fed Letter at 2 (describing bitcoin wallets).

1 bitcoin is validated by adding it to a record of all transactions. The recipient's ownership
2 is now validated." Fed Letter at 1. Although bitcoin transactions, identified by the
3 addresses to and from which bitcoins are transferred, are public in the block chain, the
4 transactors are not identified. AOR at 2. Indeed, a bitcoin user's real-life identity, IP
5 address, and even country of operation "cannot be reliably traced to a real human by an
6 auditor of ordinary technical skill." *Id.* at 3-4 & n.5. Moreover, a bitcoin user may
7 control any number of bitcoin addresses. *Id.* at 3. The requestor indicates that
8 "[k]nowing that a given [b]itcoin transaction comes from a specific person depends
9 primarily on asking them and just trusting their response." *Id.* at 4.

10 The value of bitcoins is established by exchanging them for goods or services or
11 for U.S. dollars or other currency. There are numerous online exchanges on which
12 potential buyers and sellers of bitcoins post "bid" and "ask" prices akin to those on
13 securities or commodities exchanges.⁷ The dollar exchange value of bitcoins has been
14 volatile. Between May 2012 and May 2013, the value of one bitcoin ranged between \$5
15 and \$237;⁸ as of the date of MYL's advisory opinion request, one bitcoin traded at about

⁷ See, e.g., <http://bitcoincharts.com/markets/> (last visited Apr. 7, 2014) (collecting bitcoin exchange data); see also <http://winkdex.com/> (last visited Apr. 7, 2014) (bitcoin price index that also lists prices at several larger bitcoin exchanges).

⁸ GAO Report at 8; 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 Apr. 7, 2014) (providing historical valuation data from more than 100 bitcoin exchanges, including more than 35 bitcoin-to-dollar exchanges).

1 \$664, down nearly “40% from its high of roughly \$1,150 in December [2013].”⁹

2 *MYL’s proposal*

3 MYL wishes to accept bitcoins as in-kind contributions to its contribution and
4 non-contribution accounts pursuant to a detailed proposal, the relevant portions of which
5 are discussed herein. MYL proposes to accept bitcoins only through an online form on
6 which each bitcoin contributor, regardless of the proposed contribution amount, will have
7 to provide his or her name, address, occupation, and employer. Additionally, MYL
8 intends to require each bitcoin contributor to affirm that she owns the bitcoins
9 (individually, or jointly with a spouse) that she will contribute. MYL represents that only
10 after a bitcoin contributor has provided this identifying information and affirmation will
11 MYL send that contributor a one-time-only “linked address” — a bitcoin address that
12 identifies the individual transaction — to use to send the bitcoins.¹⁰ MYL proposes to
13 accept only \$100 worth of bitcoin per election per contributor (as identified using the
14 practices just described). *See* AOR Supplement.

15 MYL also proposes to purchase bitcoins on open, high-volume bitcoin exchanges.
16 Once MYL has acquired bitcoins (whether by contributions received or by purchase), it
17 proposes to either sell them for dollars, hold them for later sale, or disburse them in

⁹ Robin Sidel and Michael J. Casey, *Fragility of Bitcoin Uncovered by Glitch*, Wall Street Journal, Feb. 11, 2014, *available at* <http://online.wsj.com/news/articles/SB10001424052702304104504579374410182920576>; *see also Major Bitcoin Exchange Said to be Insolvent*, Washington Post, Feb. 25, 2014, *available at* http://www.washingtonpost.com/business/economy/major-bitcoin-exchange-said-to-be-insolvent-after-alleged-theft-of-currency/2014/02/25/226f6226-9e71-11e3-9ba6-800d1192d08b_story.html (noting “value fluctuating wildly in recent months”).

¹⁰ MYL represents that it will retain records of: its own bitcoin addresses, including each linked address; the contributor to which each linked address is linked; the bitcoin addresses of those with whom it has made transactions; and MYL’s bitcoin transactions in the block chain. MYL represents that it will hold such records, and make them available to the Commission, as it would other records.

