



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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**To:** Commissioners Cardenas, Hatch, and Hayward

**From:** Brian Lau, Acting General Counsel, Zachary W. Norton, Senior Counsel

**Subject:** Bitcoin Research

**Date:** June 11, 2018

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### **Introduction**

At the May 2018 Commission meeting, Commissioners Audero and Hatch identified a further need to consider contributions in the form of bitcoin. Specifically, Commissioner Audero noted that the “Campaign Activity” FAQs included Question 24, which asks “[m]ay a committee accept a contribution in the form of bitcoins, a type of digital currency?” and answers “[t]he Commission has not yet formally addressed this issue. However, staff has done extensive research on the topic and recommends that committees not accept bitcoins or other digital currency as campaign contributions at this time. ...” In response, to these comments, the Commission requested that the Executive Director gather that research to present to the Commission at the following meeting. A summary of that research is listed below and the documents are attached. All existing research located has been provided and no documents have been withheld.

#### Staff Materials:

- Campaign Activity FAQs. (Attachment 1.)
- Technical Assistance Division Report from the June 19, 2014, Commission meeting, which notes that a “revised campaign fact sheet was also posted that addressed staff’s recommendation that campaign committees not accept bitcoins until the Commission has reviewed the matter.” (Attachment 2.)
- Draft “Bitcoins Q/A to add to Campaign FAQs.” (Attachment 3.)
- Draft “Bitcoins Q/A to add to Campaign FAQs ZPM.” (Attachment 4.)<sup>1</sup>
- Draft “Bitcoin Old FAQs ZPM.” (Attachment 5.)
- Draft “Bitcoins Q/A to add to Campaign FAQs EVP” with Executive Director’s edits. (Attachment 6.)

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<sup>1</sup> ZPM are the initials for former General Counsel Zackery P. Morazzini. However, it is unclear whether Mr. Morazzini drafted the documents or merely saved documents drafted by another staff attorney.

### News Articles:

- *Anchorage Daily News* article, originally published on December 22, 2013, entitled “Some Alaskans bet on Bitcoin virtual currency.” (Attachment 7.)
- *CNN* article, originally published on December 20, 2013, entitled “Online retailer Overstock to accept Bitcoin.” (Attachment 8.)
- *Forbes* article, originally published on December 23, 2013, entitled “Libertarians and Millennials Are Going Crazy Over Bitcoin: What Are They?” (Attachment 9.)
- *Miami Herald* article, originally published on December 23, 2013, entitled “Building Bitcoin use in South Florida and beyond; TECHNOLOGY.” (Attachment 10.)
- *Money Morning* article, originally published on December 16, 2013 entitled “The Seven Biggest Bitcoin Myths Debunked.” (Attachment 11.)
- *The Nation* (Thailand) article, originally published on December 22, 2013, entitled “Bitcoin plunges as China bans its use electronic money falls from \$1,000 to \$300 after ban on the mainland.” (Attachment 12.)
- *Youth Ki Awaaz* (India) article, originally published on December 23, 2013, entitled “A Fascinating Digital Currency That Can Revolutionize Cash Transactions! #Bitcoin.” (Attachment 13.)

### Reports and Case law:

- *University of Illinois Journal of Law, Technology & Policy* article, by Derek A. Dion, Note: I’ll Gladly Trade You Two Bits On Tuesday For A Byte Today: Bitcoin, Regulating Fraud In The E-Conomy Of Hacker-Cash, 2013 U. Ill. J.L. Tech. & Pol’y 165, 167. (Attachment 14.)
- *Securities and Exchange Commission v. Trendon T. Shavers and Bitcoin Savings and Trust*, 2013 U.S. Dist. LEXIS 110018; *Fed. Sec. L. Rep. (CCH) P97,596*. (Attachment 15.)
- United States Government Accountability Office, Report to the Committee on Finance, U.S. Senate: Virtual Economies and Currencies, GAO-13-516 (Washington, D.C.: May 2013). (Attachment 16.)

Federal Elections Commission Draft opinions and meeting minutes:

- Unadopted Federal Elections Commission, Advisory Opinion, “Draft”, Dated November 7, 2013, stating that Bitcoins are not “money” and that a committee may accept Bitcoins as in-kind contributions. However, a committee must sell Bitcoins when received and deposit the proceeds its campaign bank account. (Attachment 17.)
- Unadopted Federal Elections Commission, Advisory Opinion, “Draft B” and “Draft C”, Dated November 13, 2013. Draft B stating that a committee may accept Bitcoins as in-kind contributions and that Commission need not determine whether Bitcoins fit within the definition of “money.” However, a committee must sell Bitcoins when received and deposit the proceeds in its campaign bank account. Draft C stating that a committee may accept Bitcoins as in-kind contributions may also contribute Bitcoins to other federal political committees as in-kind contributions. However, the committee must sell Bitcoins when received and deposit the proceeds in its campaign bank account committee before purchasing goods or services. (Attachment 18.)
- Unadopted Federal Elections Commission, Advisory Opinion, “Draft D”, Dated November 20, 2013, stating that a committee may accept Bitcoins as in-kind contributions and may also use Bitcoins to purchase goods and services or to make contributions to other committees. (Attachment 19.)
- Federal Elections Commission Meeting Minutes for November 21, 2013, where all drafts failed 3-3. (Attachment 20.)

# California Fair Political Practices Commission

## Frequently Asked Questions: Campaign Activity

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The FAQs listed below are selected from questions people frequently ask the FPPC about campaign-related activity under the Political Reform Act (“Act”). All efforts have been made to provide helpful, easy to understand, answers to common questions. Please note that this fact sheet cannot address all of the unique variables and circumstances related to campaign activity. For more information, see the FPPC’s campaign disclosure manuals or contact the FPPC with specific questions.

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### Getting Started Questions

1. Q. When must a committee file a Statement of Organization (Form 410) with the Secretary of State’s office?
  - A. The Form 410 is required to be filed within 10 days of raising \$2,000 or more, which is the threshold for qualifying as a committee.
2. Q. Is it possible for a committee to receive a committee ID number prior to meeting the \$2,000 threshold?
  - A. Yes. The Secretary of State will issue a committee ID number upon receipt of the Form 410, even if \$2,000 or more has not yet been raised. The “Not Yet Qualified” box should be marked and once the \$2,000 threshold is met, an amendment must be filed within 10 days to report the date the committee qualified.
3. Q. Is there a fee to register as a committee?
  - A. Yes. Committees are required to pay a \$50 fee to the Secretary of State within 15 days of filing the Form 410. In addition, a \$50 fee is required to be paid to the Secretary of State by January 15 of each year until the committee terminates.
4. Q. Who must be identified on the Form 410?
  - A. The name and contact information of the treasurer and principal officers, if any, must be provided, in addition to any candidate controlling the committee. If the committee will have an assistant treasurer, his or her contact information must be also included.
5. Q. Are there any specific accounting qualifications for someone to serve as a committee’s treasurer?
  - A. No. However, no individual should accept the position as a mere figurehead. To adequately perform the duties, the treasurer must have a basic understanding of the campaign finance laws and the responsibilities of a committee treasurer.

6. Q. May a candidate serve as his or her committee's treasurer?
- A. Yes.
7. Q. Who is considered the principal officer for a non-candidate controlled committee?
- A. The principal officer(s) is the individual or individuals responsible for approving the political activities of a committee, including: 1) authorizing the content of committee communications; 2) authorizing the committee's expenditures; and, 3) determining the committee's campaign strategy. The principal officer must ensure that accurate records are maintained and may be held liable for violations. A committee may have several principal officers. If there are more than three individuals serving as principal officers, only three must be identified on the Form 410. If no individual other than the treasurer is a principal officer, the treasurer must be identified as both the treasurer and the principal officer.
8. Q. After filing a Form 410, what is the next form required to be filed?
- A. Typically the Form 497 (24-Hour Contribution Report) is the next required form. In fact, the Form 497 may be required to be filed *before* the Form 410 is required if the committee qualifies within the 90 days before the election or on the date of the election. During this period, a committee must file a Form 497 within 24 hours each time it receives contributions that total in the aggregate \$1,000 or more from a single source.
9. Q. What are the requirements for naming a candidate's committee or a committee primarily formed to support or oppose a ballot measure?
- A. For a candidate's campaign committee, the name must include the candidate's last name, office sought, and year of the election. For example, "Wallace for Supervisor 2016" or "Re-Elect Rosa in 2016 for Water Board" would meet the naming requirements.
- For a primarily formed ballot measure committee, the name must include:
- The measure's designation (e.g., Proposition 124; Measure BB);
  - The committee's position (support or oppose) on the measure;
  - If sponsored, the name(s) of the sponsor(s) (e.g., "sponsored by the Auto Dealers Association");
  - If the committee has received \$50,000 or more cumulatively from a major donor, a name or phrase that identifies the economic or other special interest of the major donor;
  - If the committee has received \$50,000 or more from major donors with a common employer, the name of the employer of the major donors;
  - If the committee has received \$50,000 or more from a major donor who is a candidate or a candidate's controlled committee, the name of the candidate or the candidate's controlled committee.
- For a comprehensive list of all committee naming requirements, see the Form 410 instructions.
10. Q. May a committee use an electronic recordkeeping system or are records required to be kept on paper?

- A. Electronic records are permitted so long as all of the required information is collected and recorded in a timely and uniform manner that ensures the information is accurate and reliable. Committees are responsible for ensuring that electronic records can be read and/or printed for auditing purposes during the required retention period – four years from the date the campaign statement was filed.

11. Q. Is a committee required to have a tax ID number?

- A. The FPPC does not require a tax ID number; however, some banks may require one in order to open a campaign bank account. A tax ID number may be requested through the Internal Revenue Service website, [www.irs.gov](http://www.irs.gov).

### **Ballot Measure Committee Questions**

12. Q. A group has raised \$2,000 to circulate petitions for a ballot measure. When does the group trigger reporting obligations?

- A. Reporting obligations begin when proponents start gathering signatures (initiative) or when a legislative body acts to place the proposal on the ballot (referendum). Certain contributions received and expenditures made are required to be disclosed even if they were received or made before the proposal became a measure. (See Campaign Disclosure Manual 3 for details.)

13. Q. May a candidate control a ballot measure committee? If so, is the candidate required to file a Form 501 (Candidate Intention Statement)?

- A. Yes, a candidate may control a ballot measure committee so long as the committee's funds are not used to support the candidate's election or to support or oppose other candidates. The candidate's last name must be included in the committee name and the Form 410 requires specified information to be disclosed related to the measure or measures for which the committee is formed. A Form 501 is not required.

14. Q. Are there any special reporting requirements for ballot measure committees controlled by a candidate?

- A. Ballot measure committees controlled by a **state** officeholder (e.g., Governor, legislator) or a candidate for elective **state** office have additional disclosure requirements when reporting expenditures. For each expenditure of \$100 or more, the committee must identify the measure or potential measure associated with the expenditure. For example, a payment to a campaign consultant for research or polling on a specific measure in a local jurisdiction could state: Research/polling for Measure B, City of Sacramento. A committee's expenditures for operating costs, administrative overhead, fundraising, travel, compliance costs and attorney fees do not require the itemization if the payment cannot be attributed to a specific measure or potential measure.

15. Q. During the 90 days before an election, a local primarily formed ballot measure committee for Measure A made a \$10,000 contribution to another primarily formed ballot measure committee for Measure A. Does this contribution trigger the filing of a 24-hour Contribution Report (Form 497)?

- A. Yes, both committees are required to file a Form 497, even if they are both formed to support the same ballot measure.

16. Q. During the 90 days before an election, supporters of a ballot measure, in coordination with the primarily formed ballot measure committee, will be paying for phone banks. The payments will be considered nonmonetary contributions to the primarily formed ballot measure committee. Rather than file several reports, may the committee file one Form 497 estimating the value of all nonmonetary contributions anticipated to be received from this source during the 90-day period before the election and on the date of the election?
- A. Yes. The committee may make a good faith estimate of the value that will be contributed during the period. The Form 497 must be filed within 48 hours of receiving the initial \$1,000 in nonmonetary contributions. If the actual value differs from the estimated amount by 20 percent or more, an amendment must be filed within 24 hours of determining the correct amount.
17. Q. If a non-profit organization makes a contribution to a primarily formed ballot measure committee, what are the campaign reporting requirements for the non-profit organization?
- A. Depending on the amount of the contribution and several other factors, the organization may be required to register as a recipient committee and file campaign reports disclosing its donors or the organization may instead qualify as a major donor committee and be required to file the Form 461. To determine the applicable reporting requirements, see the detailed information in the [Multipurpose Organizations Reporting Political Spending fact sheet](#).

### **Fundraising Questions**

18. Q. If a committee receives two monetary contributions of \$99 from one contributor, must the contributor be itemized?
- A. Yes. When a person's contributions, including monetary, non-monetary, and loans, aggregate to \$100 or more in a calendar year, the contributor must be itemized on the Form 460, Schedule A.
19. Q. A committee is hosting a dinner fundraiser. The committee is charging \$100 per person, but the actual cost of the event to the committee will be \$25 per person. When a person purchases a ticket to attend, what amount is considered as the contribution received?
- A. The contribution received is \$100. The entire cost of the ticket for the fundraiser is the amount of the contribution – the actual costs to the committee are not subtracted from the ticket price.
20. Q. A committee is going to charge \$50 per person at their next fundraiser. May an attendee pay with a \$100 bill?
- A. No. Even if change is immediately provided, a committee may not accept \$100 or more in cash from a single source. The payment must be made by personal check, debit card, or credit card.
21. Q. Is volunteer work provided by some people considered a nonmonetary contribution because of the volunteer's profession, such as free legal advice provided by a lawyer or bookkeeping done by a CPA?

- A. No. Volunteer personal services, regardless of the profession of the individual, are not reportable, so long as the individual providing the services is not paid by a third party.
22. Q. An individual is hosting a fundraising event in her home for a friend who is running for city council. She will spend \$425 to provide tea, coffee, wine, cheese, and fruit. Is the amount she pays for the event considered a nonmonetary contribution to the candidate?
- A. No. So long as she does not spend more than \$500, the event meets the home/office fundraiser exception. **Note:** The home/office fundraiser exception does not apply to a state lobbyist (or a cohabitant of a lobbyist) or a lobbying firm.
23. Q. May a private service, such as PayPal, be used to collect contributions electronically?
- A. Yes, so long as for each contribution of \$100 or more, (a) the service is able to provide the name of the contributor, and (b) the committee reports all the information needed to meet the statutory recordkeeping requirements, including the name, address, occupation, and employer of individual contributors of \$100 or more. Even if the company deducts a fee from the amount of the contribution, the entire amount of the contribution must be disclosed. The fees charged by the private service are reported as expenditures.
24. Q. May a committee accept a contribution in the form of bitcoins, a type of digital currency?
- A. The Commission has not yet formally addressed this issue. However, staff has done extensive research on the topic and recommends that committees not accept bitcoins or other digital currency as campaign contributions at this time. One of the main purposes of the Act is to allow the public and enforcement agencies to be able to accurately identify the true source of a campaign contribution. Given the anonymous nature of digital currency, which is rapidly developing and constantly evolving, there could be significant difficulties in establishing the true source of bitcoin donors. Donors may, nevertheless, convert bitcoins into U.S. dollars and contribute to a committee by personal check, or by credit card via the Internet if the committee has that option available, which the committee must deposit into their one bank account.
25. Q. If a committee receives a contribution of \$100 from an individual, but the individual did not provide the required occupation and employer information, what should the committee do?
- A. The individual contributor should be contacted to obtain the occupation and employer information. If the committee is required to report the contribution before the information is received, the committee should indicate on its campaign statement that the information has been requested and the statement will be amended when the information is received. However, if an individual's occupation and employer information is not received within 60 days of receiving the contribution, the contribution must be returned.
26. Q. A business donated the use of an employee to work on two ballot measure campaigns during the month before the election. The employee spent a total of seven percent of her compensated time working on one measure and seven percent of her compensated time on the other measure. Since more than 10 percent of her compensated time was not



spent on a single campaign, is her compensated time required to be reported as a nonmonetary contribution to the ballot measure committees from her employer?

- A. Yes. If an employee spends more than 10 percent of his or her compensated time working on campaign activity (one or multiple campaigns) in a calendar month, a nonmonetary contribution from the business must be reported. In this situation, each ballot measure committee must report a nonmonetary contribution in the amount of seven percent of the employee's compensated time. The value of the nonmonetary contribution is based on her gross salary; standard benefits (i.e., retirement and health care) do not need to be counted.
27. Q. If a committee receives a large contribution from an individual or entity, are there any special noticing requirements?
- A. Yes. Generally, if a committee receives a contribution of \$5,000 or more from an individual or entity, the committee must notify the contributor in writing *within two weeks* that he or she may need to file a major donor report. In the 90 days before an election, if a contribution of \$10,000 or more is received, the notification must be sent *within one week*. Language for the notice is found in the applicable campaign disclosure manual. An individual or entity qualifies as a major donor if contributions totaling \$10,000 or more are made in a calendar year to California (state and local) candidates and committees.

### **Expenditure Questions**

28. Q. How does a committee report printing expenses of \$100 or more paid for with the committee's credit card?
- A. The name and address of the credit card company and the amount paid must be listed on Schedule E or F of the Form 460, and the printing vendor's name and address must be listed underneath with the amount paid to that vendor. Another example of "subvendor" reporting is when a campaign consultant purchases television advertisements, the names of the stations that air the advertisements must be listed. The campaign disclosure manuals contain examples of how to report subvendors on the Form 460.
29. Q. Is it permissible for a committee to have an agreement with an independent contractor (e.g., committee fundraiser) to pay additional money if fundraising goals are surpassed?
- A. Yes, under the Act, a contingency agreement may be made, such as a committee paying a bonus to a contractor if fundraising goals are met or a committee not paying a contractor unless a particular outcome is achieved. The arrangement should be made as part of a written contract. (Note that the Act strictly prohibits contingency fees to a lobbyist for the outcome of legislation or to a placement agent for securing an investment from a state retirement board.)
30. Q. Is it permissible to purchase gifts using campaign funds?
- A. Campaign funds may be used to purchase a gift only if the payment is *directly related* to a political, legislative, or governmental purpose. Detailed information on the permissible use of campaign funds may be found in the [campaign disclosure manuals](#). In addition, there are special reporting rules for candidate controlled committees when reporting expenditures for gifts, meals, and travel. (See Question #57 below.)

## **Communications Questions**

31. Q. What are the disclosure requirements for a mass mailing sent by a candidate?
- A. When a candidate sends a mass mailing (more than 200 pieces of the same or similar mail in a calendar month), the words “paid for by” and the name and address of the candidate’s committee must appear on the outside of the mailing in no less than six-point type and in a color that contrasts with the background. If two or more candidate controlled committees pay for the mailer, the name and address of at least one of the committees must be shown on the outside and the names and addresses of all committees must appear on at least one insert. The committee ID number is not required to be included, but the FPPC recommends that committees include the committee ID number on all public campaign materials.
32. Q. What information must be included on a mass mailing if it is paid for by an independent expenditure to support or oppose a candidate?
- A. When a mass mailing is paid for by an independent expenditure to support or oppose a candidate, the words “paid for by” and the committee name and address must appear on the outside of the mailing in a color that contrasts with the background. The committee name and “paid for by” disclaimer must appear in no less than 14-point, bold, sans serif type, but the address may appear in no less than six-point type. Committees may combine the display rules and use 14-point, bold, sans serif type for both the committee name and address. The mailing must include the following statement, “[t]his advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.” The statement must be located one-quarter of an inch from the recipient’s name and address in a box with a line weight of at least 3.25 pt. The statement must appear in no less than 14-point, bold, sans serif type. Contrasting colors must be used for the background of the ad and the box outline, text and background.
33. Q. Are emails sent by a candidate’s committee required to include an advertisement disclaimer statement?
- A. Yes. Mass mailings, including emails, must include a “paid for by” disclaimer (e.g., “Paid for by Jones for Supervisor 2016”).
34. Q. How does a committee report payments made to a person to provide favorable or unfavorable content on an Internet site about a candidate or ballot measure?
- A. For each payment of \$100 or more, use the code “WEB” and report the amount of the payment, the payee, the name of the individual providing content, and the website name or URL on which the communication is published in the first instance.
35. Q. Does a candidate or committee incur reporting obligations if an unpaid blogger or other individual endorses his or her candidacy in their Internet communications?
- A. No. Uncompensated Internet activity, including blogging, social networking, sending or forwarding an email, or providing a link to a website, does not trigger a reporting obligation.

36. Q. Does the FPPC have a summary of the requirements for disclaimers on advertisements?
- A. Yes, a summary of the requirements, as well as charts for each type of committee are available [here](#).