1 bitcoin form to pay administrative expenses such as salary, server and website costs,
2 food, office supplies, and travel.¹¹ In the receipt, purchase, and sale of bitcoins, MYL
3 represents that it might use a bitcoin transaction intermediary, such as Coinbase or
4 BitPay. AOR at 7, 9. In conducting its bitcoin transactions, MYL intends to pay normal
5 transaction fees to its processors. For those bitcoins MYL sells for dollars, MYL
6 represents that it intends to deposit the proceeds into its campaign depository account
7 within 10 days of liquidation.

8 ***Questions Presented***

9 Based on the facts presented above, the requestor asks questions concerning:
10 (1) the receipt of bitcoins as in-kind contributions; (2) the sale and disbursement of
11 bitcoins; (3) the purchase of bitcoins; and (4) the reporting of bitcoin receipts and
12 transactions.

13 ***Legal Analysis and Conclusions***

14 The Commission concludes that, while the requestor may accept bitcoin
15 contributions, these contributions raise similar concerns to cash contributions, which are
16 limited under the Act due to their untraceability and the ease with which they may be
17 used for illegal purposes. Therefore, the requestor may not accept bitcoins as in-kind
18 contributions or hold contributed bitcoins in a bitcoin wallet, as proposed. But the
19 requestor may accept a contribution of up to \$100 worth of bitcoins per contributor per
20 election if MYL both liquidates those bitcoins into dollars and deposits the dollars in its
21 campaign depository within 10 days of receipt of the contribution. Because of these

¹¹ MYL states that it does not intend to disburse bitcoins for independent expenditures, solicitation costs, contributions to other committees, or other non-administrative expenses. AOR at 9.

1 conclusions, the Commission necessarily also concludes that the requestor may not
2 purchase goods or services with bitcoins. Finally, the requestor may purchase bitcoins
3 with funds from its campaign depository for investment purposes, but may not make
4 disbursements using those purchased bitcoins because Commission regulations require
5 the committee's funds to be returned to a campaign depository before they are used to
6 make disbursements.

7 ***A. Receipt of Bitcoin Contributions***¹²

8 The Act defines a "contribution" to include "any gift, subscription, loan, advance,
9 or deposit of money or anything of value made by any person for the purpose of
10 influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i); *see also* 11 C.F.R.
11 § 100.52(a). "Anything of value" includes "all in-kind contributions." *See* 11 C.F.R.
12 § 100.52(d)(1). The Commission concludes that bitcoins are "money or anything of
13 value" within the meaning of the Act but function more like cash than the categories of
14 in-kind contributions addressed in the Commission's regulations and advisory opinions.
15 Accordingly, MYL may accept bitcoins pursuant to the limitations and procedures
16 described below.

17 ***1. MYL May Not Accept Bitcoins as In-kind Contributions***

18 The Commission has issued numerous advisory opinions addressing permissible
19 contributions of things of value, such as computer equipment, public stocks, private
20 stocks, and commodities, as in-kind contributions. *See, e.g.*, Advisory Opinion 1996-29
21 (Cannon) (computer equipment); Advisory Opinion 2000-30 (pac.com) (stock); Advisory

¹² This section addresses MYL's question 1 ("May MYL PAC receive Bitcoins as an in-kind contribution" assuming that MYL "acts in accordance with [its] proposed framework?").

1 Opinion 1980-125 (Cogswell) (commodities). Section 104.13 of the Commission’s
2 regulations establishes procedures for political committees to report the receipt and
3 consumption of in-kind contributions. A receipt of an in-kind contribution that is
4 consumed, such as a computer, *see, e.g.*, Advisory Opinion 1996-29 (Cannon), is
5 reported pursuant to 11 C.F.R. § 104.13(a). A receipt of an in-kind contribution of
6 “stocks, bonds, art objects, and other similar items” that are held for later liquidation is
7 reported pursuant to 11 C.F.R. § 104.13(b).