### **24-Hour Contribution (Form 497) Report Questions**

37. Q. If a contribution of \$1,000 or more is made to one of a candidate's campaign committees (i.e., legal defense, ballot measure, past election), but not to the committee that is formed for the election triggering the 90-day reporting, are the candidate and/or the donor required to file a Form 497?
- A. Yes. When a candidate is in a 90-day reporting period, each contribution of \$1,000 or more to any of his or her committees requires the Form 497 to be filed by both the candidate and the donor.
38. Q. During the 90-day reporting period, must a candidate file a Form 497 if a contribution of \$500 is received by one of the candidate's campaign committees (i.e., legal defense, ballot measure, past election) and another contribution of \$500 from the same donor is received by the committee that is formed for the election triggering 90-day reporting?
- A. No. Because a single committee did not receive \$1,000 or more, the candidate is not required to file a Form 497. The donor is also not required to file a Form 497 as the donor did not make a contribution of \$1,000 or more to a single committee.
39. Q. A candidate received \$500 from a donor for the special primary election a few days before the election, and another \$500 from the same donor a few days after the primary election when the candidate moved to the special general election. Both contributions were received during the 90 days before the general election. Is a Form 497 required to be filed by the donor and/or the candidate?
- A. No. Because \$1,000 or more was not received in connection with one election, the Form 497 is not required to be filed.
40. Q. Must a candidate file a Form 497 if, during the 90 days before the election or on the date of the election, he or she makes a contribution of \$1,000 or more from personal funds to his or her campaign?
- A. Yes. The candidate's personal funds are contributions and subject to reporting in the same manner as other contributions received.
41. Q. What are the 24-hour contribution report (Form 497) requirements for contributions received by a political party committee?
- A. A political party must report each contribution of \$1,000 or more received within 90 days of **any** state election or on the date of a state election (including a special election). If the contributor is a committee, the contributor must also file the Form 497 within 24 hours.

### **Enforcement Question**

42. Q. If a campaign statement is filed late, what are the potential consequences?
- A. The filing officer with whom the statement is required to be filed may assess a fine of up to \$10 for each day that the statement is late (or up to \$20 per day for a statement and a

copy). In addition, filing officers are required by law to refer non-filers to an enforcement authority. If a matter is referred to the FPPC's Enforcement Division for failure to file, the fine may increase up to a maximum of \$5,000 per violation. In 2015, over 50 committees were fined by the FPPC for failing to timely file campaign statements.

### **Candidate Questions**

43. Q. When may a candidate begin to solicit and raise funds for an election?
- A. Upon filing a Candidate Intention Statement (Form 501), a candidate may begin to solicit and receive contributions. The Form 501 is considered filed when it is personally delivered or placed in the mail to the filing officer.
44. Q. Is a candidate required to file a Form 501 when running for reelection to the same office?
- A. Yes. A separate Form 501 is required for each election, including reelection to the same office.
45. Q. If a candidate does not intend to raise any funds from others and will be spending personal funds only for the filing fee and ballot statement fee, is the candidate required to file a Form 501 and open a campaign bank account?
- A. No, the candidate is not required to file a Form 501 or open a bank account; only the Form 470 (Campaign Statement – Short Form) is required.
46. Q. If a candidate does not intend to raise funds from others, but will be spending \$2,000 or more of his or her personal funds on his or her campaign (in addition to the filing fees and ballot statement fees), is the candidate required to open a bank account?
- A. Yes. Even if a candidate does not raise funds from others, if he or she spends \$2,000 or more on the campaign (not counting personal funds spent on filing fees and ballot statement fees), he or she qualifies as a committee and must open a campaign bank account. Campaign funds may not be commingled with personal funds.
47. Q. What are the rules related to a candidate spending personal funds on his or her own campaign?
- A. Except for payments for the filing fee, ballot statement fee, and \$50 Secretary of State annual committee fee, a candidate must deposit personal funds into the campaign bank account before making campaign expenditures, even if he or she does not want to be reimbursed. Personal funds may be reported as loans or monetary contributions. Personal funds may not be commingled with campaign funds and campaign expenditures may not be made from a personal account.
48. Q. Prior to attending an FPPC webinar and learning that it was not permitted, a candidate starting up his campaign used personal funds to pay for some campaign expenses. How is this reported on the Form 460?
- A. So that the activity is properly disclosed, the amount of personal funds used should be reported on Schedule A as a contribution and the expenditure is reported on Schedule E. If the candidate has not yet been reimbursed by the committee, the amount may be reported on Schedule F as an accrued expense. Non-disclosure of the payments is a

violation of the Act. All future payments must be made from the campaign bank account; personal funds must be deposited into the account before making expenditures.

49. Q. May a campaign worker use personal funds to make campaign expenditures and be reimbursed by the committee?
- A. Yes. Anyone other than the candidate may use personal funds to make campaign expenditures, such as purchasing printing, and be reimbursed after providing a receipt or invoice to the campaign. However, if the campaign does not reimburse the individual who made the expenditure within 45 days, the committee must report the amount expended as a nonmonetary contribution received.
50. Q. What are the contribution limits for local elections?
- A. The Act does not impose contribution limits on local elections. However, many local jurisdictions have adopted campaign finance ordinances that include contribution limits. Contact the city clerk or county elections office to determine if there are local contribution limits. The FPPC's website also posts local campaign ordinances.
51. Q. If a candidate occasionally uses his or her personal vehicle to attend campaign events and meet with voters, is the use of the vehicle reportable even if the candidate does not want to be reimbursed for the mileage?
- A. Incidental use of a candidate's personal vehicle for campaign purposes is not considered a contribution or expenditure and is not reportable. However, if the use of the vehicle is directly related to a political, legislative or governmental purpose, and the candidate would like to be reimbursed by the committee, the reimbursement must be made at the rate approved by the Internal Revenue Service pursuant to Section 162 of the Internal Revenue Code.
52. Q. If a candidate makes long-distance calls using his or her home phone to request support from organizations statewide, may committee funds be used to pay the phone bill?
- A. Committee funds may be used for the campaign portion of the bill; however, the non-campaign portion must be paid with personal funds.
53. Q. If a candidate is defeated in a local election, may the leftover funds be used to run again in the next local election?
- A. Yes, if specified requirements are met. An unsuccessful candidate who plans to run for the *same office* in a future election must file a new Form 501 and an amended Form 410 **before** the funds become surplus. Leftover funds become surplus 90 days after an official leaves office (incumbents) or 90 days after the end of the post-election reporting period, whichever is later. The end of the post-election reporting is June 30 for elections held between January 1 and June 30, and December 31 for elections held between July 1 and December 31. (Note: Candidates should check with the local jurisdiction to determine if there is a local ordinance that does not allow a candidate to use the same committee for a future election.)

An unsuccessful candidate who plans to run for a *different office* must file a new Form 501, a new Form 410, and open a new campaign bank account and transfer the funds **before** the funds become surplus as described above.

54. Q. If a candidate receives a refund for a filing fee after his or her committee has already been terminated, must the committee and bank account be reopened in order to accept the refund?
- A. No. Candidates are allowed to accept refunds from a governmental entity without reopening the committee and campaign bank account.
55. Q. If a candidate controls a ballot measure committee, must the ballot measure committee file a preelection statement when the candidate's committee is required to?
- A. Yes. If a candidate has multiple controlled committees, each of the committees are required to file on the dates the candidate is required to file preelection statements in connection with his or her election to office. (See Regulation 18405.)
56. Q. May a law enforcement officer, who is running for city council, wear his or her uniform at campaign events or when appearing in political advertisements for his or her campaign?
- A. The Political Reform Act does not contain restrictions related to a candidate wearing a law enforcement uniform; however, other laws may apply. The candidate should contact the District Attorney or City Attorney.
57. Q. What are the special reporting requirements for expenditures made by a candidate controlled committee when purchasing gifts, travel, and meals?
- A. Itemized expenditures made by a candidate controlled committee for gifts, meals, or travel, must be further explained in the "Description of Payment" column, whether or not an expenditure code is used, as described below.

**Gifts:** Briefly describe the political, legislative, or governmental purpose of the expenditure, and provide the date of the gift and a description of the gift. If the gift was made to an individual recipient, the name of the recipient must be included. If a gift was made to a group of recipients, the name of each recipient who received a benefit of \$50 or more is required. When the recipient of a gift with a value of \$50 or more is not known at the time the payment is required to be reported, the committee must report that the gift was for an "undetermined recipient." Once the gift has been given to the recipient, the campaign statement must be amended within 45 calendar days to disclose the name of the recipient.

**Meals:** Briefly describe the political, legislative, or governmental purpose of the expenditure, and provide the date of the meal, the number of individuals who were present at the meal, and whether the candidate, a member of his or her household, or an individual with authority to approve expenditures of campaign funds was present at the meal. It is not necessary to include the names of individual attendees on the report. However, the names of the attendees must be maintained in the committee's records. For meals reported as an itemized expenditure for travel, the reporting rules below apply.

**Travel Payments (including lodging and meals):** Briefly describe the political, legislative, or governmental purpose of the expenditure, and provide the date or dates of the travel, the destination, and the goods or services purchased. The description must also include the number of individuals for whom the payment was made and whether the trip included the candidate, a member of his or her household, or an individual with the authority to approve expenditures of campaign funds. The names of individuals who traveled are not required to be disclosed on the report. However, the names of the travelers must be maintained in the committee's records.



## FAIR POLITICAL PRACTICES COMMISSION

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### MEMORANDUM

**To:** Chair Remke and Commissioners Casher, Eskovitz, Wasserman, and Wynne  
**From:** Lynda Cassady, Chief of Technical Assistance Division  
**Subject:** Report of Division Activities

#### **Staff Accomplishments**

Staff members Cynthia Fisher and Sonia Rangel have both surpassed 25 years of state service, and we congratulate them on their many years of service to the FPPC.

#### **Advice Requests**

We have continued to experience a higher volume of phone and email advice requests due to ongoing elections and the requirement that local government agencies review their conflict of interest codes this year.

Phone counts January – May: 5,817

Email counts January – May: 4,881

#### **Form 700 - Statement of Economic Interests**

Staff is processing the more than 15,000 statements we received during March and April and is beginning the process of notifying non-filers, while filling requests for the public to view over 800 statements through May 31, 2014. Statements for the Board of Supervisors were posted to our website in May. We anticipate posting statements for Mayors and City Councilmembers in July.

#### **Form 700-Approvals of Electronic Filing Systems**

Staff has approved 68 programs to date and anticipates that the number of certification submissions will significantly increase beginning in early fall.

#### **Campaign Manuals and Informational Material**

Fact sheets were prepared and posted that address the filing locations of campaign statements for general purpose committees, candidates, and judicial candidates. Both the draft ballot measure committee manual and general purpose committee manual are posted for public comment. Staff must make revisions to fact sheets, forms and manuals to address the new Senate Bill 27 requirements for multi-purpose committees. Staff must also create a form and instructions for committees required to submit top ten contributor lists pursuant to Senate Bill 27. A revised campaign fact sheet was also posted that addressed staff's recommendation that campaign committees not accept bitcoins until the Commission has reviewed the matter. Filing schedules were posted on the FPPC website for the CalPERS election.

#### **Special Presentations**

Manager Dixie Howard made an overview presentation to the California Sheriff's Association on the Act's requirements pertaining to elected officials.

## **Seminars and Workshops**

Manager Trish Mayer and Consultant Alexandra Castillo made presentations to candidates and treasurers in San Bernardino County and in San Jose. Consultant Cynthia Jones provided training to filing officers on their administrative duties for campaign statements. The workshops have been well attended and we have received comments such as “Very good presentation” and “I have been in office a long time, and appreciate how helpful you are.”

## **Webinar Training**

Consultants Alexandra Castillo, Cynthia Fisher, Cynthia Jones, Courtney Miller, Deborah Hanephin and Ivy Branaman provided webinar training to local candidates and treasurers, local PAC treasurers, political party treasurers, and campaign filing officers. Consultant Alexandra Castillo provided training to staff from Mendocino County who perform campaign filing officer duties. The webinars continue to be popular as a convenient and cost effective way to receive beneficial training. Webinars will be conducted in June for officials in local government agencies who must amend their conflict of interest codes this year. In addition, we are developing a candidate/treasurer webinar that will be posted on our website soon for local candidates running in the November election.

## **Conflict of Interest Code Biennial Notices**

Every local government agency in California is required to review its conflict of interest code in 2014 and submit a notice by October 1, 2014, to its code reviewing body on whether the code needs to be amended. Information on this requirement has been sent and posted on the FPPC website for multi-county agencies, as well as to counties and cities who must administer this requirement.

## **Conflict-of-Interest Codes**

The following conflict of interest code amendments and adoption were approved.

### **State Agencies:**

State Personnel Board

### **Multi-County Agencies:**

Central Sierra Economic Development  
Hanford Joint Union High School  
Regional Water Authority  
Woodland Joint Unified School District

## **Workload Summary**

The chart below provides an overview of the division’s workload from January 1 through May 31. The Division not only provides educational assistance, but devotes significant resources to posting detailed information concerning independent expenditure verification and agency reports which provide transparency into government processes.

<b>Year-to-Date Workload</b>	
<b>Conflict of Interest Code Approvals</b>	<b>23</b>
<b>Seminars/Webinars/Outreaches</b>	<b>36</b>
<b>Special Presentations</b>	<b>6</b>
<b>Campaign Form 462- IE Verification</b>	<b>477</b>
<b>Form 801 – Payments to Agencies</b>	<b>34</b>
<b>Form 802 – Agency Ticket Distributions</b>	<b>1,035</b>
<b>Form 803 – Behested Payment Reports</b>	<b>131</b>



## Bitcoins Q/A to add to Campaign FAQs:

Q: May a committee accept a contribution in the form of bitcoins, a type of digital currency?

A: The Commission has not formally addressed this issue, but **we are/FPPC staff is (?)** recommending that bitcoins not be accepted as campaign contributions. One of the main purposes of the Act is to identify the true source of a campaign contribution; however, given the anonymous nature of digital currency and based on extensive research, it appears there could be significant difficulties in establishing the true source of bitcoin donors. Donors may convert bitcoins into U.S. dollars and contribute by personal check or by credit card via the Internet if the committee has that option available.

## Bitcoins Q/A to add to Campaign FAQs:

Q: May a committee accept a contribution in the form of bitcoins, a type of digital currency?

A: The Commissioners have not formally addressed this issue at this point. However, staff has done extensive research on the topic and recommends that bitcoins or other digital currency not be accepted as campaign contributions at this time. One of the main purposes of the Act is to allow the public and enforcement agencies to be able to accurately identify the true source of a campaign contribution. However, given the anonymous nature of digital currency, which is rapidly developing and constantly evolving, there could be significant difficulties in establishing the true source of bitcoin donors. Donors may, nevertheless, convert bitcoins into U.S. dollars and contribute to a committee by personal check, or by credit card via the Internet if the committee has that option available, which the committee must deposit into their one bank account.

**23. Q. May a committee accept a contribution in the form of Bitcoin (digital currency)? If so, how is it reported?**

A. Yes. Bitcoins are considered a nonmonetary contribution and may be accepted only if the candidate first obtains all the required donor information. No anonymous contributions valued at \$100 or more are permitted. For contributions valued at \$100 or more, the contributor's name, address, occupation and employer information are required. The contribution will be reported on Schedule C of the Form 460. The Bitcoins shall be treated and reported as a campaign asset until disposed of.

**24. Q. How are Bitcoins valued?**

A. Bitcoin contributions should be valued at fair market value in U.S. dollars on the date received. This figure may be available from a Bitcoin exchange, using the closing value on the date received.

**25. Q. When must Bitcoins be converted to U.S. dollars and transferred into the campaign account?**

A. The date of receipt. Committees may only have one campaign bank account. Holding campaign assets in another account is not permissible.

**26. Q. How is the disposition of Bitcoins reported?**

A. Upon liquidation of the Bitcoins, the payment received must be reported on Schedule I of the Form 460 campaign report.

**27. Q. Can fees paid to convert the Bitcoins to cash be deducted from the fair market value of the Bitcoins?**

A. Fees charged by an entity to process or convert the Bitcoins to U.S dollars are not deducted from in the reported value of the contribution. The committee should report the fees to the entity as committee expenditures.

**28. Q. Can Bitcoins be received in and spent from a Bitcoin wallet or other non-committee repository?**

No. Contributions received by a committee must be deposited in the committee's one campaign bank account prior to expenditure. Therefore, receipt and distribution from a Bitcoin wallet is not permissible.

## Bitcoins Q/A to add to Campaign FAQs:

Q: May a committee accept a contribution in the form of bitcoins, a type of digital currency?

A: The Commissioners have not yet formally addressed this issue ~~at this point~~. However, staff has done extensive research on the topic and recommends that committees not accept bitcoins or other digital currency ~~not be accepted~~ as campaign contributions at this time. One of the main purposes of the Act is to allow the public and enforcement agencies to be able to accurately identify the true source of a campaign contribution. ~~G~~However, given the anonymous nature of digital currency, which is rapidly developing and constantly evolving, there could be significant difficulties in establishing the true source of bitcoin donors. Donors may, nevertheless, convert bitcoins into U.S. dollars and contribute to a committee by personal check, or by credit card via the Internet if the committee has that option available, which the committee must deposit into their one bank account.



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Anchorage Daily News (Alaska)

December 22, 2013 Sunday

**LENGTH:** 1744 words

**HEADLINE:** Some Alaskans bet on Bitcoin virtual currency

**BYLINE:** MONICA GOKEY; mgokey@adn.com

**BODY:**

A 4-year-old "virtual" currency called Bitcoin is finding investors around the world, including in Alaska. Bitcoin's growth has been fueled largely by a handful of ardent believers who see online money as a staple of future commerce.

On a national stage, Bitcoin has earned itself a starkly divided reputation. Some love it because it's anonymous, Web-based and potentially lucrative. Others hate it for the same reasons. Most don't know enough to weigh in either way.

Bitcoin is in an awkward teenage phase -- not quite elevated from its geek-centric roots as a computer program, and not mainstream enough for commercial acceptance.

D.G., a resident of Anchorage, started bitcoin "mining" two years ago. "Virtual mining" is required to create bitcoins. D.G. says he broke into the alternative currency business at a good time.

D.G. would only speak with the Daily News on the promise of anonymity. Like many bitcoin users, he considers his anonymity of paramount importance. What's at risk, he said, is his mining infrastructure -- the computers he calls his "farm" -- and the safety of his family, several of whom are also bitcoin "miners."

"It wouldn't be any different if I had a gold mine in my backyard," he explained.

D.G. considers himself a regular Alaskan. He's in his 40s. He's a dad. He works as a property manager. A love of entrepreneurship led him to get involved in bitcoin and other e-currencies.

The origin of Bitcoin is murky at best. In 2009, a computer programmer operating under the pseudonym "Satoshi Nakamoto" released a program that some describe as the digital embodiment of a true natural resource boom. About two years ago, Nakamoto disappeared from the Internet, though the program continues to run.

Users "mine" the program for bitcoins. The more powerful the computers, the better their odds of solving the random algorithms generated by the program. If they're successful, they are rewarded with bitcoins.

Like a true natural resource boom, bitcoins become more scarce the longer the mining continues. The program will end in 2140, once 21 million bitcoins have been produced.

Bitcoins aren't coins or anything tangible. They exist only as collection of ones and zeroes in computers.

D.G. started his bitcoin venture by taking a risk. He saw a new company online pre-selling bitcoin mining equipment. He ordered 10 units.

"It was a total gamble. Everyone on the Internet said this was a scam," D.G. recalled. Even his family thought he was throwing money away. When the equipment finally arrived, D.G. put it to work.

Some Alaskans bet on Bitcoin virtual currency Anchorage Daily News (Alaska) December 22, 2013 Sunday

"The first month I made \$2,500 on my \$5,000 investment," he said.

Since then, he has sunk more than \$200,000 into his bitcoin mining equipment.

"I sold my bitcoins every day. I ended up using all the proceeds to buy the upgrades (for my mining fleet)," he said.

When he first started mining, the price of a single bitcoin was about \$2. In hindsight, he wishes he'd kept his bitcoins.

"I've literally mined 10,000 to 12,000 coins -- so imagine what that would have been worth." Twelve thousand bitcoins would be worth more than \$7 million at Friday's price .

That price is still on the lower end of what D.G. believes bitcoins will eventually be worth.

A bitcoin reached a trading high of \$1,147.25 in early December, according to The Wall Street Journal. On Wednesday its price plummeted to about \$550, prompting several national media outlets to ask if the bitcoin boom had finally gone bust.

UAA economist Kyle Hampton said bitcoins' price fluctuations are a "Wild West situation" that needs to work itself out. "People are speculating on bitcoin -- the price is skyrocketing but it's volatile," he said. "The power of the alternative currency is based in whether or not people will accept it."

The unpredictable price swings in a bitcoin's value make it hard to use as true money.

"That's one of the real limitations right now ... nailing down its value," Hampton said.

buying local

For the most part, D.G. said, he doesn't actually spend his bitcoins unless it's to buy mining equipment. But he said the potential is clear. And contrary to what you might expect for an online currency, D.G. said buying local is the way to start.

"If you want to get into investing in bitcoins, you need to start local," he said. Buying from the big exchanges is difficult. D.G. said he has several customers in Alaska. One regular buyer on the North Slope purchases a little bit of bitcoin every week.

D.G. recently sold \$14,000 worth of bitcoins to two 20-somethings planning to buy Internet equipment from China (from a company that only accepts bitcoins as payment).

If you poke around the Internet, you can find bitcoin users in Fairbanks and on the Kenai Peninsula but it's virtually impossible to gauge how many users operate in a particular geographic area.

It's only been in the past couple of months that D.G. has actually met a handful of other bitcoin miners in Anchorage. He described them as similar to himself: mostly in their mid-40s with the financial wherewithal to give bitcoin mining an earnest go.

While D.G. sees a bright future for the bitcoin, others still aren't sure.