8 Bitcoins are not like either of these types of in-kind contributions. First, bitcoins
9 are not consumer goods like computers, mailing lists, or food. As noted above, bitcoins
10 act like currency; a bitcoin is “a digital representation of value that functions as a medium
11 of exchange, a unit of account, and/or a store of value” that can be transferred to a
12 merchant as payment, or to an exchange for government-issued currency.¹³ In other
13 words, rather than being a consumable product, bitcoins are used to purchase such
14 products, and therefore bitcoins function in this context more like currency than like
15 consumable in-kind contributions. Second, for similar reasons, bitcoins are not like
16 “stocks, bonds, art objects, and other similar items to be liquidated.” Instead of being
17 liquidated, bitcoins may be (and often are) used like currency to purchase goods or
18 services. Indeed, this is what MYL proposes to do with some of the bitcoins it receives.

19 In sum, bitcoins function more like currency than like the longstanding categories
20 of in-kind contributions described in the Commission’s regulations and advisory
21 opinions.

¹³ See Internal Revenue Service, Notice 2014-21 (2014), *available at* <http://www.irs.gov/pub/irs-drop/n-14-21.pdf>; GAO Report at 5.

1 The Commission therefore concludes that MYL may accept bitcoin contributions
2 under certain restrictions that apply to currency contributions, as described below, but
3 MYL may not accept bitcoins under the regulations that govern in-kind contributions.

4 2. *Bitcoin Receipt, Liquidation, and Deposit in the Campaign Depository*

5 Each political committee is required to have a campaign depository. 2 U.S.C.
6 § 432(h); 11 C.F.R. § 103.2. A campaign depository is an account at a state bank, a
7 federally chartered depository institution (including a national bank), or a depository
8 institution with accounts insured by certain federal agencies. *Id.* Within 10 days of
9 receipt of a contribution, a treasurer must deposit the contribution into a campaign
10 depository (unless it is returned to the contributor). 11 C.F.R. § 103.3(a); *see also*
11 2 U.S.C. § 432(h).

12 MYL proposes to receive bitcoin contributions in its bitcoin wallet. Because a
13 bitcoin wallet is not held at a state or federal bank and is not insured by any government
14 agency, it does not meet the criteria to be a “campaign depository.” *See* 2 U.S.C.
15 § 432(h); *see also* Advisory Opinion 2000-30 (pac.com) (concluding that securities
16 account does not qualify as campaign depository); Advisory Opinion 1986-18 (Bevill)
17 (reaching similar conclusion regarding “cash management account”). Thus, a committee
18 cannot hold a bitcoin contribution in a bitcoin wallet. And because lawful campaign
19 depositories do not accept bitcoin deposits, the Act’s campaign-depository rule
20 necessarily requires that any bitcoin contributions be liquidated or otherwise exchanged
21 for U.S. dollars.

22 Accordingly, the Commission concludes that MYL may accept contributions of
23 bitcoin only if MYL both exchanges any such contribution into dollars and deposits the

dollars into MYL's campaign depository within 10 days of receipt of the contribution.¹⁴

Moreover, for the reasons discussed in the next section, the Commission concludes that

MYL may accept only \$100 worth of bitcoin per contributor per election, valued at the

U.S. dollar value of the contributed bitcoins on the date received..

3. *Contributor Identification*

A committee treasurer must keep account of: all contributions the committee

receives; the name and address of any person who makes any contribution in excess of

\$50, along with the date and amount of such contribution; and certain additional

information regarding any person who makes contributions aggregating to more than

\$200 during a calendar year. *See* 2 U.S.C. § 432(c)(1)-(3); 11 C.F.R. § 110.4(c). A

committee treasurer is also "responsible for examining all contributions received for

evidence of illegality." 11 C.F.R. § 103.3(b); *see also* 2 U.S.C. § 432(c)(1)-(3). That is,

a political committee is "responsible for determining the eligibility of its contributors."