Economist Hampton said the bitcoin is hardly the first alternative currency people have tried to create over the years but it's one of the most successful he's seen.

"[Bitcoin] is incredibly innovative -- as an economist it's absolutely stunning to see.

"Bitcoin's history is very much tied up in -- I don't want to say anti-government -- but a libertarian mind-set," Hampton said.

In the U.S., the Federal Reserve influences the economy by manipulating interest rates and inflation.

"Some people say that's too much power for the government to have, to manipulate the sentiments of people in the market" and to manipulate currency, Hampton said. "That's part of the appeal (of Bitcoin) is that there's not an individual you have to trust. The system is what it is; it's not corruptible."

D.G. agrees.

"Do you trust our government and our currency? They're printing it like mad," he said.

Some Alaskans bet on Bitcoin virtual currency Anchorage Daily News (Alaska) December 22, 2013 Sunday

"Internet currencies are deflationary instead of inflationary because they have a limit on how much can ever be created," D.G. added. "(Bitcoin) becomes more and more scarce (compared to) currencies created by governments where they can just (print) more."

Hampton said he would bet that Bitcoin will still be around in 10 years. Looking out to 50 years, he isn't sure.

"One of the things that economists like me say is that the best prediction of the price of anything in the future is its price right now. There's as much a chance of (a bitcoin's) price going up as there is the price going down," Hampton said.

In Fairbanks, Jacob Sears is a Bitcoin early adopter and avid supporter. Sears is 19 years old and a political science major at the University of Alaska Fairbanks. He has been involved with Bitcoin for about a year now but it's only during the past semester that he's become active about bringing it to UAF.

Sears has given presentations to other students and hopes to launch a virtual currencies club. Support from UAF faculty has been positive, he said. Sears also contributes to a national Bitcoin blog.

Sitting down for coffee in Anchorage on his way home for the holidays, Sears is dressed in a white collared shirt and a red tie. He isn't shy about admitting that his passion for Bitcoin might seem like just a geeky hobby to some.

At his side are a laptop, a smartphone and a set of keys. One of his keys is a small metal disc with a unique QR code printed on it (a QR code is a modern, square-shaped version of a barcode). When Sears scans his key chain with his smartphone, his digital bitcoin wallet automatically comes up on the screen, ready for a transaction.

tough market

Sears' system is as easy as using a debit card. His only problem is finding Alaska vendors that accept bitcoins.

"I'm hoping to get to the point you can pop in and buy a coffee," Sears said.

In other U.S. cities, bitcoins are an accepted form of payment at sandwich shops and other vendors.

Alaska isn't quite there yet, Sears said. But he's eager to help businesses set up bitcoin payment systems -- "it's pretty business-friendly," he said.

Sears said he spends most of his bitcoins over the Internet. Through an online service called gyft.com, Sears uses bitcoins to shop at a slew of major retailers. Gyft.com lets users pay major vendors like Amazon, Target and the Gap with bitcoins.

And what does Sears buy? College kid stuff. Video games, a Nintendo 3DS and textbooks for the spring semester.

While Sears has dabbled in bitcoin mining, he said his student income doesn't really match the investment most miners need to be successful. He currently mines about 0.02 of a bitcoin every other week -- about enough for a coffee and a bagel.

That's fine by him. As much as he has become infatuated with Bitcoin, Sears knows it's a high-risk environment.

"This is definitely still the early-adopter period," he said.

Sears says his parents still don't quite get the nuts and bolts of Bitcoin, despite his best efforts to explain it to them, but they're excited by his enthusiasm for it nonetheless.

While Bitcoin's niche audience is dedicated to its success, governments across the world are still struggling to come to grips with online currencies.

When an online drug bazaar called Silk Road was busted in early October, the FBI seized more than \$28 million in bitcoins that had been used to buy and sell illegal drugs.

The incident raised an uncomfortable question: To what extent is Bitcoin used to hide illegal activities?

Drug Enforcement Administration spokeswoman Jodie Underwood said the agency has seen a link between Bitcoin and drug trafficking in the DEA's Pacific Northwest region, which includes Alaska.

"Our intelligence in the PNW indicates that bitcoins are starting to become another alternative mode for drug traffickers," Underwood said.

Some Alaskans bet on Bitcoin virtual currency Anchorage Daily News (Alaska) December 22, 2013 Sunday

Still, most "major drug organizations continue to prefer cash," said Joseph Moses, DEA public affairs spokesman.

The agency has adjusted by hiring more computer specialists and partnering with other agencies, especially the FBI, on drug crimes facilitated by the Internet.

At a November congressional hearing on virtual currencies, several groups testified against Bitcoin, citing its link to nefarious activities like online drug and pornography sales.

UAA economist Hampton said cracking down on Bitcoin would likely have little effect on the overall flow of dark money:

"Cash is anonymous; Bitcoin doesn't do anything that cash doesn't do already."

**LOAD-DATE:** December 23, 2013





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CNN Wire

December 20, 2013 Friday 7:10 PM EST

**LENGTH:** 730 words

**HEADLINE:** Online retailer Overstock to accept Bitcoin

**BYLINE:** By Ben Rooney

**DATELINE:** NEW YORK (CNNMoney)

**BODY:**

NEW YORK (CNNMoney) -- Overstock.com will become the first major U.S. retailer to accept Bitcoin, the company's chief executive Patrick Byrne told CNNMoney Friday.

Byrne said customers will be able to use the virtual currency to make purchases on Overstock.com, which sells everything from digital cameras and bed sheets to patio furniture and even cars. The company is expected to have total revenue of \$1.3 billion for 2013, according to FactSet Research.

"We think there's going to be a market in Bitcoin, and we want to get in front of it," said Byrne. "We want to be the first major e-tailer that accepts them." Byrne first made comments about Overstock.com accepting Bitcoin in an interview with Bitcoin blog newsBTC and later in the Financial Times.

Overstock plans to begin accepting Bitcoin near the end of the second quarter of 2014. Byrne said the move stems partly from his background in the Austrian School of economics, which is associated with the Libertarian party in the United States.

"We're the guys who like gold," he said. "We think the monetary base should not be something that a government can create with a stroke of a pen."

Unlike traditional currencies, Bitcoin is not backed by any government authority or central bank. It exists only on the internet and is "mined" by powerful computers that solve complex math puzzles.

Byrne said he is concerned about the possibility of "bad currency wars" in the future. He said the U.S. dollar is already being undermined by the Federal Reserve's easy money policies and by overspending by politicians in Washington.

Like gold, Byrne said Bitcoin should hold its value better than the dollar because it is "mathematically constrained" and cannot be manipulated by government authorities.

There are currently 12.1 million bitcoins in circulation, according to blockchain.info. The total number of bitcoins is capped at 21 million.

Critics say Bitcoin is at best a fad and at worst a haven for criminals looking to buy and sell illegal goods anonymously. But supporters argue that Bitcoin is a more democratic alternative to traditional currencies.

Former U.S. Congressman Ron Paul, an outspoken Libertarian from Texas, has said that Bitcoin could be the dollar's "destroyer" if it goes mainstream.

Online retailer Overstock to accept Bitcoin CNN Wire December 20, 2013 Friday 7:10 PM EST

Bitcoin has exploded in value this year, rising from about \$13 in January to more than \$1,200 earlier this month. On Friday, bitcoins were trading at about \$739 on the Mt. Gox exchange.

The currency is prone to wild swings and experts say Bitcoin will remain volatile as the technology evolves.

Byrne acknowledged that the volatility is a problem and that Overstock will need to "continually convert Bitcoins into dollars" to avoid losing money. Eventually, he said there will be a derivatives market that will allow companies to hedge their exposure to Bitcoin.

In some respects, it's not a surprise that Overstock would move to accept Bitcoin. The company is unconventional. It is known for quirky ads and for shortening its name online to O.co.

Byrne also has a penchant for writing long, rambling shareholder letters in earnings reports. And he famously appeared on "60 Minutes" to complain about short sellers who were betting against his stock. He even told CNNMoney in 2003 that "When opportunities come along where we can knee the shorts in the groin, that's always good for fun and amusement. That's just icing on the cake."

But Overstock is not the first business to embrace Bitcoin.

British entrepreneur Richard Branson made a splash in November when he announced that his commercial space travel venture, Virgin Galactic, will allow customers to pay for their flights with Bitcoin.

China's leading search engine Baidu also accepts Bitcoin for certain services. And a car dealer in California recently accepted Bitcoin as payment for a Tesla Model S, valued at \$100,000.

Bitcoin has been a particularly popular investment in China, but regulators have been cracking down. This week, China's largest bitcoin exchange, BTC China, abruptly stopped accepting new deposits. That came after China's central bank issued a warning and announced new rules for financial institutions dealing in bitcoins earlier this month.

European Union officials have also warned about the risks of Bitcoin and may consider regulating the currency.

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**LOAD-DATE:** December 21, 2013



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I4U News

December 23, 2013 Monday 5:35 AM EST

**LENGTH:** 818 words

**HEADLINE:** Libertarians And Millennials Are Going Crazy Over Bitcoin: What Are They?

**BYLINE:** Forbes

**BODY:**

Dec 23, 2013 (I4U News:<http://www.i4u.com> Delivered by Newstex)

Libertarians and Millennials are going crazy over Bitcoin. So what are these Bitcoins, what do they do, what's the big deal, and why do young people love them so much? The simplest answer is the freedom offered by a currency largely unregulated by government.

Bitcoin is a private currency that is not backed by any government, central bank or organization. It's completely decentralized. This video offers more details on how this works. We have seen the cost of Bitcoins in dollars rise from a few cents to values of \$1,200. Much of the reason for the rise is that people trust Bitcoin more than many government-backed currencies.

Bitcoins are being used all over the world. Anyone can send Bitcoins to anyone, anywhere with one of the lowest transactions costs on the planet compared to government backed currency. These low transactions costs make doing business with Bitcoins more affordable, convenient and secure, three factors that young people highly value.

Young people have more distrust in the government and its competence than ever before. We're tired of dealing with banking regulations which make international transactions more expensive, slow and more inconvenient than they need to be.

There is a surge of libertarian belief among Millennials that 'less government is better government.' Bitcoins are a perfect case study of how a free market, private currency not only can work but excel in the real world. With no government involvement, this is a system that users regulate and take care of themselves.

While the dollar value of Bitcoin is still volatile, that hasn't stopped it from becoming more and more widely accepted. Subway has accepted Bitcoin, Virgin Galactic, non-profits like Students For Liberty are accepting them as donations. In fact, recently The Foundation For Economic Education was gifted a million dollars worth of BTC. Merchandising companies like Inspired by Liberty are also accepting them for goods. This is a small list of the thousands of companies that accept Bitcoins. And more and more are jumping onboard everyday, stabilizing the currency as they do so.

This stabilization and growing trend of businesses accepting Bitcoins is adding to the excitement surrounding them. More things to purchase with Bitcoins, combined with increased financial freedom, makes Bitcoins even more exciting to Millennials.

Cryptocurrencies have never really been done before quite like Bitcoin. Young people understand technology better than any previous generation, because we have had computers and advanced technology as a part of our lives since we were born. Millennials aren't scared to dive into emerging technologies to experience the full free market of ideas accessible through the internet.

At first Bitcoins started out as a curiosity, but as more and more people became interested, and Bitcoin started to be taken more seriously, it has become the powerhouse that we see today. With more people taking interest in this fascinating real-world economic experiment, we are going to see Bitcoin enter the everyday consumer's life.

We're also seeing Bitcoin coincide with a generation more mobile than ever. Millennials can use Bitcoins in any country, without having to convert their currency. There is no need to find a currency exchange building, no need to worry about conversion rates, no need to worry about a lot of the problems with government-issued currency. Bitcoin also connects young people in disparate countries with each other so they can pay each other easily for services like software development and intellectual property. Bitcoin has no borders. It connects businesses directly with customers in a more direct way than any 'middlemen' like PayPal or a credit card companies. It's economic freedom unlike anything seen before.

Bitcoins can be an investment, a medium of exchange, and much ore. It's also a challenge to the status quo and proof that the free market can produce a private currency that works.

Bitcoin might not be the end-all and be-all for currency, but its respectable success despite its flaws demonstrates that young people are more-than-willing to experiment with decentralized and innovative currencies. We can all be excited to see what currency innovations will enter the currency market in the next couple of years.

Bitcoin is loved and embraced by young bright individuals who see the potential future that Bitcoin and what it represents and can be. What's the deal with Bitcoin and young people? Everything.

Gannon LeBlanc is a Young Voices Advocate and serves on the executive board of Eastern Michigan University's Mock Trial team. He has also spoken before university student groups on law, politics and economics. He is pursuing a Bachelors of Business Administration with a double major in Economics and Entrepreneurship at Eastern Michigan University.

Source: Forbes

**LOAD-DATE:** December 23, 2013



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**The Miami Herald**

Found on [Miami.com](http://Miami.com)  
The Miami Herald

December 23, 2013 Monday

**LENGTH:** 1308 words

**HEADLINE:** Building Bitcoin use in South Florida and beyond;  
TECHNOLOGY

**BYLINE:** Lance Dixon; [ldixon@MiamiHerald.com](mailto:ldixon@MiamiHerald.com)

**DATELINE:** December 23 2013

**BODY:**

The U.S. Senate has deemed it legitimate. Detractors dismiss it as unstable and a vehicle for criminal trade. China has banned new deposits on its largest exchange.

Bitcoin, the international digital payment system and currency and one of the hottest technology and finance topics this past year, could become a widespread vehicle for trade, believe the leaders of a Miami group. To further that view, Miami International Bitcoin will be participating in the North American Bitcoin Conference slated for Miami Beach in January.

"The thing that's really exciting about Bitcoin is that, here in South Florida, we have a half billion people to the south of us who do not have access to a banking system that works well, capital markets, credit -- things that we take for granted," said Charles Evans, business professor at Florida Atlantic University and one of the founders of Miami International Bitcoin.

"I fully expect that Miami could become the 'Silicon Valley' of small-scale international finance," Evans, who will speak at the conference, said. "I defy anybody to do business in South Florida without doing international business."

Bitcoin began in 2009 as an electronic payment system and currency allowing for peer-to-peer payments and financial exchanges without financial regulation or a third party, such as a bank. Users establish an online wallet using their local currency and exchange with other Bitcoin owners. As a payment system, it functions much like PayPal, but there are no charge fees and no credit cards are required. As a currency, Bitcoin allows for a nearly universal system as units can be converted to local currencies, usually without fees.

The 2014 conference will take place Jan. 24-26, and is expected to draw over 500 members of the Bitcoin community. It hopes to build on the success of past conferences like Bitcoin 2013, held in May in San Jose, Calif., by bringing together technology professionals, business people and policy makers to discuss the future of Bitcoin.

The Clevelander hotel will even allow conference goers to pay for their rooms, food and drinks with Bitcoin through conference sponsor BitPay. The hotel joins other businesses in South Florida that are accepting Bitcoin as payment like Vanity Cosmetic Center in Miami and Planet Linux Caffe in Coral Gables. And internationally, Bitcoin is gaining acceptance for various kinds of purchases like gift cards and even for Black Friday shopping last month.

Daniel Mery, owner of Planet Linux in Coral Gables, said customers can easily walk up and use their phones to purchase coffee, pastries and sandwiches in the cafe with Bitcoin.

"We want to promote Bitcoin like we promote new technologies," Mery said. "Bitcoin is a universal currency, it's a currency that no government controls." He wants to encourage other local store owners -- not just those appealing to techies -- to follow his lead.

Bitcoin proponents like Evans see Bitcoin as a potential payment solution that facilitates international trade without requiring currency exchange, especially in regions like the Caribbean and the Americas where cell phone and technology usage is increasing. In Venezuela, for example, there are 30.5 million cell users, a number that tops the country's actual population, according to National Telecommunications Commission data.

Since Bitcoin can be transferred via smart phones, Carlos Parra, an economics professor at Florida International University, believes there's a chance to impact impoverished and under-served residents in countries like Venezuela.

"If it turns out that bitcoins end up having less volatility than the national currency, then people at the bottom of the pyramid in Venezuela, for them it would be easier to use bitcoins," Parra said. "Bitcoins would be very useful for international transfers. Most of the remittances to the Caribbean come from Miami and they are making a lot of inroads with mobile money."

But understanding the currency and overcoming skepticism remain potential challenges for international expansion and acceptance. "There's the connotation that it's used for black markets and illegal purposes. From the public affairs side of things, a company wouldn't want to be exposed to that, even if it's an indirect relationship," said Parra.

Recently, Bitcoin took a hit in value when BTC China, the largest Bitcoin exchange in China, said it would stop accepting deposits for Bitcoin in the local currencies, renminbi and yuan. Bitcoin's exchange rate dropped from a peak of more than \$1,000 to as low as about \$300 before settling in the \$500 and \$600 range. Monday it traded at \$641 for 1 bitcoin.

"The run-up we saw over the last month or so was unsustainable," Evans said. "It was based on high expectations that people in China would be able to use Bitcoin in a way that is not the case."

And as other international marketplaces are revealed as hoaxes or simply disappear, there's still skepticism about Bitcoin becoming a rival to the dollar or euro -- or even holding its value as an investment.

For individuals who have already invested, Bitcoin advocates want to also let people know the currency is still highly vulnerable to hacking.

Sean Emmanuel co-founded Bot Revolt to Bitcoin "antivirus" to help educate people about Bitcoin if they invest. Subscribers pay monthly or annually to have Bot Revolt monitor their Bitcoin exchanges to prevent illicit activity and hacking.

"Pushing out the word and getting people to understand that there are better ways to protect your Bitcoin is one of the tougher things in the world," Emmanuel said.

Emmanuel and his team, which is based in Pompano Beach, also plan to launch the beta version of the website Bitcoin Intel in January, to track price movements. As the value continues to rise, Evans warns that new converts to Bitcoin should remain cognizant of trends, like the recent and ongoing crackdowns in China.

"We're talking about something that's new, and very few people understand it, and they hear about it from their friends and get involved in it," Evans said. "I wouldn't count on [its exchange rate] doubling every day forever, so you're going to have to watch the price movements and wait for things to calm down a little bit before you get too giddy."

As with any investment, people have to know how to balance spending and saving, because the currency is vulnerable.

"I've personally invested money into Bitcoin, so it's definitely a cause for concern," Emmanuel said. "You can have Bitcoin that you store, and I have a set of Bitcoin that I use to exchange goods and services between my colleagues."

Evans thinks that beyond investing in Bitcoin, individuals should think of creating personal business opportunities like Emmanuel did. Or like Kenneth Metral created with his online marketplace Coingig.

Metral is CEO of the Coingig site and works in South Miami with international partners. He said that he wants his site to become the "Amazon" of Bitcoin and avoid the fates of marketplaces that sold illegal goods or duped users out of their bitcoins.

"We do a small verification process with each seller to make sure they're real," Metral said. "When a buyer purchases a product they pay us first, we wait until the buyer receives the product and then we release the payment to the seller."

Coingig's homepage is refreshed in real time to reflect the current price of Bitcoin and translates a customer's local currency into the Bitcoin equivalent. Metral says the site is getting customers every day, because people are attracted to the idea of shopping without giving up their personal information: "It's kind of changing the way we think about money and currency."

And even if Bitcoin plummets in value again (even before you finish reading this), Evans thinks it has already made an impact.

"This is the future with a capital t and a capital F," said Evans.

**LOAD-DATE:** December 23, 2013



1 of 999 DOCUMENTS

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Money Morning

December 16, 2013 Monday 10:15 PM EST

**LENGTH:** 1196 words

**HEADLINE:** The Seven Biggest Bitcoin Myths Debunked

**BYLINE:**

**BODY:**

Dec 16, 2013 (Money Morning:<http://www.moneymorning.com/> Delivered by Newstex)

Bitcoin has been in the news a lot lately, but few people - even those talking about it in the media - really have a solid grasp on this groundbreaking digital currency[1].

What most people do know about Bitcoin is its meteoric rise in value over the past couple of months. The price of Bitcoin[2]s trading on the Mt. Gox exchange rose from less than \$100 at the end of July to more than \$1,200 at the end of November.

And then Bitcoin prices[3] crashed to less than \$700. And then they rose back up to \$1,000 - all this in a span of a few weeks (as of this writing, Bitcoins are trading on Mt. Gox at about \$900).

Such large, rapid gains - as well as the currency's volatility - have made Bitcoin a hot topic on financial news channels, websites, and publications.

But despite all the attention, Bitcoin remains an enigma. With so much confusion and wrong assumptions about the digital currency out there, we at Money Morning felt it was time to set the record straight.

Here's the real scoop on the seven biggest Bitcoin myths:

The Seven Biggest Bitcoin Myths

Bitcoin Myth #1: Bitcoin Is a Bubble

This may be the biggest of all the Bitcoin myths and has grown out of the digital currency's steep and rapid rise in value. But while Bitcoin may well be overvalued at the moment, it's not a bubble. In fact, the Bitcoin "bubble" has burst several times in its five-year history. Each time it has recovered and moved on to new highs. Real bubbles don't do that. What's more, Bitcoin has risen despite a lot of negative coverage (as opposed to hype) - mostly well-known economists warning investors away from Bitcoin because it's a bubble.

Bitcoin Myth #2: Bitcoin Is Worthless Because It's Not Backed By Anything

Remember, the U.S. dollar, like most "fiat" currencies of the world, is also not backed by anything real like gold or some other commodity. A fiat currency is backed only by the government that prints it. And that's not saying much, particularly when central banks the world over are in a race to see who can devalue their currencies the fastest[4]. By contrast, the supply of Bitcoin is controlled by a computer algorithm rather than a central banker with a printing press - only 21 million Bitcoins will ever be created. That prevents inflation (although it will lead to deflation - hence the rapid rise in the value of Bitcoin.) What's more, the market has answered the question of whether Bitcoin has value. People trade Bitcoin[5] every day, and use it to buy things. That utility alone gives Bitcoin value.

Bitcoin Myth #3: Bitcoin Is Hard to Use

OK, this myth is still partly true, but using Bitcoin is getting easier every day. Companies like Coinbase have made it easier to buy and sell Bitcoin in U.S. dollars, and most merchants that accept it now use scannable QR codes. At some



point in the near future, an entrepreneur will invent the Bitcoin "killer app" - software that will make using Bitcoin easier than using a credit card. At that point the digital currency will truly go mainstream. Of course, another issue is finding places to spend Bitcoin, but that's changing as well. (See Bitcoin Myth #4.)

#### Bitcoin Myth #4: You Can't Spend It Anywhere

While the places that accept Bitcoin are scattered for now, the number is growing. Some high-profile examples are a Lamborghini dealership in California that accepted Bitcoin to pay for a Tesla, and Richard Branson's announcement that his Virgin Galactic would accept Bitcoin to purchase a trip into space. At Money Morning we've talked about more mundane places you can spend Bitcoin here[6] and here[7].

#### Bitcoin Myth #5: Bitcoins Are Easily Stolen

Let's be clear: Bitcoins can be stolen, but so can credit card numbers and cash. In other words, Bitcoins are no more or less secure than other forms of money. But as with any form of money, taking the proper precautions greatly minimizes the risks. For example, a strong password for your Bitcoin wallet will make it nearly impossible to steal Bitcoins from your PC. Some people go so far as to store their Bitcoins on a removable flash drive. You also need to be careful about the kind of online accounts you use to manage your Bitcoins. If you have some Bitcoins with a fly-by-night outfit that disappears, so do your Bitcoins.

#### Bitcoin Myth #6: Bitcoin Is Pointless

Many people don't see the need for a new form of electronic payment when we already have credit cards and online services like PayPal. In fact, Bitcoin has several advantages over other forms of payment. For instance, Bitcoin transactions carry either no or extremely low fees. And no personal information is part of the transaction, making it a more secure way to pay. Bitcoin also makes international transactions much easier for ordinary people. A person in the United States can use Bitcoin to buy a product directly from an Internet-based merchant in Japan, or Sweden, or Brazil - no foreign exchange fees or other charges necessary.

#### Bitcoin Myth #7: It's Only a Matter of Time Before Bitcoin Is Outlawed

It's true that many central banks, regulators, and governments are wary of Bitcoin. But part of that stems from Bitcoin's popularity among users of nefarious websites such as Silk Road to sell illegal drugs and other contraband. But the U.S. government shut down Silk Road in October. And several U.S. government officials, including U.S. Federal Reserve Chairman Ben Bernanke, have recently softened their stance on the digital currency. A few oppressive regimes may ban Bitcoin, but most will choose instead simply to regulate it, which will help legitimize it in the minds of the public and lead to more widespread adoption.

Whatever happens with Bitcoin, investors need to realize that virtual currency is here to stay. In fact, there are already more than 80 other digital currencies in addition to Bitcoin, with more being created all the time. Here's a list of Bitcoin's primary rivals, and which ones will likely come out on top...[8]

Tags: biggest bitcoin myths[9], bitcoin[10], Bitcoin Myths[11], Bitcoin prices[12], bitcoin today[13], digital currency[14], how to buy bitcoin[15], investing in bitcoin[16]

[1]: <http://moneymorning.com/tag/digital-currency/> [2]: <http://moneymorning.com/tag/bitcoins/> [3]:

<http://moneymorning.com/tag/bitcoin-prices/> [4]:

<http://moneymorning.com/2013/02/20/are-you-about-to-lose-your-savings-in-the-currency-war/> [5]:

<http://moneymorning.com/tag/trade-bitcoin/> [6]:

<https://moneymorning.com/2013/11/27/five-surprising-places-that-accept-bitcoin/> [7]:

<http://moneymorning.com/2013/12/13/who-accepts-bitcoin-you-d-be-surprised/> [8]:

<http://moneymorning.com/2013/11/22/why-virtual-currency-is-here-to-stay-bitcoin-or-no-bitcoin/#.UqeGW-KJ5I0> [9]:

<http://moneymorning.com/tag/biggest-bitcoin-myths/> [10]: <http://moneymorning.com/tag/bitcoin-2/> [11]:

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The Nation (Thailand)

December 22, 2013 Sunday

**LENGTH:** 906 words

**HEADLINE:** Bitcoin plunges as China bans its use electronic money falls from \$1,000 to \$300 after ban on the mainland

**BYLINE:** The Nation

**BODY:**

Bloomberg  
New York

Bitcoin prices plunged against the yuan and the dollar after China's largest online market for the virtual currency stopped accepting Bitcoin deposits and Scandinavian authorities said they would impose regulations.

Bitcoin fell as much as 49 per cent to 2,011 yuan or US\$331 (Bt10,000) on BTC China, which said its payments subsidiary YeePay would no longer offer deposit services. Against the dollar, Bitcoin declined as much as 43 per cent on the Bitstamp, an online market where the digital money can be traded for legal tender.

Since the digital money is not controlled or authorised by any country or banking authority, Bitcoins have also attracted the interest of authorities concerned that they can be used to trade in illicit goods or evade financial controls.

While Bitcoins have been around since 2008, their growing use has attracted speculators, fueling a rally that drove up the price of the virtual currency more than 80-fold this year.

"Every day brings a new twist and turn," said Gil Luria, an analyst at Wedbush Securities.

"Longer term, the technologies that have been introduced, innovations that have been involved in Bitcoin will have a very big impact. What the actual value of Bitcoin is going to be is far harder to determine, particularly since the market is illiquid."

More nations are taking an official stance on virtual currencies.

Norway said this month it would not recognise Bitcoins as legal tender and will impose a capital gains tax.

BTC China's decision to stop taking deposits follows a move by China's central bank to bar financial institutions and payment companies from handling Bitcoin transactions.

"China represented a lot of the incremental demand for Bitcoin over the last few months," Luria said.

"Removing that demand lowers the price very substantially, and creates the perception that maybe other countries won't allow trading."

The Treasury Department's Financial Crimes Enforcement Network has said that Bitcoin businesses may be considered money transmitters for the purpose of complying with anti-money laundering laws.

Bitcoin plunges as China bans its use electronic money falls from \$1,000 to \$300 after ban on the mainland The Nation (Thailand) December 22, 2013 Sunday

The agency sent letters to "about a dozen" Bitcoin-related businesses last month asking them either to register or explain why they are not subject to its jurisdiction.

"Fincen often sends letters to banks, credit unions, jeweller, casinos and the like," said Steve Hudak, a spokesman for the Financial Crimes Enforcement Network. "This should not be surprising to anyone."

Introduced five years ago by a programmer, or group of programmers, going under the name of Satoshi Nakamoto, Bitcoins exist as software and can potentially reduce banking-transaction fees, making it an attractive option for trading via the Web or in stores.

Bitcoins are being used to pay for everything from Gummi bears and digital cameras to Tesla electric cars on the Web, with more than 12 million in circulation.

The virtual currency gained some credibility last month after law enforcement and securities agencies said in US Senate hearings that Bitcoin could be a legitimate means of exchange. The US government shut down in October the Silk Road Hidden Website, where people could obtain guns, drugs and other illicit goods using Bitcoins. That generated optimism the digital money would become more widely used for legal purposes.

The price of Bitcoins topped \$1,000, and have since dropped to trade around \$562 today on Bitstamp, one of the more active online exchanges where Bitcoins are traded for dollars and other currencies.

The jump in Bitcoin prices prompted former Federal Reserve chairman Alan Greenspan this month to call the market a "bubble".

Denmark is the latest nation to prepare standards to protect its consumers from risks associated with virtual currencies after the regulator found it lacked authority to prevent a company creating an exchange for the software.

The most likely outcome would be an "amendment to existing financial legislation so that we have regulation covering it," Michael Landberg, chief legal adviser at the Financial Supervisory Authority in Denmark, said in an interview.

"It is also important to have this included in money laundering acts."

Denmark plans to "align" itself with other nations in designing a framework that deals with gray" ones created by the use of Bitcoins and its competitors, Landberg said. The FSA is preparing draft legislation for lawmakers to consider, he said.

"We'll seek to follow the mainstream," Landberg said.

"Bitcoins are not forbidden in the US and the UK.

"It is out there and will continue to be out there.

"It just needs to be regulated. The challenge for us is how to do that."

BTC China can no longer accept new deposits, according to Bobby Lee, its chief executive officer, said this week.

"We've suspended customer deposits," Lee said. "It is unfortunate but we apologise for that inconvenience. We think this is due to government regulation. We have to play by the rules of the government of China. It is what it is."

Lee's comments came less than two weeks after China's central bank barred financial institutions and payment companies from handling Bitcoin transactions amid a jump in prices for the virtual currency and investor losses.

YeePay, a third-party payment provider, gave notice this week to BTC China that it could no longer provide payment services, while TenPay, another payment provider owned by Tencent Holdings., earlier halted service with BTC China by "mutual agreement," Lee said.

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Youth Ki Awaaz

December 23, 2013 Monday

**LENGTH:** 876 words**HEADLINE:** A Fascinating Digital Currency That Can Revolutionize Cash Transactions! #Bitcoin**DATELINE:** India**BODY:**

India, Dec. 23 -- Bitcoins have been in the news for desirable, unreasonable and intriguing reasons for quite some time now. Quite a few articles & opinions are being written on it. But what is this relatively new phenomenon? Is it a gold nugget or garbage or a bit of both among the plethora of new stuff coming up on the virtual world right now?

Wikipedia describes Bitcoins as "a peer to peer payment network & digital currency based on an open source protocol, which makes use of a public transaction log". All this jargon might be better understood by computer geeks but what it basically means is that Bitcoins is a virtual currency, its control is decentralized i.e. there is no central authority controlling its generation and use, thus making it free from external control and it uses a public transaction log, which is like a huge database which verifies payments and ensures there are no instances of double spending. This huge database is maintained and run by "miners", who generate the currency and earn bitcoins as well.

The idea of bitcoins came in a scientific paper published under the pseudonym Satoshi Nakamoto. He combined existing knowledge of networking with his own ideas of an inflation proof mechanism and the incentivising feature to create a new electronic cash system.

Its standout features and prominent advantages include encryption enabled anonymity, absence of government/central bank control and is also the cheapest means of transferring cash. What acts as a boon on one side also turns out to be a bane on the other as the above mentioned features are exactly what would aid the black market, money launderers, drug dealers and all such illegal operations. The Silk Route saga is a testimony to this. Silk Route was an online marketplace for illegal drugs which was shut down by the US government, which had extensively used bitcoins to aid its evasion of the government radar. However, the critics say that constant stigmatizing of the Bitcoins with this scandal is unfortunate. Illegal trade and black marketing is carried out even with US currency, but that doesn't mean we stop the minting of dollar bills, right?

How did the bitcoin use gain prominence? Well it all started with the Cyprus crisis of 2009. With all the inflation ravaging around during the time, Cyprus too experienced a financial crisis (as was the norm for most countries then). This resulted in an unexpected 10% tax on those who had assets of 100,000 euros or more in the bank. With the threat of their earnings falling in government hands, many sought ways to stash away their cash and stumbled upon the nascent Bitcoin. What you basically have to do to earn bitcoins is to create an account in MtGox.com and wire money to it. Based on the exchange rate, you get to purchase bitcoins, and here comes the catch.

The exchange rate of bitcoins can fluctuate erratically. This is because the value of bitcoins isn't centrally controlled i.e. its value & exchange rate depends on the willingness of other users to buy the bitcoins. During peak demand periods, a bitcoin touched highs of \$266 and just as well plummeted to \$65 when the demand waned. In this regard, bitcoins behave somewhat like stocks to an extent. This is because of the inherent inflation proof mechanism. The total number of bitcoins in circulation can only be 21 million at a time. So if you are mining bitcoins and there is a huge demand for them, your contribution to the total bitcoin number is reduced. This reduces your savings. On the contrary, you could just as well strike gold when the demand is low but your share to the bitcoin production is larger.

The erratic nature, however, hasn't prevented popular sites like Reddit and wordpress from accepting it as legal tender. However, its propensity to be used for criminal activities has made governments wary. That even the government requires some perseverance to snoop into bitcoin transactions shows the strength of its encryption programme. Like any financial medium of transactions, especially digital ones, there is huge potential for misuse of this technology and many countries are against its use. The largest private company aimed at making bitcoins more accessible, easy to use and safer is situated in Cyprus, yet the Central Bank of Cyprus or CBC has labeled bitcoins as dangerous. China has issued notices to all its financial institutions stating that bitcoins are no longer recognised as legal tender and cannot be used for financial transactions.

Despite all the whining about the dangers & risks of using bitcoins, there is no denying that this is a futuristic form of currency. In a world where everything is going virtual, a currency that can ride the waves of inflation and recession, circumvent capital controls and counter international sanctions, is an ultra-superior financial weapon. The weapon may be double edged as any new and progressive endeavour will be. However, I believe that researching, refining and re-vamping this young virtual soldier can make it a potent and very useful giant in the future.

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*2013 U. Ill. J.L. Tech. & Pol'y 165*

**LENGTH:** 24057 words

**NOTE:** I'LL GLADLY TRADE YOU TWO BITS ON TUESDAY FOR A BYTE TODAY: BITCOIN, REGULATING FRAUD IN THE E-CONOMY OF HACKER-CASH

**NAME:** Derek A. Dion\*

**BIO:** \* J.D./M.B.A., University of Illinois College of Law and College of Business, expected 2014. I would like to thank my parents and Kristina for their support and helpful feedback. Finally, I would like to thank Mustafa Neak and John Kendzior for being outstanding editors.

**LEXISNEXIS SUMMARY:**

... Bitcoin also has potential to serve as a "metacurrency" - a currency that bridges international legal tenders - and could compete with businesses like Western Union in this realm. ... Gox was hacked on June 19, and \$ 8.75 million U.S. dollars were stolen, the exchange went into free fall: Bitcoins sold for pennies on the dollar, and the exchange was forced to negate a number of transactions, rolling back Bitcoin prices to about \$ 17. ... But rather, Liberty Dollars fall within the purview of counterfeiting due to their particular use of symbols that are or could be used for American currency, as well as the adoption of terms such as "dollars," "USA," and "Trust in God." ... But where the securities laws may fail to regulate Bitcoins themselves, they can be used to regulate Bitcoin exchanges. ... Examining these laws, particularly with regard to e-Gold and PayPal as comparable test cases, can shed light on the feasibility and effectiveness of using these statutes to regulate Bitcoin. ... These savvy users would be more prone to constantly changing public addresses on their Bitcoins and laundering the coins to randomize their trading network.

**TEXT:**

[\*166]

I. Introduction

Imagine, if you will, two traders meeting in secret. They are on a path only available by a secret route: it's called the Silk Road. While there, the traders negotiate deals that would be illegal under the laws of their homeland. They exchange in secret, eluding authorities by dealing in a private currency not issued by their mother countries. Then they part ways; having bartered for dangerous narcotics and weaponry.

This is neither the stuff of legend nor history. Silk Road is a hidden website not available through traditional Internet search engines. n1 It is not accessible by Uniform Resource Locator (URL), but instead by The Onion Router (TOR). n2 TOR is a free online software package that allows users to traverse the Internet in complete anonymity, without third-party tracking. n3 It does this by constantly changing the Internet Protocol (IP) address of a computer. n4 TOR allows its users to explore the "Deepnet" and visit .onion sites - sites that only host completely anonymous users.

n5 Silk Road is best found by using an online directory within the Deepnet, n6 but even locating one of these directories can be difficult. n7

Silk Road hosts a utopic libertarian drug market for marijuana, cocaine, lysergic acid diethylamide (LSD), heroin, and any number of other drugs. n8 There's a catch: the website trades only in Bitcoin - an electronic currency not backed by any government. n9 This allows both parties to deal anonymously and avoid the leering eyes of law enforcement. Although Silk Road is illegal, the trading currency, Bitcoin, seems to fall in between the cracks of a collection of [\*167] legal frameworks.

This Note will argue that Bitcoin should not be strictly outlawed. However, as a matter of policy, Bitcoin, and any future electronic, independent currency should be regulated and fall within the purview of the Securities Acts. Part II of this Note will address the background of Bitcoin and the existing statutes that can be used to regulate electronic currency. Part III will provide an analysis of the real and imagined ramifications of Bitcoin and explore the policy implications of using existing statutes to hamper criminal uses for Bitcoin. Part IV will provide recommendations on how to regulate Bitcoin - balancing the personal commercial rights of the individual with the government's need to enforce crimes against fraud and the drug trade. This Note briefly concludes in Part V.

## II. Background

Before exploring policy matters, it is important to understand what Bitcoin is and why it is relevant and to survey the laws that could potentially regulate electronic currency. Only then can the legal and monetary implications be adequately evaluated.

### A. How Bitcoin Operates and How Bitcoin Is Used

Bitcoin is an electronic form of floating currency unbacked by any real asset and without specie, such as coin or precious metal. n10 It is not regulated by a central bank or any other form of governmental authority; instead, the supply of Bitcoins is based on an algorithm which structures a decentralized peer-to-peer transaction system. n11 Bitcoin was designed to reduce the transaction costs that are created when third parties validate transactions and mediate disputes. n12 It solved this problem using a system where all of the other users work together to validate transactions, creating a public record of the chain of custody of each Bitcoin. n13

Users access their Bitcoin account through electronic wallets. n14 They can keep their wallets on their computers, or, to mitigate the risk of theft, they can sign up to use a wallet through an online wallet service. n15 Each wallet is based [\*168] upon keypairs - a set of public and private keys that perform different functions. n16 The public keys generate an address: essentially a string of letters and numbers approximately twenty-seven to thirty-four characters long. n17 The private keys are used to authorize transactions. n18 Addresses contain no information about the user, but the public keys' signature can be used to trace transactions. n19 Thus, a Bitcoin can be traced through every address that held it; however, the ownership of each address remains anonymous.

When a transaction is made, it is time-stamped and cannot be modified. n20 This notarizes the transaction and prevents Bitcoins from being double-spent. n21 A single Bitcoin, thus, has a "block chain," a history of time-stamped transactions where it moved from one address to another. n22

There are a number of ways to begin trading in Bitcoin. One option is to identify someone who is willing to send Bitcoins and offer to pay traditional currency in exchange. n23 After setting a price, the seller can then transfer the Bitcoins to the buyer's wallet. n24 A more formal mechanism for Bitcoin trading is to use a Bitcoin exchange. n25 Traders can use an e-commerce intermediary, such as Dwolla or PayPal, n26 to make a cash payment into an exchange and to cash out from an exchange. n27 Like traditional currency exchanges, price is not usually individually negotiated, but based on the aggregate supply of, and demand for, Bitcoins in the system. n28 Use of the exchanges through Dwolla or PayPal adds to the transaction cost, n29 but it is more efficient and better monitored.

[\*169] Bitcoin is used in a variety of forums. It originally began as a novel currency for computer geeks who were working on Internet-related tasks. n30 The currency may also have been favored by those who viewed American monetary policy as unconstitutional and therefore illegitimate. n31 Their investment in Bitcoin is a political demonstration of the feasibility of a private legal currency.

However, Bitcoins have seen increasing acceptance in a number of other contexts. As alluded to in the Introduction, Bitcoin is commonly used for online drug markets or casinos. n32 Bitcoin has also been accepted by legitimate organizations, such as WikiLeaks, for charitable donations. n33 Additionally, this trend has been extended to donations to

illegitimate organizations, such as criminal hacker groups. n34 Even some brick-and-mortar facilities accept Bitcoins. n35 For example, customers can log onto a computer and transfer Bitcoins from their account into the account of a number of restaurants. n36

Currently there are nearly 10.7 million Bitcoins in existence, and this amount is steadily increasing. n37 Best estimates place Bitcoin adoption at a peak in September of 2012, reaching over 60,000 active users. n38 However, that amount has settled into the 20,000-user range. n39 Although some commentators have already proclaimed the death of Bitcoin due to system vulnerabilities, n40 they are mistaken. n41 Bitcoin is ideal for those who seek to purchase illegal guns or drugs online, sponsor domestic or international terrorist agendas, or even hire a hit man in anonymity. n42 Therefore, although Bitcoin use may diminish among mainstream hobbyists, its adoption will be maintained among [\*170] hardcore hackers, smugglers, and anarchists.

This Note stresses the need for a paradigm shift away from passively viewing the rise and fall of Bitcoin into an activist role of recognizing the convenience and novelty of e-currency, but diminishing its capacity for criminal exploitation. The following section documents existing laws that can be used to restrict e-currency use.

## B. The Legal Principles That Can Potentially Be Leveraged to Regulate Bitcoin

Some authors have concluded that Bitcoin is probably legal under current U.S. law. n43 However, there are a number of existing statutes that could be used if authorities desired to restrict Bitcoin use.