Advisory Opinion 2012-26 (Cooper) (discussing identification requirements for

contributions sent by text message). If, after deposit of a contribution in the campaign

depository, the contribution cannot be determined to be from a legal source, the treasurer

must refund the contribution within 30 days of the receipt of the contribution or within 30

days of discovering the contribution's illegality (if not initially apparent upon receipt).

11 C.F.R. § 103.3(b)(1)-(2).

¹⁴ The date of receipt of a contribution is the date the committee obtains possession of the contribution. 11 C.F.R. § 102.8(a). The Commission has previously determined that a contribution made by electronic credit card authorization is "received" when the committee receives the contributor's authorization to charge the card. *See, e.g.,* Advisory Opinion 2012-17 (Red Blue T) at 6; Advisory Opinion 1990-04 (American Veterinary Medical Association) at 2-3; *see also* Advisory Opinion 1995-34 (Politechs). Following that reasoning, the Commission concludes here that a bitcoin contribution is "received" when the committee receives notice either of the authorization or of the completion of the transfer, whichever such notification comes first.

1 Bitcoins present certain unique considerations with regard to a political
2 committee’s obligation to identify its contributors and determine the legality of
3 contributions it receives. Bitcoins differ from more common contribution methods, such
4 as checks or standard credit cards, because “all that is needed to complete a transaction is
5 a bitcoin address, which does not contain any personal identifying information.” GAO
6 Report at 8. Moreover, unlike checks or credit cards, bitcoins are not associated with a
7 depository institution, which means that they cannot be traced or verified through
8 standard audit mechanisms, such as account records.¹⁵ In fact, given their potentially
9 anonymous nature, contributions of bitcoins are most like cash contributions, on which
10 the Act imposes strict limits. Specifically, because Congress was concerned that “cash
11 offers too facile a medium for unethical and illegal activities” due to “[i]ts untraceability
12 and easy transferability,” 120 Cong. Rec. 7832 (1974) (statement of Rep. Boland), the
13 Act allows committees to accept cash contributions of only \$100 per contributor per
14 election. *See* 2 U.S.C. §§ 432(c)(2), 441g; *see also* 11 C.F.R. § 110.4(c).

15 “By analogy to” this statutory restriction (*see* AOR Supplement), MYL proposes
16 to limit itself to receiving \$100 in bitcoin contributions per contributor per election. The
17 Commission agrees that such a limit is a necessary condition of MYL’s acceptance of
18 bitcoins. Although 11 C.F.R. § 110.4(c) is not directly applicable (because bitcoin is not
19 “currency of the United States” or of a foreign country), the Commission concludes that
20 the inherent anonymity of bitcoin contributions — and the resulting compliance and
21 reporting concerns attendant upon their receipt — requires them to be treated as

¹⁵ *See, e.g.*, 31 C.F.R. 103.121(b) (requiring depository institutions to identify and keep certain records regarding each customer who opens an account).

1 contributions of currency are treated under that section.¹⁶ See Advisory Opinion 1991-
2 20 (Call Interactive) (finding that 900-line service provider should apply limits “similar”
3 to those of 11 C.F.R. § 110.4(c)(3) to anonymous contributions, even though
4 contributions were not cash contributions and 11 C.F.R. § 110.4(c)(3) was “not directly
5 applicable”).

6 To be clear, the Commission is not concluding that bitcoins are “currency,” but
7 that contributions of bitcoins may be accepted under procedures established by
8 Commission regulations governing contributions of currency. The Commission
9 acknowledges that government agencies, courts, and others are grappling with complex
10 questions regarding the categorization and regulation of virtual and other private
11 “currencies.”¹⁷ The Commission expresses no opinion regarding the application of
12 federal securities law, tax law, or other law outside the Commission’s jurisdiction to
13 MYL’s proposed activities.