### 1. Federal Power and Currency

Before addressing which statute is best suited for regulating Bitcoin, it is important to examine whether it is constitutional to use federal law to limit the use of electronic currency. The constitutional issues that come into play are whether the federal government has the power to create legal tender and the power to regulate legal currency.

The Constitution reads: "No state shall ... emit Bills of Credit; make any Thing but gold and silver coin a Tender in Payment of Debts ..." and that, "the Congress shall have the Power ... To coin Money, regulate the Value thereof, and of foreign Coin." n44 This has been interpreted to mean that states do not have the power to issue their own forms of legal currency because this power is reserved for the federal government. n45

In 1792, Congress passed the Mint Act and established the U.S. dollar. n46 Backed by silver, the dollar was defined as 24.056g of silver. n47 In 1834, the dollar became backed by 1.5g of gold. n48 However, the Civil War led to a run on specie, which left the United States short on gold coins. n49 Congress's response was to legitimize the release of paper tender, unbacked by the gold standard. n50 The Supreme Court initially declared the issuance of these "greenbacks" unconstitutional. n51 The dispute that led to this decision arose [\*171] when a debtor tried to repay a debt that existed before bills were legal tender. n52 The payor offered to cover the debt with newly minted United States notes, but was refused by the payee. n53 The Supreme Court found that although Congress had the power to mint coin and issue bills or notes, it did not have the power to issue notes as legal tender. n54 Put another way, Congress could not force a debtor to accept a particular form of payment. The Court expressed particular concern for the individual right of citizens to contract how they may obligate their own debts. n55

The Supreme Court soon overruled this decision and found that paper money did not conflict with the Constitution. The Court's reasoning was that certifying notes as legal tender was a combination of Congress's power to coin money and to affix standards. n56 Justice Bradley, concurring, noted that the power under the Necessary and Proper clause allows Congress efficient and effective realization of "national resources." n57

The Hepburn Court drew a strong distinction between legal tender and legal currency. Indeed, the two are not the same. According to Merriam Webster, "legal tender" is "currency in such amounts and denominations as the law authorizes a debtor to tender and requires a creditor to receive in payment of money obligations." n58 However, "currency," according to Webster, is a legitimate "medium of exchange." n59 To be more specific, it is possible for a government to host one legal tender, but to recognize a number of other legal currencies. Under this state of affairs, a creditor could not refuse payment offered in legal tender for a debt, but a service provider could be particular about which currency they will accept. Even though the U.S. dollar is the only legal tender, those providing goods or services are not forced to accept certain denominations when their service does not involve a debt or obligation. n60

Congress has the power to regulate legal currency. The Supreme Court has made clear:



In the exercise of undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that congress may, constitutionally, secure the benefit of it to the people by appropriate legislation. To this end, congress has denied the imposition of counterfeit and base coin to the community. To the same end, congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority. Without this power, indeed, its attempts to secure a sound and [\*172] uniform currency for the country must be futile. n61

The next two parts will address two such enactments by Congress.

## 2. Counterfeiting Prohibitions

The most obvious legal framework for regulating currency is the counterfeiting statutes. n62 An enterprising litigator could claim that Bitcoin is a form of counterfeiting, and creating, mining, and possessing Bitcoins is therefore an illegal act. This section will examine the language of the counterfeiting statutes, as well as their application, in several contexts.

The United States has a robust set of counterfeiting laws that prohibit almost any form of legal tender imitation. The statutes expressly punish those who falsely make, forge, or counterfeit "any coin or bar in resemblance or similitude of any coin of a denomination higher than 5 cents or any gold or silver bar coined or stamped at any mint or assay office of the United States ... ." n63 The counterfeiting statutes are broad and do not simply punish those who attempt to create imitation currency, but also those who attempt to "utter or pass, any coins of gold or silver or other metal, or alloys of metals, intended for use as current money ... ." n64

The counterfeiting statutes are concerned not just with undue wealth creation, but competition with U.S. legal tender that could, in aggregate, do damage to the value of the U.S. dollar and American monetary policy. n65 This principal is particularly true in a world where governments have fiat currencies - floating currencies whose value is derived relative to each other and their own purchasing power. n66 Thus, it is illegal for an individual to make or pass currency "whether in the resemblance of coins of the United States ... or of original design." n67

Most famous counterfeiting cases involve attempts at directly replicating legal tender, checks, or other financial instruments. For example, Frank Abagnale Jr. passed approximately \$ 2.5 million in fraudulent checks. n68 Emerich Juechter, also known as Edward Mueller, eluded authorities for years as he passed replica \$ 1 bills. n69 Thirteen-year-old Mary Butterworth used a [\*173] cotton cloth, an iron, and a pen to replicate early eighteenth century currency. n70

But there are fewer instances of counterfeiting via "original design." A recent case has shed light on what constitutes original-design counterfeiting under federal law. Beginning in 1998, the National Organization to Repeal the Federal Reserve Act and the Internal Revenue Code (NORFED) produced gold and silver coins as well as gold-backed dollar bills which it called "Liberty Dollars." n71 The organization was based in Evansville, Indiana and used a private mint to circulate, according to its claim, \$ 20,000,000 in currency. n72 The advertisements for Liberty Dollars referred to it as "real money" and "currency." n73 The bills contained inscribed terms such as "Liberty," "Dollars," "Trust in God," and "USA," and the coins contained images such as the Torch of the Reserves, the Statue of Liberty, and the Bill of Rights. n74 NORFED claimed that Liberty Dollars were "absolutely 100% legal, lawful, and Constitutional! Legal opinions have been obtained by prominent attorneys that validate that the Liberty Dollar complies with all U.S. laws and the Uniform Commercial Code." n75

It is important to note that Liberty Dollars were not an exact attempt to copy U.S. tender. To begin with, Liberty Dollars were not green, like U.S. dollars, but rather pink, red, blue, and other colors. n76 Furthermore, the bills lacked any images of presidents: on one side was an image of the Statue of Liberty, on the other was a description of the bill as a warehouse receipt. n77 Even the dimensions differed between U.S. dollars and Liberty Dollars. n78 Appendix A.1 juxtaposes images of Liberty Dollars to traditional U.S. dollars to illustrate the obvious differences between the two. n79

In 2006, the U.S. Mint released a press release stating that prosecutors within the Justice Department had found that competition with U.S. currency is [\*174] a criminal act. n80 The Mint asserted that Liberty Dollars were illegal not just because they resemble U.S. dollars, but because they attempted to compete with them as well. n81

In March 2011, Liberty Coin creator Bernard von NotHaus was convicted of conspiracy n82 and two counts of counterfeiting. n83 According to von NotHaus, during the trial, prosecutors compared the similarity of Liberty Dollar coins to U.S. coins and successfully made clear the possibility of confusion between the two. n84 In response, the FBI

released a press release stating, "It is a violation of federal law for individuals, such as von NotHaus, or organizations, such as NORFED, to create private coin or currency systems to compete with the official coinage and currency of the United States." n85 However, some have noted that during trial, the judge removed the "competition" clause of the indictment without objection by the prosecution, and the government's press release is not on sound legal footing. n86

The counterfeiting statutes have been used to prosecute not just instances of direct copying of U.S. legal tender, but original designs, which confuse spenders and compete with the U.S. dollar. Part III addresses whether it is possible that Bitcoin is a form of illegal counterfeiting.

### 3. The Stamp Payments Act

Other statutes directly address an individual's ability to create legal currency that competes with U.S. legal tender. It could be argued that circulating Bitcoin is illegal under the Stamp Payments Act.

The Stamp Payments Act of 1862 proscribes: "Whoever makes, issues, circulates, or pays out any note, check, memorandum, token, or other obligation for a less sum than \$ 1, intended to circulate as money or to be received or issued in lieu of lawful money of the United States, shall be fined under this title or imprisoned not more than six months, or both." n87 This law was enacted during the coin shortage that resulted from Civil War monetary policy. n88 Businesses had begun to release their own stamps as private currencies since many small coins had been hoarded. n89 It was Congress' intent to disincentivize businesses who issued these stamps that competed with U.S. [\*175] coins. n90 The Act has most recently been incorporated into the Violent Crime Control and Law Enforcement Act of 1994. n91

In *Monongahela Bridge*, the court was concerned with whether a train company's paper ticket labeled "good for one trip" was in violation of the Stamp Payments Act. n92 The court concluded that the tickets were not in violation of the law because they bore no resemblance to U.S. coins and did not offer payment in money. n93

Another charge saw its way to the Supreme Court when a furnace company issued notes that it would pay fifty cents worth of goods on demand. n94 The Court found that the Act did not apply because the notes' restriction to "payment in goods" limited the geographic range of the notes' worth and, thus, they could not realistically compete with U.S. tender. n95

Finally, in a later case, an individual created tokens that stated "good for amusement only" and "no cash value," but could potentially fool vending machines into accepting them as currency. n96 The Minnesota District Court rejected a "mechanical test" (an ironic double entendre) and focused on whether the coins would "deceive [a] person exercising ordinary caution." n97 It concluded that, in this case, there was no way most people could be duped into using the tokens as currency. n98 Finally, the court was quite concerned with whether the tokens were intended to be used as a medium of exchange - which simply was not the case. n99

This reasoning furthers the argument that the purpose of the Stamp Act is to prohibit currencies that undermine the circulation of coins. Individuals who circulate notes, stamps, or tokens meant to be payable only in goods are not posing a real threat to U.S. coin denominations. From this, one commentator has noted that the Stamp Payments Act is unlikely to apply to instances where the currency: (1) Serves a particular community; (2) Is for repayment in goods; and (3) Does not compete with U.S. coins. n100

Though the Stamp Payments Act has not often been used, it is possible that it could be revitalized to limit the use of Bitcoin.

### 4. The Securities and Exchange Acts

Another candidate is the Securities and Exchange Acts. By trading Bitcoins for other currency, exchanges are potentially engaged in securities trading, and thus fall within the purview of the Securities and Exchange [\*176] Commission (SEC). Of course, much has been written about the Securities and Exchange Acts, n101 and a full survey of the Acts lies outside the scope of this Note. Instead, this Note will concern itself with the purpose of the Acts, definitions within the Acts, and consequences of the Acts when addressing arguments in favor of or against its application to Bitcoin.

The Securities Act was enacted due to the overriding public interest in providing comprehensive regulation for markets and exchanges. n102 Congress showed appreciable concern for the fact that "frequently the prices of securities on such exchanges and markets are susceptible to manipulation and control, and the dissemination of such prices gives

rise to excessive speculation, resulting in sudden and unreasonable fluctuations in the prices of securities ... ." n103 It also made note of the effect of securities on liquidity and credit in times of economic strife. n104

The 1929 stock market crash was believed to be caused, at least in part, by "excessive promotion of securities at prices unreasonably high in relation to their true underlying values." n105 Congress' goal was to force markets into conservative valuations, increased disclosure, and a dedicated surveillance for fraud. n106 Before the Great Depression, many uneducated investors believed the stock market was a place where investments only went up. n107 Because of little comprehensive regulation regarding securities, individuals could get away with failing to disclose negative facts about their company. n108 Other fraudsters would band together and manipulate stock prices by purchasing them en masse and trading amongst themselves. n109

The Securities Act prohibits an individual who "with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States." n110 As the statute stands, the Act applies to notes, stocks, investments, and commodities. n111

Although perhaps pedantic, a survey of the definitions of each of these terms is useful when dealing with an instrument as unique as Bitcoin. A stock is "[a] proportional part of a corporation's capital represented by the number of equal units (or shares) owned, and granting the holder the right to participate in the company's general management and to share in its net profits or [\*177] earnings." n112 A note is "[a] written promise by one party (the maker) to pay money to another party (the payee) or to bearer." n113 A commodity is "an article of trade or commerce ... . The term embraces only tangible goods, such as products or merchandise, as distinguished from services." n114 However, definitions are to be taken broadly within the Acts and focus on the real-world implications of the vehicle. n115 Importantly, foreign currency falls outside the purview of the securities laws. n116 Currency is defined as: "an item (such as a coin, government note, or banknote) that circulates as a medium of exchange." n117

Of course, the securities laws are also applicable to investment contracts. n118 The Supreme Court clarified that an investment contract is "a contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party ... ." n119 However, the investor may still have a nominal involvement in the investment. n120 An investment contract can revolve around the purchase of a piece of technology, but a critical question becomes whether the investor seeks to derive profit from the piece of technology, rather than use or enjoy it. n121

Investments that fall under the securities laws must register with the SEC. n122 Issuers must also make regular public reports to the SEC where they disclose pertinent facts. n123 Furthermore, issuers are subject to liability in instances of fraud. n124

What qualifies as an exchange is broad and includes currency exchanges. n125 However, in a relevant limitation to the definition, the Seventh Circuit found that a computer program called "Delta," which compiled information about buyers and sellers and made the two parties aware of each other, was not an exchange. n126 The court noted that Delta lacked a "trading [\*178] floor." n127 Although virtual exchanges can possibly fall within the definition of the Act, they must behave in a way "generally understood" as the way exchanges conduct business. n128

Thus, Bitcoin could potentially be considered securities through a number of various definitions, and exchanges such as Mt. Gox could feasibly fall within the purview of the Exchange Act.

## 5. Requirements of Financial Institutions

Financial institutions are required to conform to a plethora of statutes in order to play a role in reducing money laundering, fraud, and tax evasion. These statutes include the Bank Secrecy Act n129 and the Money Laundering Statute. n130 Exchanges that trade Bitcoin could be regulated through the use of these statutes.

The Bank Secrecy Act requires financial institutions to report currency transactions over \$ 10,000. n131 Financial institutions are also required to file a number of other reports involving the transport of currency. n132 Additionally, these institutions are required to police and report suspicious activity by registering with the Financial Crimes Enforcement Network (FinCEN). n133 A currency exchange is a recognized financial institution according to the Bank Security Act. n134

The money laundering statute prohibits those who:

Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conduct[] or attempt[] to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity ... knowing that the transaction is designed in whole or in part - to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity. n135

It has been noted that money laundering cases primarily turn on the scienter element of the crime. n136 Although "knowing" is a high standard and does not capture mere negligence, "willful blindness" - where an actor knowingly disregards the potentially criminal nature regarding the origin of the funds - will satisfy the element of scienter. n137

[\*179] A recent case has shed light on the applicability of money laundering statutes to institutions that exchange in independent digital currency. e-Gold was an early form of e-currency. n138 It claimed to back its currency with gold specie stored in St. Kitts and Nevis. n139 e-Gold accounts were allowed to be anonymous and transfers were irrevocable, making them a strong vehicle for those engaging in pyramid schemes, n140 get-rich-quick scams, n141 and pump-and-dump schemes. n142 For every transaction in e-Gold currency, the company received a share of the proceeds. n143 e-Gold was not registered or licensed as a money transmitting service. n144

e-Gold founder Doug Jackson insisted that he was not aware of particular instances of crime despite its rampant existence on e-Gold. n145 After a visit from federal authorities, Jackson began to take a more proactive role in policing individuals who may have been using e-Gold to support criminal activity. n146 Although e-Gold users could set up anonymous accounts, Jackson was able to gather information on potential abusers when they traded their e-Gold for cash by giving an address or debit card account. n147 An FBI agent, who worked on the investigations of e-Gold fraudsters, noted that Jackson was "instrumental in helping track people down." n148

However, the cooperation was not enough to avoid indictment. e-Gold and particular members within the organization were charged and convicted based on a series of financially-related crimes. n149 First, they were charged with conspiracy to commit money laundering by conducting financial transactions that involved the proceeds of illegal activity. n150 They were also charged with transmitting funds without a license and criminal forfeiture. n151 The indictment noted that e-Gold allowed its users to remain anonymous, maintained staff without financial experience, and did not respond to customer complaints [\*180] concerning fraud as evidence of its guilt. n152

An alternate example of a similar business is PayPal. PayPal emerged because many small businesses could not accept credit cards when doing business online and sending checks or cash through the mail was not a feasible solution. n153 PayPal offered a solution through a peer-to-peer payment system - the company served as financial intermediary between two parties and did not require a buyer to give away sensitive credit information to the seller. n154 PayPal's growth was correlated with the growth of the online auction house giant, eBay. n155

Like e-Gold, PayPal faced investigation for operating as a bank without a license because of its practice of allowing buyers to enter funds into their PayPal account in advance of selecting purchases. n156 However, PayPal received an opinion from the Federal Deposit Insurance Corporation (FDIC) stating that it was not a bank because it did not handle or hold funds placed into it and its funds were not FDIC-insured because PayPal was not chartered as a bank. n157 Even still, PayPal was advised to apply for a money-transmitter license and complied. n158 PayPal also took steps to detect fraud within its system by appointing a compliance officer, using fraud detection software, training employees to detect fraud, and keeping records of every transaction. n159 Of course, these steps add to the transaction costs for PayPal's service. n160

Thus, PayPal and e-Gold collectively demonstrate a range of regulatory fates that could befall Bitcoin using the money laundering statutes.

## 6. Potential Defenses to Prosecution

Even if Bitcoin was officially prohibited, potential defenses derive from the Uniform Commercial Code (UCC) and the First Amendment to the U.S. Constitution.

Regarding the UCC, NORFED claimed that Liberty Dollars were legal. On its website, there was a letter from June 10, 1998, written by attorney Paul J. Sulla. n161 Mr. Sulla argues that Liberty Dollar bills were paper receipts that demonstrated the purchaser paid \$ 10 for one ounce of .999 fine silver n162 to be stored in a warehouse pursuant to the terms on the instrument. n163 He asserted that the warehouse receipt itself is a transferable and negotiable instrument payable to the bearer and thus is legal under the UCC. n164

[\*181] A warehouse receipt is a document that serves as evidence for the fact that someone owns title in goods that are being stored by another party. n165 In this case, the Liberty Dollars bills and coins are simply receipts for the silver that is being stored. Mr. Sulla points out that it is customary for silver dealers to warehouse their goods by lots determined by the receipts. n166 He further insists that the back of each Liberty Dollar houses the elements necessary for a warehouse receipt. n167 At the trial of von NotHaus, the court found this argument unavailing, as it was more concerned with the fact that the form of the receipt was confusingly similar to U.S. coins and dollars. n168

Mr. Sulla also argued that use of Liberty Dollars is protected by the First Amendment as it is a form of "petition" seeking redress from the federal government, namely, the disbanding of the Federal Reserve and Internal Revenue Service. n169 The closest parallel is a string of cases involving a tax protest organization called the National Commodity and Barter Association (NCBA). n170 The organization engaged in commercial transactions and was the subject of several investigations concerning its suspected involvement in money laundering and tax evasion. n171 The Tenth Circuit found that the commercial aspect of the organization did not alter the protections of the First Amendment. n172 Thus, the U.S. government had to overcome its burden before issuing subpoenas to the NCBA, which would reveal the member list and have a chilling effect on the free speech of the members. n173

However, this case and others with a similar message may not be as broad as Mr. Sulla alludes. It is true that the court noted that the "commercial aspect" of the organization did not forfeit its First Amendment protections. n174 Indeed, it forced the government to demonstrate an "overriding and compelling" state interest before issuing the subpoenas. n175 However, the court did not mention, at any point, that the money laundering statute or reporting regulation did not apply to the NCBA. n176

[\*182]

### III. Analysis

Effective regulation of Bitcoin would theoretically capture or maximize the positive attributes of Bitcoin, while minimizing the negative attributes. Part (A) of this section will examine the real-world effects of Bitcoin. Part (B) will identify the best legal framework for regulating Bitcoin's faults while promoting its best attributes.

#### A. The Ramifications of Bitcoin

There are several qualities that make Bitcoin appealing and useful. First, its electronic nature makes it highly transferable. n177 Anyone who can access the Internet can download a Bitcoin wallet and store it on his or her computer. n178 Transfers can occur instantaneously without need for an institutional third party to verify the transaction, such as a bank in a traditional wire transfer. However, it should be noted that the gain in transaction cost over a business like Dwolla and PayPal is merely marginal. n179

Because most intermediaries can be eliminated, Bitcoin has low transaction costs. n180 The only "cost" of a transaction is the computer-processing work needed to solve block chains, n181 and most computers have spare capacity for this process. n182 Essentially, transaction costs can amount to nothing.

Bitcoin also has potential to serve as a "metacurrency" - a currency that bridges international legal tenders - and could compete with businesses like Western Union in this realm. n183 It has also provided liquidity in locations where cash is hard to come by. For example, in Iran, many citizens have used Bitcoin in response to the lack of currency in the economy. n184 Some claimed that Bitcoin's steady release of currency into the system was a cure for inflation. n185 But that claim is disputed. n186

Finally, Bitcoin allows users to make legitimate donations and purchases [\*183] anonymously. n187 This is a benefit in cases where an individual may not want to be associated with a transaction, even if that transaction is perfectly legal. For example, a controversial organization such as WikiLeaks could receive support from individuals without those donors fearing damaging association and accusation. Despite some positive attributes, there are plenty of reasons to find Bitcoin disconcerting. These include both (1) criminal concerns and (2) market concerns.

#### 1. Bitcoin as a Criminal Vehicle

Considering Bitcoin has no physical properties, it would be reasonable to think that an adept hacker would be able to create them out of nothing. However, this is less likely than it may initially seem. A deeper understanding of how Bitcoins make and validate transactions will help illustrate this assertion.

Counterfeiting can occur by double-spending Bitcoins. However, the public nature and verification of the transactions makes this process difficult to do. A Bitcoin contains the address of its current holder. n188 Essentially, when the owner is seeking to transfer a Bitcoin, she records the new public address on the Bitcoin and signs the Bitcoin with her own private key. n189

The best way for a savvy hacker to counterfeit Bitcoins is to develop a way to seemingly spend a Bitcoin, while maintaining a "copy" for herself, complete with a legitimate block chain history. n190 However, in order to prevent this kind of double-spending, Bitcoin contains a validation system. n191 Whenever a proposed transaction is made, it is broadcast to the entire system. n192 To validate the transaction, the system works collectively to create a timestamp for the block chain. n193 This signature identifies that a particular Bitcoin has been transferred at a particular time. n194 If a user were to try to double-spend her copied Bitcoin, the system would recognize that another Bitcoin, with a matching block chain, had already been notarized and would refuse to validate any further transactions. n195

Validating these transactions requires the system to have a massive number of Central Processing Units (CPUs). Since Bitcoin lacks infrastructure, there are no formal servers or systems to manage the validation process. n196 Instead, users of Bitcoin volunteer their computers' CPUs. n197 To incentivize this behavior, Bitcoins are "mined"; as one volunteers CPU power, [\*184] their computer has a random chance of receiving Bitcoins for the work. n198

Counterfeiting can still occur through a "brute force" attack - where an attacking hacker simply uses CPU power greater than the combined power of all the honest members of the system in order to falsely validate the spending of coins. n199 However, the system as a whole disincentivizes this behavior in two ways. First, the incentive system invites a large number of users to volunteer their CPUs thereby increasing the amount of brute force needed to compromise the system. n200 Secondly, if the hacker has access to such a large amount of CPU power, she stands to make a lot of money at little risk by using that power to mine for Bitcoins instead of trying to counterfeit them. n201 It is possible that this safeguard is worthy; as of yet, there are no reported instances of double-spending within the Bitcoin system.

However, protection against counterfeiting does not mean that Bitcoins cannot simply be stolen. This can occur when a hacker gains control of a user's private key and uses it to sign transactions that the true user is not aware of and would not consent to. n202 Although the validation process exists, its sole concern is making sure that one Bitcoin is not spent more than once. It does not and cannot validate whether the signing of a transaction was made with consent by the proper owner.

There have been several actual instances of hackers developing tools to falsely gain private key information and then using that information to steal Bitcoins. Thieves have several opportunities to determine who owns a lot of Bitcoins and discover the details of their information. For example, a website called bitcoinreport.com posts a list of the public addresses that hold the greatest number of Bitcoins. n203 This gives attackers a better idea of who to target within the system. A sophisticated hacker or investigator can use the Bitcoin forums to find connections to the owner's nickname or even real name. n204 Another site associates addresses with the age of the wallet, the number of transactions, the size of the wallet, and the number of Bitcoins that it holds. n205 A hacker is able to collect a great deal of information on a targeted victim.

Hackers have a number of tools to compromise a legitimate user's wallet. In April 2011, a program called "Stealthcoin" debuted. n206 The program uses compromised computers as "zombies" and has them mine for Bitcoins at a [\*185] slow rate to minimize harm to the victim. n207 The mined Bitcoins, of course, go to the "herder" and not the owner of the computer who mined it. n208 In another instance, an information technology administrator for a school purportedly used a Daemon script - a program that causes other computers to take specific actions - called "Botnet" to have the school system's computers mine Bitcoins when no one was using them. n209 In June of 2011, a Trojan - a virus that, to a computer, appears to be a non-threatening program - called "Infostealer.Coinbit" was discovered that targets a Windows user's default place for a Bitcoin wallet and then would email the wallet to the thief. n210

These infractions may seem minor, but the theft of Bitcoins can occur on a massive level. Symantec, a software security company, has surmised that Botnet is able to garner approximately \$ 100,000 (U.S. dollars, not Bitcoin) monthly for herders using compromised computers. n211 As for Infostealer, one Bitcoin user has reported that he lost approximately \$ 500,000 U.S. dollars' worth of Bitcoins on June 13, 2011. n212 Symantec and the victim suspected that Infostealer.Coinbit was responsible for draining the account. n213 Several days later, Mt. Gox, the largest Bitcoin exchange, which accounts for 90% of all Bitcoin/U.S. dollars trading, was compromised. n214 The hacker stole about \$ 8,750,000 U.S. dollars in Bitcoins, approximately a thirteenth of all the Bitcoins in existence. n215 An hour later, a hacker claimed credit and posted, "I have hacked into mtgox [sic] database. Got a huge number of logins [sic] password combos. Mtgox [sic] has fixed the problem now. Too late, cause [sic] I've already got the data. Will sell the database for the right price.

Send your offers ... ." n216 The exchange suspected that the hacker was able to succeed with a brute force attack against "unsalted" n217 passwords that were relatively vulnerable. n218

[\*186] There are several ways users can be protected from theft. First, they can encrypt their wallet in order to keep Infostealer.Coinbit from snatching it away. n219 Or, wallets can be stored in a dedicated virtual machine system that Infostealer.Coinbit can't reach. n220

Bitcoin users are also developing their own methods of investigation so that they can track Bitcoin thieves. Internal investigators can use the public data available to show a public key's association with other public keys. n221 They then use this data to create maps of networks. n222 From these maps, they can draw conclusions about transactions that seem suspicious because they involve a user outside the normal network, occur at an unusual time, or pertain to an unusually large amount of Bitcoins. n223 Thus, the addresses of thieves and conspiracies can be identified. n224 These public keys cannot be linked to any one individual and therefore have limited use, but services such as the Bitcoin Faucet, which publishes the IP addresses of those it gives coins to, and voluntary disclosures on the Bitcoin forums can provide further personal details on alleged thieves. n225

There is also potential for criminals to use Bitcoins to cover their tracks of ill-gotten gains. For example, a tech-savvy drug dealer could convert his cash into Bitcoins and then disperse them among a multitude of wallets. Then, as the criminal needed cash, he could reconvert the Bitcoins into U.S. dollars. Since the wallets are public but contain no information on the user, it could be quite a challenge for investigators to sort out the criminal's pattern for laundering cash. n226

As noted in the Background, in order to hamper money laundering, financial institutions must report any transaction over \$ 10,000. n227 Bitcoin exchanges have thus far not begun reporting. n228 Yet, due to increased pressure from various government bodies, Bitcoin Exchanges have begun to offer aid to investigating agencies by voluntarily reporting suspicious transactions and offering money-laundering aid. n229 The FBI has issued a report requiring that Bitcoin exchanges comply with the money laundering statutes. n230 Furthermore, gains from exchange transactions are supposed to be reported to [\*187] the Internal Revenue Service (IRS) using Form 1099(b). n231 This includes gains made from trading in Bitcoins. However, due to the anonymous nature of the addresses on Bitcoin accounts, the IRS will struggle to enforce taxation on Bitcoin trading gains.

Finally, as noted in the Introduction, Bitcoins are ideal for purchasing illicit goods or supporting illegitimate groups. Not only are they anonymous, but they do not require a bank account for purchase, which means that an investigating authority cannot freeze it for seizure. n232 Silk Road is not the only way to illegally spend Bitcoins; some consider Bitcoin to be an ideal way to skirt the federal prohibition on online gambling. n233 Some individuals have given anonymous donations to criminal organizations. When LulzSec hackers cracked into Sony's Playstation Network, stole its source code for the Sony Computer Entertainment's Developer Network, and posted it online, LulzSec claimed that an individual donated \$ 7,200 U.S. dollars' worth of Bitcoins to their cause. n234

Although counterfeiting is not a concern for Bitcoin, there are a number of reasons to be concerned with the currency's criminal uses.

## 2. Bitcoin as a Vulnerable Market

Criminal activity aside, there are also market failures that make Bitcoin vulnerable. Critics have expressed concern over Bitcoin's limited liquidity, its tendency towards hyper-fluctuation, its long-term deflationary vulnerability, its susceptibility to pump-and-dump scams, and its bias toward early adopters.

One major concern for Bitcoin exchanges is liquidity. Mt. Gox does not accept credit/debit transactions, and PayPal refuses to service Mt. Gox, citing a policy against virtual currencies. n235 TradeHill, a large U.S. exchange, has suspended trading due to liquidity concerns. n236 This leaves a number of unusual ways to convert U.S. dollars into Bitcoins. One way is to use Liberty Reserve - a private exchange system based in Costa Rica that will allow a client to put dollars into an account and then trade that money on a Bitcoin exchange. n237 Another method is to mail a personal check directly to the Mt. Gox exchange and direct it to an individual named "Morpheus," who will [\*188] exchange cash for Bitcoins. n238 The final method of exchange involves purchasing Linden Dollars on Second Life and then converting the Linden Dollars into Bitcoins. n239 Regardless, these cumbersome methods leave individuals who seek to trade out of Bitcoins during a period of price fluctuation without a quick way to do so.

A concern for price fluctuation is not ill-founded. The price of Bitcoins has seen marked variation in the past year. Early in 2011, Bitcoins were worth approximately \$ 0.30. n240 In May and June of 2011, the price of Bitcoins inflated

rapidly from \$ 1 to \$ 30. n241 Then, on June 10, the Bitcoin market lost 30% of its value in one day; Bitcoin prices dropped from \$ 28.919 to \$ 20.01 U.S. dollars. n242 When Mt. Gox was hacked on June 19, and \$ 8.75 million U.S. dollars were stolen, the exchange went into free fall: Bitcoins sold for pennies on the dollar, and the exchange was forced to negate a number of transactions, rolling back Bitcoin prices to about \$ 17. n243 Appendix 2 shows two graphs: one illustrates the inflation of the Bitcoin bubble from July of 2010 to June 2011; the other illustrates the collapse of the Bitcoin on June 19. n244

New Bitcoins are mined by computers at a fixed rate that will eventually reach 21,000,000. n245 After 2030, when 21,000,000 coins have been mined, no more Bitcoins will be "discovered" and unless Bitcoins are counterfeited the number of coins in the system will remain constant. n246 The philosophy behind this is to protect Bitcoins from market fluctuations. n247 For example, if a new large gold reserve is discovered, the price of gold will drop. n248 However, this solution gives rise to a number of other concerns. First, there is a long-term possibility for deflation. n249 Bitcoin's price will fall as mining slows because individuals will begin to hoard their Bitcoins. Second, the incentive for volunteering CPU power is eliminated, which means fewer individuals will actively be involved in validating transactions. This leaves the whole system vulnerable to a brute force attack. Bizarrely, if this were to occur, the result would be an influx of double-spent counterfeit coins, which would increase the [\*189] amount of coins in the system, which could crack the deflationary cycle.

There is also a risk for individuals to use Bitcoins for pump-and-dump scams. A pump-and-dump scam occurs when an individual owns an investment that they maliciously encourage others to purchase, thereby "pumping" up the price. n250 The scammer, knowing that this price is inflated and unsustainable, rides the investment to the top of its price and then sells off his investment. n251 Bitcoin is particularly susceptible to these sorts of scams because there is a small amount of coins and few transactions. n252 Thus, just a couple hundred trades can change the price dramatically. n253 Furthermore, Bitcoins are traded and hoarded among a niche group of tightly knit enthusiasts. A credible scammer could have great influence using blogs and message boards. n254

The mining of coins and the plateau of Bitcoin supply in 2030 creates a bias toward early adopters. An advantage exists to those who commit CPU now, particularly for those with faster computers and more resources. n255 A wealth gap among Bitcoin holders may occur because a relatively small group can afford the amount of CPU it takes to create new block chains en masse. n256 This is particularly true when one considers the disproportionate effect programs such as Botnet can have on the creation and possession of Bitcoins. The long-term effect is the creation of an oligarchical class of Bitcoin hoarders, which will do damage to the liquidity, utility, and democratic spirit of Bitcoin.

## B. How to Best Regulate Bitcoin

### 1. Counterfeiting

To properly examine whether Bitcoin is a form of counterfeiting, one must first examine the rationale of the prosecution and the court in the Liberty Dollars case. Next, one must examine the differences between Liberty Dollars and Bitcoin not just as a currency, but as an organization. Finally, one can consider the policy implications of using the counterfeiting laws to regulate Bitcoin.

The FBI noted that it was illegal for individuals to create currency systems that attempted to compete with U.S. legal tender. n257 If the FBI's statement is to be read broadly, it would seem to certainly implicate Bitcoin. [\*190] Yet, it is quite likely that private currencies are not per se illegal. But rather, Liberty Dollars fall within the purview of counterfeiting due to their particular use of symbols that are or could be used for American currency, as well as the adoption of terms such as "dollars," "USA," and "Trust in God." n258 Furthermore, the advertisements noted Liberty Dollars were "real money," "constitutional," and "legal." n259 Thus, in this instance, there was a real chance a purchaser could buy Liberty Dollars under the false belief that she was purchasing a new or rare minting of U.S. dollars or coins.

As an e-currency, Bitcoin cannot physically contain images associated with U.S. legal tender. As seen in Appendix A.2, the "image" of the Bitcoin, really just a logo, is simply a cartoon coin with a stylized "B." n260 Bitcoin does advertise itself as a "currency." Yet it avoids any claims of legality or "constitutionality." n261 Thus, from the perspective of a litigator, the argument that Bitcoin is on par with Liberty Dollars is a strained one, particularly because the trial judge removed the "compete" clause from the indictment before jury deliberations. n262

For the purposes of enforcement, the differences between how Bitcoin and Liberty Dollars derive their value are even more important. Liberty Dollars were backed by specie stored in warehouses. n263 Thus, when the FBI seized the specie in the warehouses, the bills lost their value. n264 However, Bitcoins are backed by no specie. n265 Although



mining the Bitcoins requires computing power, their value is derived completely by supply and demand - they have no inherent value. n266 Thus, even if a compelling argument could be made that the counterfeiting statute applies to all private currencies, the logistics of seizing Bitcoins becomes extremely problematic. n267

Liberty Dollars, to the benefit of the FBI, had a face to their organization through Bernard von NotHaus. n268 Thus, when von NotHaus was found guilty of counterfeiting, Liberty Dollars lost their figurehead. The case is different [\*191] for Bitcoin. Satoshi Nakamoto created the Bitcoin algorithm, n269 but the name is most likely an alias, and not even hardcore Bitcoin users know Nakamoto personally. n270 Even if prosecutors were able to identify Nakamoto, they could be facing a proverbial Spartacus, n271 where another person would step forward within the Bitcoin community and assume the role of figurehead.

Finally, prosecutors must consider the fact that Bitcoins are not the only digital currency. For example, Second Life, a massive-multiplayer online game, n272 has a fiat currency called Linden Dollars, which is backed by money held by Linden Labs. n273 Within Second Life, users create avatars and can create their own online businesses that use Linden Dollars as a currency. n274 For a time, Second Life was praised as the next major iteration of the Internet, an opportunity for many tech entrepreneurs to cut their teeth. n275 This is not to say that Linden Dollars are a shining example of what e-commerce can be, n276 but rather, prosecutors should avoid destroying the technological and economic possibilities of e-currency in a zealous attempt to topple Bitcoin.

## 2. Stamp Payments Act

Alternately, the government could choose to argue that Bitcoin falls within the purview of the Stamp Payments Act. The purpose of the Stamp Payments Act was to encourage the use of greenbacks. n277 Unlike the "currencies" in Van Auken and Monongahela, Bitcoins are not for payment in goods and are not limited to a specific geographic area. n278 Furthermore, unlike the tokens in Gellman, Bitcoins are intended to be used as currency, and people are regularly convinced into accepting them as such. n279 The question turns on whether Bitcoin competes with U.S. coin. Indeed, it is hard to argue that, were it not for Bitcoin, quarters and dimes would be shipped to pay for goods over the Internet. Of course, if one takes a more comprehensive view of the term "coin" as part of a collective monetary system, the argument that Bitcoin [\*192] diminishes the value of the dollar as a whole becomes more palpable. n280

Of course, the age of the statute, n281 as well as the statute's limited enforcement, n282 works against an argument based fully on the purpose of the act. On the other hand, the act has been amended as recently as 1994. n283 This amendment could be read to suggest that Congress recognizes a need to use the Stamp Payments Act in a modern context (including e-currency). n284 The lack of such intent seems just as likely. n285

The act punishes those who issue, circulate, or pay out prohibited tokens. n286 For enforcement persons, it is unclear who "issues" Bitcoin. The most likely candidate is Satoshi Nakamoto. It would be a difficult argument to claim that those who solve block chains are issuing Bitcoin. n287 However, those who solve block chains are aiding in the circulation of the coins. This would implicate anyone who has downloaded the Bitcoin program. Furthermore, Bitcoin exchanges could be found in violation of the Stamp Payments Act for "paying out" cash for Bitcoins.

If the government were to choose to regulate Bitcoin through the Stamp Payments Act, it would have to consider the peer-to-peer nature of the currency. Bringing a case against one actor in the Bitcoin system, even a significant one like Mt. Gox, will not bring an ultimate end to Bitcoin trading. However, if the government's concern is competition with "greenbacks," n288 removing large trading houses and making the entire system less liquid will discourage all but the most ardent of Bitcoin advocates.

## 3. Securities and Exchange Acts

Another way for regulators to attempt to reign in Bitcoin is through the use of the Securities and Exchange Acts. First, comparing the purpose of the Securities and Exchange Acts and the unique historical circumstance behind them, to the current environment that Bitcoins reside within will provide a proper context for this analysis. Second, Bitcoins must be examined through the lens of the definitions of the traditional securities, as provided in Part II. Third, it should be discussed whether trading in Bitcoin creates an investment contract. Finally, one must consider the policy implications of expanding the securities laws to include e-currencies.

The securities laws were born from the "Wild West" of the state- [\*193] regulated securities market. n289 At the time, securities were misunderstood by most investors, who fell prey to fraudsters manipulating the market, as well as companies who operated with unique accounting schemes and often would not disclose negative facts. n290 This envi-

ronment is quite similar to the current Bitcoin market - it is misunderstood by most, which leads to mass speculation and crime. There is alignment in the purpose of the Securities Acts and the reality of the current Bitcoin market.

However, Bitcoins do not fall within the category of "notes" - there is no promise to pay for Bitcoin, though some are willing to trade for them. n291 Nor can Bitcoins be considered a commodity, which refers to tangible goods n292 rather than intangible objects. There are more similarities between Bitcoins and stocks - for the more CPU an individual invests in solving block chains, she receives a proportional amount of Bitcoins. However, Bitcoin, of course, lacks the organization of a corporation, and there are no "voting rights" associated with owning more Bitcoins. n293

The Securities Acts also cover investment contracts. However, Bitcoins themselves seem to fail under this definition as well. First, an investment presumes a return in the future. Individuals trading Bitcoins for U.S. dollars are not necessarily looking to eventually cash out their coins for traditional currency, perhaps they merely want to enjoy Bitcoins. Secondly, even if they were, attempting to ride a currency market to the top should hardly be considered a "common enterprise."

But where the securities laws may fail to regulate Bitcoins themselves, they can be used to regulate Bitcoin exchanges. n294 One must consider the flexible nature of the definitions within the Securities Acts in order to cover instruments that had not yet been invented. n295 Furthermore, it is a much more compelling argument to say that those who trade on the exchanges are looking for a future return based on the actions of others. n296

Bitcoin exchanges bring together willing buyers and sellers. n297 More importantly, they have a virtual trading floor, which was a crucial distinction in a case like Board of Trade. n298 Unlike the computer program Delta, the Bitcoin exchanges behave in ways "generally understood" to be a currency exchange. n299

[\*194] Bitcoin exchanges run as nonprofit entities that are registered to individuals outside the United States. n300 It is true that nonprofit exchanges are exempt from registration requirements, n301 though not anti-fraud requirements. n302 However, the registration "will not be assumed; it must be affirmatively pleaded and proved by the defendant." n303 Also, foreign currency exchanges have been required to follow the securities laws, as well. n304 Thus, although these elements make the argument in favor of registering the Bitcoin exchanges more challenging, they are not insurmountable.

Were the exchanges to fall under the purview of the securities laws, they would be forced to make a number of changes. First of all, an exchange would have to register with the SEC. n305 It would also have to file a number of public reports n306 which could have a double benefit - informing potential investors on the full reality of Bitcoin investment, while providing the government with useful information that it previously had lacked. Most importantly, the exchanges would be liable for instances of fraud. n307 This would force them to invest in self-policing mechanisms.

No doubt this will increase the transaction cost for the exchanges. However, spreading this cost across all investors is preferable to investors bearing the entire risk of fraud themselves. This solution also allows the exchanges to continue operation, albeit at greater cost. n308

#### 4. Financial Requirements

Finally, a prosecutor could attack Bitcoin exchanges through the use of the money laundering laws. Examining these laws, particularly with regard to e-Gold and PayPal as comparable test cases, can shed light on the feasibility and effectiveness of using these statutes to regulate Bitcoin.