¹⁶ The Commission is aware that bitcoin is a type of digital currency, which is an emerging technology, and that the technology continues to develop rapidly. For example, technology may be developed which will provide better information regarding the identities of bitcoin contributors. See, e.g., Saumya Vaishampayan, *Facebook Identities On Bitcoin Wallets Could Get Bitcoin To The Mass Market*, Mar. 27, 2014, available at <http://blogs.marketwatch.com/thetell/2014/03/27/facebook-identities-on-bitcoin-wallets-could-get-bitcoin-to-the-mass-market-chamath-palihapitiya/>. To the extent bitcoin technology changes in the future, the Commission will, upon request, revisit the issue.

¹⁷ See, e.g., *SEC v. Shavers*, No. 4:13-CV-416, 2013 WL 4028182, at *2 (E.D. Tex. Aug. 6, 2013); Internal Revenue Service, Notice 2014-21; Craig K. Elwell *et al*, Cong. Research Serv., R43339, Bitcoin: Questions, Answers, and Analysis of Legal Issues (2013), available at <http://www.fas.org/sgp/crs/misc/R43339.pdf> (providing overview of federal, state, and international legal issues); 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; Fed Letter; Massachusetts Office of Campaign & Political Finance Advisory Opinion 2014-01 (Massachusetts Pirate Party PAC); Montana Commissioner of Political Practices Advisory Opinion COPP-2014-AO-001 (Fulton); The Law Library of Congress, Global Legal Research Center, Regulation of Bitcoin in Selected Jurisdictions, January 2014, available at http://www.loc.gov/law/help/bitcoin-survey/2014-010233%20Compiled%20Report_.pdf?loclr=bloglaw.

1 The Commission does note, however, that other government agencies are
2 similarly concerned with the potentially anonymous nature of bitcoin transactions, and
3 the possibility that the bitcoin system may be used for illegal purposes.¹⁸

4 Accordingly, the Commission concludes that MYL may accept only up to \$100 of
5 bitcoins per contributor per election, valued at the U.S. dollar value of the contributed
6 bitcoins on the date received. MYL indicates that it will provide a unique linked address
7 by which an individual may make a bitcoin contribution only after that contributor
8 provides his or her name, address, and employer and affirms that the contributed bitcoins
9 are owned by him or her. These steps are necessary to ensure compliance with this limit
10 — and to ensure that these contributions are not “anonymous,” *see* 11 C.F.R.

11 § 110.4(c)(3).

12 The Commission notes that MYL’s proposal does not include an attestation that a
13 potential contributor is not a foreign national or government contractor. Given the
14 untraceability of bitcoin contributions, the Commission here finds that, before MYL
15 provides a unique linked address by which an individual may make a bitcoin
16 contribution, the contributor must also make an affirmative statement that the contributor
17 is not a foreign national, a federal contractor, or otherwise prohibited from contributing to
18 MYL.

¹⁸ *See, e.g.,* Massachusetts Office of Campaign & Political Finance Advisory Opinion 2014-01 (Massachusetts Pirate Party PAC) at 2, n.2 (noting that, under Massachusetts law, “[b]ecause Bitcoins are increasing in popularity in part due to the anonymity they provide, committees that choose to accept Bitcoins must exercise care to ensure that they obtain accurate contributor information.”); Craig K. Elwell *et al*, Cong. Research Serv., R43339, Bitcoin: Questions, Answers, and Analysis of Legal Issues (2013), *available at* <http://www.fas.org/sgp/crs/misc/R43339.pdf> (“Congress is interested in Bitcoin because of concerns about its use in illegal money transfers”); The Law Library of Congress, Global Legal Research Center, Regulation of Bitcoin in Selected Jurisdictions, January 2014, *available at* http://www.loc.gov/law/help/bitcoin-survey/2014-010233%20Compiled%20Report_.pdf?loclr=bloglaw (finding that there is “widespread concern about the Bitcoin system’s . . . potential for criminal misuse” among foreign governments and central banks).

1 In addition, for purposes of this advisory opinion, the Commission assumes that
2 MYL will comply with its responsibility to determine the eligibility of its contributors
3 and the legality of the contributions it receives in all respects, including through the
4 examination of contributions that “present genuine questions as to whether they were
5 made by . . . foreign nationals, or Federal contractors.” 11 C.F.R. § 103.3(b). This
6 obligation continues even after receipt or deposit of the contribution. *Id.* Nothing in this
7 advisory opinion should be construed to relieve MYL of these requirements.

8 MYL must return or refund any amount of a bitcoin contribution that is over \$100
9 (as well as any bitcoin contribution from a prohibited source, that exceeds the
10 contributor’s annual contribution limit, or that is otherwise not legal). *See* 2 U.S.C.
11 § 441a(a)(1)(C); *see also* 11 C.F.R. §§ 103.3(a), 110.1(d), 110.2(d), 110.4(c)(2). The
12 Commission has previously determined that a committee may return an excessive
13 contribution “either in the form given” (if not in dollars), or in a dollar amount “equal to
14 the excess” of the contribution when it was received. Advisory Opinion 1980-125
15 (Cogswell); *see also* 11 C.F.R. § 103.3(b)(3). Accordingly, MYL’s proposal (AOR at 7)
16 to refund the dollar equivalent of a bitcoin contribution, when required by law to make a
17 refund or return, satisfies this requirement. The refund amount, including for any
18 excessive portion of the contribution, should be calculated by the valuation methods
19 discussed below. If MYL cannot identify a bitcoin contributor in order to refund a
20 bitcoin contribution, MYL should promptly dispose of the contribution for a lawful
21 purpose unrelated to any federal election, campaign, or candidate. *See* 11 C.F.R.
22 § 110.4(c)(3); Advisory Opinion 1991-20 (Call Interactive).

4. *Bitcoin Valuation*

A bitcoin contribution should be valued at the U.S. dollar value of the contributed bitcoins on the date received.¹⁹ If the entity that processes the bitcoin contribution forwards the entire contribution to MYL in the form of dollars, the committee should use this dollar amount to value the contribution.²⁰ If a contributor makes a contribution through an entity that does not forward the contribution in dollars, MYL should value that contribution based on the market value of the bitcoins at the time the contribution is received. To determine this market value, the committee should first rely on valuation data provided contemporaneously by the processor.²¹ If the processor does not provide such data — or if no processor is involved in the transaction — the committee should value the contribution using a reasonable exchange rate of bitcoins for dollars. For an exchange rate to be reasonable, it should be a publicly available rate of bitcoins traded for dollars on a high-volume public bitcoin exchange that is open to transactions within the United States. For each bitcoin transaction, the committee should use the rate established

¹⁹ MYL should value the contribution at the time of receipt even if the value of the bitcoin appreciates or depreciates between the receipt and the liquidation. (See note 15, above, for determining the date of receipt.) Such appreciation or depreciation is reported separately, as explained below.

²⁰ As noted above, MYL has indicated that it might use a processor such as BitPay. Under the BitPay model, a Bitcoin recipient may choose to receive the contribution in bitcoin (to its bitcoin wallet) or in its dollar equivalent (as established by BitPay and forwarded to the recipient's bank account within one business day of the BitPay transaction). See Bitcoin Transaction Processing, <https://bitpay.com/bitcoin-direct-deposit> (last visited Apr. 7, 2014). Thus, if BitPay, or another processor, were to forward to MYL a dollar equivalent of the bitcoin contribution, that dollar equivalent would be the amount of the contribution. If a processor collects its fee by forwarding less than the contribution amount, see the discussion below in Part D.2.

²¹ Under the BitPay model, a contributor could choose to denominate his or her contribution in U.S. dollars with a conversion rate established by BitPay at the time of the transaction (*e.g.*, contribute "\$100 in bitcoins" at a rate of "1 bitcoin = \$500"), even if the contribution is delivered to the recipient in bitcoins.