Because Bitcoin exchanges trade from U.S. dollars (and other currencies) to Bitcoin and back, they are currency exchanges. Thus, they are subject to the requirements of the Bank Secrecy Act. n309 FinCEN has released a recent press release specifically stating an interest in regulating all money service [\*195] businesses, including Bitcoin, whether they are U.S. companies or not. n310 Specifically, Bitcoin exchanges are required to report exchanges greater than \$ 10,000, n311 register with FinCEN, and begin self-policing for instances of fraud. n312

The exchanges are also vulnerable to sanction stemming from the Money Laundering Act. Individuals are able to gain Bitcoins in a number of illegal ways. n313 It is fair to assume that these same individuals would use the exchanges for conversions into other currencies because it would be inefficient to try and make trades involving such a large amount of Bitcoins on an individual basis. n314 Furthermore, criminals leave a trail of telltales as they engage in suspicious behavior on the exchanges. n315 Mt. Gox and others must be aware of the problem of criminals using the exchanges. Although it may be unfair to accuse them of knowing about particular acts of criminality and knowingly aiding in money laundering, the "willful blindness" aspect of scienter can still apply. For example, Bitcoin exchanges allow

individuals to make trades in anonymity, do not police trades on their exchange, and do not provide proper documentation for taxation on investment gains. n316 Furthermore, it is rare when the exchanges reverse trades. n317 These elements can be used against the Bitcoin exchanges as evidence that they have the necessary scienter.

There are similarities between e-Gold and Bitcoin. Both involve an electronic currency that touts anonymity as a benefit. n318 Both are used by criminals and fraudsters as a mechanism for gaining or cleaning illegal cash. n319 Both have exchanges, which process massive amounts of transactions and charge per transaction. n320 Surely, the two systems are similar enough that Bitcoin exchanges face the same risks as e-Gold of being shuttered and the owners of the exchanges being prosecuted for criminal penalties.

But, as with e-Gold, if regulators were to use the Money Laundering Act to close Mt. Gox and others, they would be missing an opportunity to use the exchanges as a pipeline to information on criminal behavior. e-Gold began to require registration, and instituted internal mechanisms to provide the FBI with information on suspicious behavior. n321

PayPal took the steps necessary to appease law enforcement by appointing a compliance officer, installing fraud detection software, and [\*196] making reports to law enforcement. n322 Although this affected the transaction costs, PayPal has been a successful business model without sacrificing compliance to U.S. law.

Bitcoin exchanges, too, have shown an interest in cooperating with law enforcement. n323 In Europe, French authorities have licensed the first Bitcoin exchange that will operate like a bank, complete with debit cards, accounts, and an easier mechanism for converting cash into Bitcoin. n324 Regulators should not miss the opportunity to get valuable information from a few large information aggregators, rather than trying the impossible task of monitoring the vast network of peer-to-peer Bitcoin trades.

Closing the exchanges would surely dry up the liquidity of the Bitcoin system. Most investors would pull out of Bitcoin, creating a run on the currency in general. However, what would remain, after the dust settled, is a cadre of dedicated users, n325 mostly those dedicated to criminal activity, ideology, or technical novelty. Illegal acts such as purchases on Silk Road or Black Market [Reloaded] would not end, they would simply occur within a Bitcoin black market that cannot be monitored.

#### 5. Addressing Potential Defenses

The potential defenses raised in the case of the Liberty Dollar should not be a concern for the Bitcoin litigator.

The UCC defense, flimsy in its own right, n326 is completely inapplicable in the case of Bitcoin. Bitcoin lacks both the specie and paper warehouse receipt that Mr. Sulla referred to. At best, proponents of this argument would be forced to argue that ownership of Bitcoin is an electronic receipt of the computer power devoted to mining the coin. This argument is unavailing, as the UCC requires certain information be documented to be considered a warehouse receipt. n327

The First Amendment defense, though stronger, will not protect Bitcoin or the exchanges. Unlike the NCBA, which was organized behind the belief that the Federal Reserve and IRS are illegitimate, Bitcoin is not united behind a common ideology. n328 However, to ensure that any First Amendment violations do not occur, regulators should be prepared to articulate and prove an [\*197] "overriding state interest" n329 in issuing subpoenas to investigate any money laundering, tax evasion, or other criminal violations.

#### IV. Recommendations

Although not illegal, it is clear that Bitcoins increase subversive actors' capacity to commit criminal offenses and are problematic as a currency. However, they should not be strictly outlawed. Instead, Bitcoins should see heavier regulation and fall within the purview of the SEC.

It is true that Bitcoins offer little legitimate advantage to traditional currency, existing legitimate business (such as PayPal), or investment activities. The fact that they are novel, relatively anonymous, used for the purchase of illegitimate goods, and easy to use as a vehicle for eluding reporting and tax requirements does not justify their existence and points to a need to restrict their use.

Outlawing Bitcoin would not address the problem. In the short run, exchanges such as Mt. Gox would probably close and many users would abandon the currency. However, Bitcoin would retain a core of tech-savvy or anarchist users that are all the more intrigued by the currency's newfound illegality. It is quite likely that they would trade

Bitcoins secretly and continue to use them as a mechanism for sponsoring hackers and purchasing drugs. However, the trades would no longer happen in a large exchange but rather one at a time between users. These savvy users would be more prone to constantly changing public addresses on their Bitcoins and laundering the coins to randomize their trading network. This would hamper an investigating agency's ability to aggregate network patterns and evaluate trends. They also would be more cautious about maintaining backups to their coins, so that if their computer is seized and the Bitcoins on their hard drive are destroyed, they would have backup copies. Furthermore, websites that publish information on addresses with large amounts of Bitcoins would surely shut down, severing another way to gather valuable information on suspicious actors.

A better solution is for Congress to explicitly create a comprehensive set of statutes that address the regulation of private electronic currencies, like Bitcoin. The first element should require Bitcoin to maintain a database of registered wallets. This database would be subject to subpoena but could not be accessed by the government otherwise. This fail-safe helps to ensure that the registry of wallets is not in violation of the First Amendment.

Depending on Congress is all well and good, but the rash of thefts, cons, and hacks already occurring in the Bitcoin world suggest that prosecutors and investigators should not wait. The primary concern needs to be avoiding options that lead to the closure of the exchanges. To this end, a prosecutor's argument that Bitcoin is per se counterfeiting, or in violation of the Stamp Payments Act, is not only a weak legal argument, it is against sound policy.

This is not to say the exchanges should be left alone. Using the weight of [\*198] the Money Laundering Acts, the government can leverage the exchanges into keeping a record of their transactions, policing suspicious trades, and making the necessary reports to regulatory agencies. In so doing, it must consider the success story of PayPal over the relative failure of e-Gold.

In the long run, the Bitcoin exchanges should fall within the purview of the SEC. They should be forced to report large transactions and be subject to the rigorous accounting standards of the Financial Accounting Standards Board. They should be subject to the securities laws, which help to eliminate opportunities for fraud. Like other financial institutions, the exchanges should face rigorous audits by the IRS and be compelled to supply their traders with information to file Form 1099(b).

Where these attempts fail, prosecutors can also rely on the federal wire fraud statute, which has a broad purview and could be used to prosecute just about any scheme, scam, or fraud committed within Bitcoin. n330

Finally, the DOJ, SEC, FBI, and Drug Enforcement Agency should each maintain a small division that specializes in investigating the illegitimate use of electronic currencies. n331 These agencies should expect crime and violations revolving around e-currency to grow in the coming years.

Investigative techniques such as mapping user networks and tracking suspicious trading behavior will help identify targeted criminal accounts. These units would also use the existing information on exchanges and websites to gather intelligence on suspicious users such as their web aliases, their account histories, their web presence, and potentially, their real names and addresses. Combined with a successful attempt to have registered users on the exchanges, in the case of a large theft, such as the Mt. Gox "mega-hack," investigators could create a network of the Bitcoins involved. Known users can be investigated and eliminated, and then used to cull down to a smaller list of criminal suspects. Importantly, all of these investigative techniques involve public information, which ameliorates the concern for garnering warrants, Title III permissions, or subpoenas.

## V. Conclusion

Despite much travail, the bizarre world of Bitcoin has prevailed through currency exchange mega-hacks, burst bubbles, and an army of Trojans. Litigators, investigators, and regulators need to begin preparing themselves for how best to manage a corner of the Internet that has eluded regulation and has great potential for crime, particularly when there is no one law that neatly covers Bitcoin within its purview. Due to the peer-to-peer nature of the currency and the technical aptitude of many of its adherents, searching for an option that dismantles Bitcoin in one fell swoop is futile. Instead, regulators must seek a balance between oversight and cooperation from the major [\*199] institutions, namely the exchanges.

Through the use of the Money Laundering Act and the Exchange Act, the government can achieve that balance. What will be left is a currency that is stronger and safer for use by the everyday consumer, but also easier to navigate in order to rout out those who would use it to commit illegal acts.

[\*200]

Appendix A.1  
U.S. Dollars Compared to Liberty Dollars

Appendix A.1

Appendix A.2  
The Icon that Represents Bitcoin

Appendix A.2 [\*201]

Appendix 2  
The Bitcoin Bubble

Appendix 2  
The Bitcoin Crash

Figure

### Legal Topics:

For related research and practice materials, see the following legal topics:

Criminal Law & Procedure Criminal Offenses Miscellaneous Offenses Counterfeiting Elements Criminal Law & Procedure Criminal Offenses Miscellaneous Offenses Counterfeiting Penalties International Trade Law General Overview

### FOOTNOTES:

n1. Adrian Chen, *Underground Website Lets You Buy Any Drug Imaginable*, *Wired* (June 1, 2011, 2:25 PM), <http://www.wired.com/threatlevel/2011/06/silkroad/>.

n2. *Id.*; *Silk Road: Not Your Father's Amazon.com*, *NPR* (June 12, 2011, 3:33 PM), <http://www.npr.org/2011/06/12/137138008/silk-road-not-your-fathers-amazon-com> [hereinafter *Silk Road*]. A URL refers to the address of a website and may contain specific file information. *Webster's Third New International Dictionary* 2499 (Philip Babcock Gove ed., 2002).

n3. *Tor: Overview*, *TOR Project*, <https://www.torproject.org/about/overview.html.en> (last visited Mar. 8, 2013).

n4. *Id.*

n5. Ryan Broderick, *Traveling Down the Silk Road to Buy Drugs With Bitcoins*, *Motherboard* (June 24, 2011), <http://www.motherboard.tv/2011/6/24/traveling-down-the-silkroad-to-buy-drugs-with-bitcoins> [hereinafter *Broderick, Silk Road*]. Some have estimated that the Web that is hidden from most users is 500 times larger than the searchable Web. Bin He et al., *Accessing the Deep Web*, *Comm. of the ACM*, May 2007, at 95, available at <http://dl.acm.org/citation.cfm?doid=1230819.1241670>.

n6. Broderick, *Silk Road*, *supra* note 5.

n7. There is no Google in the Deepnet; traditional ways of searching the surface web - via crawlers, or spiders, which follow hyperlinks to survey the Web - are not effective in the Deepnet, where many of the databases are query-based (seeking a specific command). Alex Wright, *Exploring a "Deep Web" That Google Can't Grasp*,

N.Y. Times (Feb. 22, 2009),  
[http://www.nytimes.com/2009/02/23/technology/internet/23search.html?\\_r=1&th&emc=th](http://www.nytimes.com/2009/02/23/technology/internet/23search.html?_r=1&th&emc=th).

n8. Silk Road, *supra* note 2. Silk Road has about a thousand items available, most of them are drugs. See Broderick, Silk Road, *supra* note 5 (describing how easy it was to purchase drugs off of the Silk Road). It rakes in about \$ 1.9 million per month. Monetarists Anonymous, *Economist* (Sept. 29, 2012), <http://www.economist.com/node/21563752>.

n9. Broderick, Silk Road, *supra* note 5. Bitcoin is not the first, nor only, currency gone unbacked by a government. As commentator Reuben Grinberg notes, Bitcoin shares that quality with the Iraqi Swiss Dinar. Reuben Grinberg, Bitcoin: An Innovative Alternative to Digital Currency, 4 *Hastings Sci. & Tech. L.J.* 159, 174 (2012).

n10. See Satoshi Nakamoto, Bitcoin: A Peer-to-Peer Electronic Cash System 8 (2008) (unpublished white paper) (claiming that the Bitcoin system does not require any backing or "trust"), available at <http://bitcoin.org/bitcoin.pdf>. Individuals have made both Bitcoin coins and bills, however these have not been officially adopted by the Bitcoin system. See Physical Bitcoins by Casascius, <https://www.casascius.com/> (last visited Mar. 8, 2013) (coins); Bitbills, <http://www.bitbills.com/> (last visited Mar. 8, 2013) (bills).

n11. Chen, *supra* note 1. Satoshi Nakamoto created the algorithm in 2008 in a self-published paper. Nakamoto, *supra* note 10. Many consider the name to be an alias. Joshua Davis, The Crypto-Currency, *New Yorker*, Oct. 10, 2011, at 62; Posting of Wobber, Who Is Satoshi Nakamoto?, Bitcoin Forum (Apr. 16, 2011, 9:25 PM), <https://bitcointalk.org/index.php?topic=5951.0> ("Nobody knows him.").

n12. Nakamoto, *supra* note 10, at 1.

n13. *Id.* at 2.

n14. J.P., Bits and Bob, *Economist* (June 13, 2011, 8:30 PM), <http://www.economist.com/node/21518611>.

n15. *Id.* (noting that the wallet services have their own risk of going defunct or vanishing with users' coins). There has already been one instance of a wallet service fraud. Benjamin Wallace, The Rise and Fall of Bitcoin, *Wired* (Nov. 23, 2011, 2:52 PM), [http://www.wired.com/magazine/2011/11/mf\\_bitcoin/all/1](http://www.wired.com/magazine/2011/11/mf_bitcoin/all/1) [hereinafter Wallace, Rise and Fall] (describing how Tom Williams ran MyBitcoin from the West Indies and one day disappeared with everyone's coins).

n16. Nakamoto, *supra* note 10, at 6.

n17. Address, Bitcoin Wiki, <https://en.bitcoin.it/wiki/Address> (last visited Mar. 8, 2013) ("An example of a Bitcoin address is 31uEbMgunupShBVTewXjtbBv5MndwfXhb.").

n18. Nakamoto, *supra* note 10, at 2.

n19. See Fergal Reid & Martin Harrigan, An Analysis of Anonymity in Bitcoin 10-11 (Sept. 30, 2011, 1:20 AM) (unpublished white paper) (mapping a network of transactions surrounding a theft of Bitcoins), available at <http://anonymity-in-bitcoin.blogspot.com/2011/07/bitcoin-is-not-anonymous.html>. For more on investigation techniques to crack the anonymity of Bitcoins, see *infra* Part IV.

n20. Nakamoto, *supra* note 10, at 2-3.

n21. Id. at 2.

n22. Reid & Harrigan, *supra* note 19, at 3.

n23. The Tuesday Podcast: Bitcoin, Nat'l Pub. Radio (July 12, 2011, 6:44 PM) [hereinafter Tuesday Podcast] (downloaded from Planet Money, NPR, <http://www.npr.org/blogs/money/2011/07/13/137795648/the-tuesday-podcast-bitcoin>).

n24. Id.

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n28. Daniel Roberts, The Clock Is Ticking on Bitcoin, CNN (June 17, 2011, 12:29 PM), <http://tech.fortune.cnn.com/2011/06/17/the-clock-is-ticking-on-bitcoin/>.

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n30. Wallace, Rise and Fall, *supra* note 15. For example, one might trade three Bitcoins in exchange for some programming help on a website.

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n32. Chen, *supra* note 1.

n33. Adam Clark Estes, Bitcoin's Speedy Fall: EFF Halts Donations and Wikileaks Cashes Out, Atlantic Wire (June 21, 2011), <http://www.theatlanticwire.com/technology/2011/06/bitcoin-eff-wikileaks-fsf-donations/39055/>; Bitcoins for Charity, <http://bitcoinsforcharity.org/> (last visited Mar. 8, 2013).

n34. Sara Yin, Bitcoin: The Currency of Hackers, PC Mag (June 13, 2011, 11:06 AM), <http://www.pcmag.com/article2/0,2817,2386812,00.asp>.

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n36. *Id.*

n37. Total Number of Bitcoins in Existence, Bitcoin Block Explorer, <http://blockexplorer.com/q/totalbc> (last visited Mar. 12, 2013).

n38. Bitcoin Map, Bitcoin Wiki, [https://en.bitcoin.it/wiki/Bitcoin\\_Map](https://en.bitcoin.it/wiki/Bitcoin_Map) (last visited Mar. 13, 2012).

n39. *Id.*

n40. Estes, *supra* note 33 (noting that major non-profits are no longer accepting Bitcoins); Roberts, *supra* note 28 (suggesting Bitcoin will be regulated soon); Wallace, Rise and Fall, *supra* note 15 (describing Bitcoin as going from "currency of tomorrow to dystopian joke"); Tim Worstall, So That's the End of Bitcoin Then, *Forbes* (June 20, 2011, 4:42 AM), <http://www.forbes.com/sites/timworstall/2011/06/20/so-thats-the-end-of-bitcoin-then/> ("It's difficult to see what the currency has going for it.").

n41. Timothy Lee, Bitcoin's Comeback: Should Western Union Be Afraid?, *Wired* (Dec. 21, 2011, 3:33 PM), <http://www.wired.com/threatlevel/2011/12/bitcoins-comeback/> ("We thought Bitcoin's value would continue to collapse, but so far that hasn't happened."). One developer has noted that Bitcoin as a product has passed through industry analyst Gartner's "trough of disillusionment" and is entering the "plateau of productivity." Wallace, Rise and Fall, *supra* note 15.

n42. Using the same principles as Silk Road, Black Market [Reloaded] markets criminal services, such as assassination and murder, along with the more mundane drug and weapons sales. Wallace, Rise and Fall, *supra* note 15.

n43. For another examination of whether Bitcoin falls within the purview of current law, see Grinberg, *supra* note 9, at 181-206. Mr. Grinberg does not draw a conclusion either way as to the legality of Bitcoin. *Id.* at 206. Whereas Mr. Grinberg's article focuses on whether Bitcoin will be found illegal under current law, this Note focuses instead on the policy implications of using particular statutes to attempt to regulate Bitcoin.

n44. U.S. Const. art. I, § 10.

n45. *Julliard v. Greenman*, 110 U.S. 421, 446 (1884) ("The Constitutional authority of congress to provide currency for the whole country is now firmly established.").

n46. Mint Act, ch. 16, 1 Stat. 246 (1792).

n47. Arthur Nussbaum, The Law of the Dollar, 37 *Colum. L. Rev.* 1057, 1059-60 (1937).

n48. *Id.* at 1064; Paul O'Leary, The Coinage Legislation of 1834, 45 *J. Pol. Econ.* 80, 94 (1937).

n49. Echoes of the Past With Implications for the Future: The Stamp Payments Act of 1862 and Electronic Commerce, *Banking Rep. (BNA)* No. 67, at 465 (1996) [hereinafter *Echoes of the Past*].

n50. Legal Tender Act, ch. 33, 12 Stat. 345 (1862).



n51. *Hepburn v. Griswold*, 75 U.S. (8 Wall.) 603, 626 (1870).

n52. *Id.* at 606.

n53. *Id.*

n54. *Id.* at 616.

n55. *Id.* at 623 ("It is understood and declared that no law ought ever to be made or have force in the said territory, that shall in any manner interfere with or affect private contracts ...").

n56. *Knox v. Lee & Parker v. Davis*, 79 U.S. (9 Wall.) 457, 553 (1871).

n57. *Id.* at 560 (Bradley, J., concurring).

n58. Webster's Third New International Dictionary 1290 (Philip Babcock Gove ed. 2002).

n59. *Id.* at 557.

n60. Legal Tender Status, U.S. Dept. of the Treasury, <http://www.treasury.gov/resource-center/faqs/Currency/Pages/legal-tender.aspx> (last updated Jan. 4, 2011).

n61. *Veazie Bank v. Fenno*, 75 U.S. (7. Wall.) 533, 549 (1869) (addressing the federal power to issue a tax on private bank notes).

n62. 18 U.S.C. §§485-486 (2006).

n63. *Id.* § 485.

n64. *Id.* § 486.

n65. See *United States v. LeMon*, 622 F.2d 1022, 1024 (10th Cir. 1980) ("The manifest purpose of the counterfeiting statute is the protection of all currency and obligations of the United States."). A counterfeiting penalty was included with the passing of the Legal Tender Act. Ch. 33, 12 Stat. 347.

n66. See Benjamin Klein & Michael Melvin, Competing International Monies and International Monetary Arrangements, in *The International Monetary System: Choices for the Future* 290, 294-97 (Michael B. Connolly ed., 1982).

n67. 18 U.S.C. § 486 (emphasis added).

n68. About Frank Abagnale, Abagnale & Associates, <http://www.abagnale.com/aboutfrank.htm> (last visited Mar. 8, 2013).

n69. William Bryk, Little Old Money maker, N.Y. Sun (Feb. 16, 2005), <http://www.nysun.com/on-the-town/little-old-money-maker/9282/>.

n70. Lynn Glaser, Counterfeiting in America 21-22 (1968). Though her brother and sister-in-law testified against her, she was acquitted for lack of evidence. Id.

n71. Elizabeth Williamson, "Liberty Dollars' Can Buy Users a Prison Term, U.S. Mint Warns, Wash. Post (Oct. 10, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/09/AR2006100900993.html>.

n72. Press Release, U.S. Mint, Liberty Dollars Not Legal Tender, United States Mint Warns Consumers (Sept. 14, 2006) [hereinafter Press Release, U.S. Mint], available at [http://www.usmint.gov/pressroom/index.cfm?flash=yes&action=press\\_release&id=710](http://www.usmint.gov/pressroom/index.cfm?flash=yes&action=press_release&id=710).