1 by the chosen exchange closest in time to receipt of the contribution for the transaction
2 being valued.

3 ***B. Sales and Disbursements of Bitcoins Received as Contributions***²²

4 MYL proposes either to sell its bitcoins or to spend them to purchase goods and
5 services. MYL represents that when it sells bitcoins, it will deposit the dollar proceeds in
6 its campaign depository within 10 days of liquidation. As discussed above, the
7 Commission concludes that MYL must liquidate all bitcoins it receives and deposit the
8 proceeds into a campaign depository within 10 days of receiving the contribution.
9 Because of this campaign-depository requirement, MYL may not spend bitcoins it
10 receives as contributions. *See supra* Part A.2 (discussing 2 U.S.C. § 432(h)(1) and 11
11 C.F.R. § 103.3(a)).

12 ***C. Bitcoin Purchases***²³

13 MYL also proposes to purchase bitcoins, either on open, high-volume exchanges
14 or through bitcoin payment processors.²⁴ Under Commission regulations, “funds may be
15 transferred from the [committee’s campaign] depository for investment purposes, but
16 shall be returned to the depository before such funds are used to make expenditures.”
17 11 C.F.R. § 103.3(a). In several prior advisory opinions, the Commission has concluded
18 that a committee could invest its funds in a variety of liquid investment vehicles. *See,*

²² This section addresses MYL’s question 2 (“May MYL PAC purchase and sell Bitcoins?”), 3 (“May MYL PAC disburse Bitcoins?”), 3a (“May it do so with Bitcoins it received as contributions as well as purchased Bitcoins?”), and 3b (“May it accept ordinary discounts offered by providers?”).

²³ This section, in conjunction with Part B above, addresses MYL’s question 2 (“May MYL PAC purchase and sell Bitcoins?”).

²⁴ Although MYL does not specify the source of funds for such purchases, the Commission presumes that such purchases will be made with funds from MYL’s campaign depository.

1 *e.g.*, Advisory Opinion 1999-08 (Specter) (mutual and bond funds); Advisory Opinion
2 1986-18 (Bevill) (cash management account); Advisory Opinion 1980-39 (Fluor PAC)
3 (investment trust). Accordingly, the Commission concludes that MYL may use funds in
4 its campaign depository to purchase bitcoins for investment purposes.

5 The Commission’s regulations provide that funds transferred from the
6 committee’s campaign depository for investment purposes “shall be returned to the
7 depository before such funds are used to make expenditures.” 11 C.F.R. § 103.3(a). The
8 Commission has previously concluded that 11 C.F.R. § 103.3(a) prohibits a political
9 committee from making expenditures with liquid assets it has purchased with funds from
10 its campaign depositories. *See* Advisory Opinion 1986-18 (Bevill) at 2; Advisory
11 Opinion 1999-08 (Specter); *see also* Advisory Opinion 2000-30 (pac.com). Consistent
12 with these prior determinations, the Commission concludes that MYL’s proposal to
13 purchase goods or services with bitcoins that MYL buys using funds from its campaign
14 depository is not permissible under Commission regulations. MYL must sell those
15 purchased bitcoins and deposit the proceeds in its campaign depository before using the
16 funds to make disbursements for goods and services.

17 ***D. Reporting***²⁵

18 *1. Bitcoins Purchased by MYL*

19 The earnings (or losses) realized upon the sale of any bitcoins purchased from
20 funds transferred from a campaign depository must be reported like other investment
21 earnings or losses. *See* 2 U.S.C. § 434(b)(3)(G); 11 C.F.R. §§ 104.3(a)(3),
22 104.3(a)(4)(vi); Advisory Opinion 1999-08 (Specter); Advisory Opinion 1986-18

²⁵ This section addresses MYL’s question 4 (“How should MYL PAC report all of the above?”).

(Bevill). Such earnings and losses should be valued as discussed above and should be reported on Form 3X, Schedule A, Line 17 (with losses as a negative entry).

2. Bitcoins Received by MYL as Contributions

The valuation difficulties inherent in the reporting of bitcoin contributions are similar to the difficulties that arise in the reporting of certain in-kind contributions and foreign currency contributions. Accordingly, the Commission concludes that a practical approach that includes aspects of these reporting procedures is appropriate.²⁶

The receipt of bitcoins should be reported as shown on the Attachment to this advisory opinion. The Attachment shows the reporting of the receipt of \$100 in bitcoin as a contribution (aggregating with \$325 of prior contributions from this contributor) in a “memo item” entry, with the simultaneous reporting of the liquidation of that bitcoin through an exchange. Because “memo item” entries do not affect the reported cash-on-hand, this additional entry does not result in the double-counting of the bitcoin contribution. Instead, these two entries allow the committee’s reported cash-on-hand to be increased by the value of the bitcoin at the time of liquidation.²⁷

A “memo item” entry for the receipt of a bitcoin contribution should include: 1) the U.S. dollar value of the contributed bitcoins on the date received and the number of bitcoins contributed on the date of receipt (in this hypothetical case, .2 bitcoins were valued at \$100.00); 2) the date(s) the bitcoins were contributed and liquidated; and 3) the

²⁶ The reporting approach described here modifies the approach taken in two earlier advisory opinions that addressed the reporting of stock to be liquidated. See Advisory Opinion 2000-30 (pac.com); Advisory Opinion 1989-06 (Boehlert).

²⁷ Note that if the contribution processor forwards the contribution to MYL in dollars instead of bitcoins, the dates and amounts on lines A and B on the Attachment would be identical because the conversion from bitcoin to dollars would be simultaneous with receipt. The name on line A would be the name of the processor instead of an exchange.

1 name of the exchange used and the U.S. dollar value at the time of liquidation. An entry
2 for the receipt of funds from liquidated bitcoins should include: 1) the U.S. dollar value
3 of the contributed bitcoins at the time of liquidation and the number of bitcoins liquidated
4 (in this hypothetical case, .2 bitcoin were valued at \$120.00 when liquidated); 2) the date
5 the bitcoins were liquidated; and 3) the name of the exchange used at the time of
6 liquidation.

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

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

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 Any advisory opinions cited herein are available on the Commission's website.

6 On behalf of the Commission,
7
8
9

10 Lee E. Goodman
11 Chairman
12

13 Attachment

SCHEDULE A (FEC Form 3X)
ITEMIZED RECEIPTS

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:	PAGE	OF
(check only one)		
☒ 11a	☐ 11b	☐ 11c
☐ 13	☐ 14	☐ 15
☐ 16	☐ 17	

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

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 04 / 15 / 2014
Mailing Address 789 West Street		Amount of Each Receipt this Period 120.00 0.2 Bitcoins sold via ABC Exchange
City New York	State NY	
Zip Code 10005		
FEC ID number of contributing federal political committee. C		
Name of Employer	Occupation	
Receipt For: ☐ Primary ☐ General ☐ Other (specify) ▼		Aggregate Year-to-Date ▼ 120.00

Full Name (Last, First, Middle Initial) B. John Contributor		Date of Receipt MM / DD / YYYY 04 / 15 / 2014
Mailing Address 123 First Street		Amount of Each Receipt this Period 100.00 0.2 Bitcoins, liquidated via ABC Bitcoin Exchange on 4/15/14 for \$120
City Alexandria	State VA	
Zip Code 22314		
FEC ID number of contributing federal political committee. C		
Name of Employer First Bank	Occupation Teller	
Receipt For: ☐ Primary ☐ General ☐ Other (specify) ▼		Aggregate Year-to-Date ▼ 425.00

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: ☐ Primary ☐ General ☐ Other (specify) ▼		Aggregate Year-to-Date ▼

SUBTOTAL of Receipts This Page (optional).....▶	120.00
TOTAL This Period (last page this line number only).....▶	