n73. Id.

n74. Id.

n75. Frequently Asked Questions, Liberty Dollar, <http://libertydollar.org/ld/faqs/> (available through Way-back Machine, <http://web.archive.org/web/20090220133950/http://libertydollar.org/ld/faqs/> (last visited Mar. 8, 2013)).

n76. For images of Liberty Dollars, see Liberty Dollar Office Raided by FBI - Gold and Silver "Coins" Seized, CoinLink (Nov. 16, 2007), <http://www.coinlink.com/News/top-stories/liberty-dollar-office-raided-gold-and-silver-coins-confiscated/> [hereinafter Raided by FBI].

n77. Post of hugolp, Re: Liberty Dollars Held by Collectors Subject to Seizure as Contraband, Bitcoin talk (Sept. 6, 2011, 6:51 PM), <https://bitcointalk.org/index.php?topic=41067.0>. However, the coins did feature presidential candidate Ron Paul. Raided by FBI, *supra* note 76. For a discussion on the purpose of the warehouse receipt, see *infra* Part I.B.6.

n78. Letter from Paul J. Sulla to G. Edward Griffin (June 10, 1998) [hereinafter Sulla], available at <http://web.archive.org/web/20090227104328/http://www.libertydollar.org/ld/legal/legalopinionletter.htm>. For an image comparing Liberty Dollars and U.S. dollars, see Post of hugolp, *supra* note 77.

n79. Raided by FBI, *supra* note 76; United States Dollar, Famous Wonders, <http://famouswonders.com/united-states-dollar/> (last visited Feb. 3, 2013) (displaying the image of the U.S. dollar).

n80. Press Release, U.S. Mint, *supra* note 72.

n81. See *id.* ("Liberty Dollars ... compete with the circulating coinage of the United States. Consequently, prosecutors ... have concluded that the use of NORFED's "Liberty Dollars' ... is a crime.").

n82. *18 U.S.C. §§371, 485, 486* (2006).

n83. Press Release, Fed. Bureau of Investigation, Defendant Convicted of Minting His Own Currency (Mar. 18, 2011) [hereinafter Press Release, FBI], available at <http://www.fbi.gov/charlotte/press-releases/2011/defendant-convicted-of-minting-his-own-currency>.

n84. Reality Report, Bernard von NotHaus: Liberty Dollar Trial Update, YouTube (Apr. 18, 2011), <http://www.youtube.com/watch?v=U0D7s4MfbQE>.

n85. Press Release, FBI, supra note 83 ("Attempts to undermine the legitimate currency of this country ... represent a clear and present danger to the economic stability of this country.").

n86. Seth Lipsky, When Private Money Becomes a Felony Offense, Wall St. J. (Mar. 31, 2011), <http://online.wsj.com/article/SB10001424052748704425804576220383673608952.html>.

n87. *18 U.S.C. § 336* (2006).

n88. Echoes of the Past, supra note 49, at 465.

n89. *Id.*

n90. *Id.*

n91. *Id.* at 467; *18 U.S.C. § 336*.

n92. *United States v. Monongahela Bridge Co.*, 26 F. Cas. 1292, 1292 (W.D. Pa. 1863).

n93. *Id.* at 1292-93.

n94. *United States v. Van Auken*, 96 U.S. 366, 367 (1877).

n95. *Id.* at 369.

n96. *United States v. Gellman*, 44 F. Supp. 360, 362 (D. Minn. 1946).

n97. *Id.* at 363.

n98. *Id.* ("Any school child, or the most illiterate person, would not be duped into accepting any of these slugs or tokens as genuine coins.").

n99. *Id.* at 364.

n100. Grinberg, supra note 9, at 187.

n101. See generally Thomas Lee Hazen, *Federal Securities Law* (2d ed. 2003); Marc I. Steinberg, *Securities Regulation* (5th ed. 2009); Thomas Lee Hazen, *Securities Regulation* (2008) (serving as a reference to the Securities Acts and rules).

n102. *15 U.S.C. § 78b.* (2006).

n103. *Id. § 78b.(3).*

n104. *Id. § 78b.(4).*

n105. Edmund W. Kitch, *A Federal Vision of the Securities Laws*, *70 Va. L. Rev.* 857, 858 (1984).

n106. *Id.*

n107. Harold Bierman Jr., *The Causes of the 1929 Stock Market Crash: A Speculative Orgy or a New Era?* 29-32 (1998).

n108. *Id.* at 20-23.

n109. *Id.* at 35-37.

n110. *18 U.S.C. § 472* (2006).

n111. *15 U.S.C. § 78c.(a)(10)* (2006).

n112. *Black's Law Dictionary* 1551 (9th ed. 2009).

n113. *Id.* at 1162.

n114. *Id.* at 310.

n115. *SEC v. C. M. Joiner Leasing Corp.*, 320 U.S. 344, 351 (1943) ("The reach of the Act does not stop with the obvious and commonplace. Novel, uncommon, or irregular devices, whatever they appear to be, are also reached if it be proved as matter of fact that they were widely offered or dealt in under terms or courses of dealing which established their character in commerce as 'investment contracts,' or as 'any interest or instrument commonly known as a 'security.'").

n116. *Proctor & Gamble Co. v. Bankers Trust Co.*, 925 F. Supp. 1270, 1280 n.4 (S.D. Ohio 1996).

n117. *Black's Law Dictionary* 440 (9th ed. 2009).

n118. *15 U.S.C. § 78c.(a)(10)* (2006).

n119. *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946) (defining "investment contracts" using state "Blue Sky" laws).

n120. *SEC v. Merch. Capital, LLC*, 483 F.3d 747, 755 (11th Cir. 2007); *SEC v. Alpha Telcom, Inc.*, 187 F. Supp. 2d 1250, 1260 (D. Or. 2002), *aff'd*, *SEC v. Ruttera*, 350 F.3d 1084, 1097 (9th Cir. 2003).

n121. *SEC v. Infinity Grp. Co.*, 212 F.3d 180, 187 (3d Cir. 2000).

n122. 15 U.S.C. § 77e.(a), e.(c) (2006).

n123. 17 C.F.R. § 229.601 (2012).

n124. See *Caravan Mobile Home Sales v. Lehman Bros. Kuhn Loeb*, 769 F.2d 561, 564 (9th Cir. 1985) (stating that to be held liable, issuers must (1) intentionally; (2) misrepresent; (3) a material fact; (4) in connection with the sale of securities).

n125. 15 U.S.C. § 78c.(a)(1) (2006). Foreign currency exchanges apply as well. *United States v. Roberts*, No. 4:08 CR00181, 2008 WL 5111165, at 1 (E.D. Ark. Dec. 2, 2008).

n126. *Bd. of Trade of City of Chi. v. SEC*, 923 F.2d 1270, 1272 (7th Cir. 1991).

n127. *Id.* The court did not expect a literal trading floor, but a virtual one. *Id.*

n128. *Id.*

n129. 31 U.S.C. §§5311-5330 (2006).

n130. 18 U.S.C. § 1956 (2006).

n131. 31 U.S.C. § 5313(a); 31 C.F.R. § 103.22 (2011).

n132. 31 U.S.C. § 5313.

n133. Forms, FinCEN, [http://www.fincen.gov/financial\\_institutions/forms.html](http://www.fincen.gov/financial_institutions/forms.html) (last visited Feb. 26, 2013).

n134. 31 U.S.C. § 5312(a)(2)(J).

n135. 18 U.S.C. § 1956(a)(1).

n136. Charles Thalen Plombek, Confidentiality and Disclosure: The Money Laundering Control Act of 1986 and Banking Secrecy, 22 *Int'l Law.* 69, 71-72 (1988).

n137. *Id.* at 72-73. Mr. Plombek notes in a footnote that "a currency exchanger who participates in a transaction with a known drug dealer involving hundreds of thousands of dollars in cash and accepts a commission far above the market rate, could not escape conviction simply by claiming that he did not know for sure that the currency involved in the transaction was derived from crime. On the other hand, an automobile dealer who sells a car at market rate to a person whom he merely suspects has involvement with crime, cannot be convicted of this offense in the absence of a showing that he knew something more about the transaction or the circumstances surrounding it." *Id.* at 75 n.25.

n138. Kim Zetter, Bullion and Bandits: The Improbable Rise and Fall of e-Gold, *Wired* (June 9, 2009, 12:00 AM), <http://www.wired.com/threatlevel/2009/06/e-gold/all/1>. e-Gold began in 1995 and its founder created it as

an international currency that was free from government control. *Id.* Its gold backing supposedly made it superior to paper currency. *Id.*

n139. Indictment at 14, *United States v. e-Gold, Ltd.*, No. 07-109 (D.D.C. 2007).

n140. A pyramid scheme is where participants make money only by recruiting more participants, and not through the growth of the investment. Pyramid Schemes, U.S. Sec. & Exch. Comm'n, <http://www.sec.gov/answers/pyramid.htm> (last updated Feb. 25, 2009).

n141. Indictment, *supra* note 139, at 23; see Mark Herpel, Experiences With High Yield Investment Programs (HYIPs), *Helium* (Aug. 24, 2007), <http://www.helium.com/items/550557-experiences-with-high-yield-investment-programs-hyips> (providing analysis on how much spending on e-Gold goes to scams).

n142. Indictment, *supra* note 139. For a definition of pump-and-dump schemes, see *infra* Part III.A.2.

n143. Indictment, *supra* note 139, at 27.

n144. Zetter, *supra* note 138.

n145. *Id.* ("e-Gold had unwittingly become banker to the underworld.").

n146. *Id.*

n147. *Id.*

n148. *Id.*

n149. Indictment, *supra* note 139; Zetter, *supra* note 138.

n150. *18 U.S.C. § 1956* (2006); Indictment, *supra* note 139, at 29.

n151. *18 U.S.C. § 982(a)(1)* (2006); *18 U.S.C. § 1956*; *18 U.S.C. § 1960* (2006); Indictment, *supra* note 139, at 50.

n152. Indictment, *supra* note 139, at 35.

n153. Carl Kaminski, Note, Online Peer-to-Peer Payments: PayPal Primes the Pump, Will Banks Follow?, 7 *N.C. Banking Inst.* 375, 375 (2003).

n154. *Id.* at 378-79.

n155. *Id.* at 375.

n156. *Id.* at 380-81.

n157. *Id. at 382-83.*

n158. *Id. at 384-85.*

n159. *Id. at 390.*

n160. *Id. at 390.* For PayPal's current costs per transaction, see *PayPal Merchant Fees, supra note 29.*

n161. Sulla, *supra note 78.*

n162. ".999 fine silver" refers to the coins being 99.9% pure silver.

n163. Sulla, *supra note 78* (citing U.C.C. § 2-503(4)(a) (2007)).

n164. *Id.* (citing U.C.C. §§3104(a), 3-412 (2007)).

n165. Black's Law Dictionary 1721 (9th ed. 2009).

n166. Sulla, *supra note 78.*

n167. *Id.* (noting U.C.C. § 7-202(2) (2007)).

n168. Press Release, FBI, *supra note 83.*

n169. Sulla, *supra note 78* (citing *Nat'l Commodity & Barter Ass'n v. United States*, 951 F.2d 1172, 1174 (10th Cir. 1991)); see also *Pleasant v. Lovell*, 876 F.2d 787, 795 (10th Cir. 1989); *In re First Nat'l Bank, Englewood, Colo.*, 701 F.2d 115, 118-19 (10th Cir. 1983) (in error, Mr. Sulla cited "*Granbouche v. US* 701 F.2d 1172 (1983)").

n170. See generally *Nat'l Commodity*, 951 F.2d at 1174 (listing several cases in which NCBA offered first amendment defenses against federal charges); *Pleasant*, 876 F.2d at 795 (listing previous cases involving the first amendment rights of NCBA members).

n171. *Pleasant*, 876 F.2d at 789-90.

n172. *Id. at 795.*

n173. *Id. at 793.*

n174. *Id. at 795.*

n175. *Nat'l Commodity*, 951 F.2d at 1175; see also *Pleasant*, 876 F.2d at 795 (noting that the government's requirement of disclosure, when a group wishes to remain anonymous, can be a form of infringement on free speech).

n176. See *Nat'l Commodity*, 951 F.2d at 1175 (stating that a grand jury is investigating the statutory violations); *Pleasant*, 876 F.2d at 795 (holding that NCBA members' claims are barred on the grounds of absolute immunity without addressing the issue of whether the NCBA was obligated under the money laundering statute or reporting regulation).

n177. What Is a Good Way to Concisely Explain Bitcoin?, We Use Coins, <http://bitcoin.stackexchange.com/questions/336> (last visited Feb. 3, 2013).

n178. Getting Started, We Use Coins, <http://www.weusecoins.com/getting-started.php> (last visited Feb. 3, 2013).

n179. *Supra* note 29 and accompanying text.

n180. Nakamoto, *supra* note 10, at 8.

n181. The block chain is the agreed-upon ownership history of each Bitcoin. Transaction costs may be negligible, but mining costs are not necessarily moot. See Wallace, *Rise and Fall*, *supra* note 15 (describing how miners invested in souped-up machines and grew tired of burdensome energy bills).

n182. See Ryan Broderick, *How to Get Rich on Bitcoin by a System Administrator Who's Secretly Growing Them on His School's Computers*, MotherBoard (May 27, 2011), <http://www.motherboard.tv/2011/5/27/how-to-get-rich-on-bitcoin-by-a-system-administrator-who-s-secretly-growing-them-on-his-school-s-computers> [hereinafter Broderick, Administrator] (explaining how computers can covertly solve block chains).

n183. *Lee*, *supra* note 41.

n184. Max Raskin, *Dollar-Less Iranians Discover Virtual Currency*, Bloomberg Businessweek (Nov. 29, 2012), <http://www.businessweek.com/articles/2012-11-29/dollar-less-iranians-discover-virtual-currency>.

n185. J.P., *supra* note 14.

n186. *Lee*, *supra* note 41 ("Bitcoin boosters forget that the value of a currency is based on supply and demand... Demand for Bitcoin ... fluctuates wildly.").

n187. *Bitcoins for Charity*, *supra* note 33.

n188. *Address*, *supra* note 17.

n189. *Id.*

n190. Nakamoto, *supra* note 10, at 2.

n191. *Id.*

n192. *Id.*



n193. Id. at 3.

n194. Id. at 2.

n195. Id. at 3.

n196. Id. at 1.

n197. What Is a Good Way to Concisely Explain Bitcoin?, supra note 177.

n198. Nakamoto, supra note 10, at 4.

n199. Id.

n200. See Wallace, Rise and Fall, supra note 15 (describing how Bitcoin mining grew quickly as value was discovered).

n201. Nakamoto, supra note 10, at 4.

n202. Bitcoin Theft - The Top Ten Threats, Genesys Guru Blog, <http://genesysguru.com/blog/blog/2011/06/17/bitcoin-theft-the-top-ten-threats/> (last updated June 23, 2011) [hereinafter Top Ten Threats].

n203. Bitcoin Rep., <http://bitcoinreport.appspot.com/> (last updated Dec. 3, 2011, 11:53 PM).

n204. Bitcoin Forum, <http://forum.bitcoin.org/> (last visited Feb. 26, 2013). The hacking process is described in detail in Top Ten Threats, supra note 202.

n205. Bitcoin Block Explorer, <http://blockexplorer.com/> (last visited Feb. 26, 2013).

n206. Stealthcoin, or "Bitcoin: Botnet Edition," Bitcoin Miner (Apr. 19, 2011, 1:35 PM), <http://www.bitcoinminer.com/post/4755112500/stealthcoin-introduced> [hereinafter Stealthcoin].

n207. Id. A zombie computer is one that has been compromised and can be manipulated into taking certain actions by a hacker. Zombie, Webopedia, <http://www.webopedia.com/TERM/Z/zombie.html> (last visited Feb. 11, 2013).

n208. Stealthcoin, supra note 206.

n209. Broderick, Administrator, supra note 182.

n210. Ken Poulsen, New Malware Steals Your Bitcoin, Wired (June 16, 2011, 8:58 PM), <http://www.wired.com/threatlevel/2011/06/bitcoin-malware/>.

n211. Peter Coogan, Bitcoin Botnet Mining, Symantec (June 17, 2011), <http://www.symantec.com/connect/blogs/bitcoin-botnet-mining>.

n212. J.P., *supra* note 14; Tim Worstall, Bitcoin: The First \$ 500,000 Theft, *Forbes* (June 17, 2011, 1:09 PM), <http://www.forbes.com/sites/timworstall/2011/06/17/bitcoin-the-first-500000-theft/>.

n213. Steve Ragan, Malware Targeting Bitcoins Suspected in Recent Theft, *Tech Herald* (June 17, 2011, 6:00 AM), <http://www.thetechherald.com/article.php/201124/7283/Malware-targeting-Bitcoins-suspected-in-recent-theft>.

n214. Jason Mick, Inside the Mega-Hack of Bitcoin: The Full Story, *Daily Tech* (June 19, 2011, 6:40 PM), <http://www.dailytech.com/Inside+the+MegaHack+of+Bitcoin+the+Full+Story/article21942.htm> [hereinafter Mick, Mega-Hack].

n215. *Id.*

n216. *Id.*

n217. Instead of cracking a firewall, one way a hacker can gain unauthorized entry is by loading a password on running memory to gain access to a nearby web server and then enter PCs within the network. Chris Hummel, SANS Inst., Why Crack When You Can Pass the Hash? 2 (Oct. 12, 2009) (unpublished), available at [http://www.sans.org/reading\\_room/whitepapers/testing/crack-pass-hash\\_33219](http://www.sans.org/reading_room/whitepapers/testing/crack-pass-hash_33219). Salting randomizes the password hash to keep a pass-the-hash attack from occurring because the password becomes obsolete on running memory. *Id.* at 3.

n218. Mick, Mega-Hack, *supra* note 214.

n219. Poulsen, *supra* note 210.

n220. Ragan, *supra* note 213. A virtual machine stores the Bitcoins in a non-physical location, but this creates other security concerns. See Ken Hess, Virtual Machines Are No Security Blanket, *Linux Mag.* (Jan. 11, 2010), <http://www.linux-mag.com/id/7665/> ("Virtual machines are no more secure than physical ones.").

n221. Reid & Harrigan, *supra* note 19, at 3.

n222. *Id.* at 4-7.

n223. *Id.* at 10-12.

n224. *Id.* at 11-12.

n225. *Id.* at 7-8; see also Bitcoin Block Explorer, *supra* note 205; Bitcoin Rep., *supra* note 203 (providing additional information on Bitcoin users).

n226. Bitcoin Laundry (beta), <http://bitcoinlaundry.com> (last visited Feb. 26, 2013) (offers to launder Bitcoins by receiving coins and sending ones with different block chains back to the sender).

n227. *31 U.S.C. § 5313(a)* (2006); *31 C.F.R. § 103.22* (2012).

n228. Brett Wolf, Bitcoin Exchanges Offer Anti-Money-Laundering Aid, Reuters (June 15, 2011, 6:01 PM), <http://www.reuters.com/article/2011/06/15/financial-bitcoin-idUSN1510930920110615>.

n229. Id.

n230. Fed. Bureau of Investigation, Bitcoin Virtual Currency: Unique Features Present Distinct Challenges for Deterring Illicit Activity 8 (2012), available at [http://www.wired.com/images\\_blogs/threatlevel/2012/05/Bitcoin-FBI.pdf](http://www.wired.com/images_blogs/threatlevel/2012/05/Bitcoin-FBI.pdf).

n231. Instructions for Form 1099-B, IRS, <http://www.irs.gov/instructions/i1099b/ar02.html> (last visited Feb. 26, 2013).

n232. Andy Greenberg, Crypto Currency, Forbes (Apr. 20, 2011, 6:00 PM), <http://www.forbes.com/forbes/2011/0509/technology-psilocybin-bitcoins-gavin-andresen-crypto-currency.html>; Don Reisinger, Senators Target Bitcoin Currency, Citing Drug Sales, CNET News (June 9, 2011, 7:48 AM), [http://news.cnet.com/8301-13506\\_3-20070268-17/senators-target-bitcoin-currency-citing-drug-sales/](http://news.cnet.com/8301-13506_3-20070268-17/senators-target-bitcoin-currency-citing-drug-sales/).

n233. Timothy B. Lee, Bitcoin-Based Gambling to Expand in 2013, Ars Technica (Jan. 4, 2013, 1:45 PM), <http://arstechnica.com/tech-policy/2013/01/bitcoin-based-gambling-to-expand-in-2013/>.

n234. Parmy Olson, LulzSec Hackers Post Sony Dev. Source Code, Get \$ 7K Donation, Forbes (June 6, 2011, 12:57 PM), <http://blogs.forbes.com/parmyolson/2011/06/06/lulzsec-hackers-posts-sony-dev-source-code-get-7k-donation/>.

n235. Mick, Black Friday, *supra* note 26.

n236. Evan Applegate, Bitcoin Exchange Shuttered; Nerds Rattled, Bloomberg (Feb. 17, 2012, 1:03 AM), <http://www.businessweek.com/technology/bitcoin-exchange-shuttered-nerds-rattled-02172012.html>.

n237. Mick, Black Friday, *supra* note 26; What Is Liberty Reserve, Liberty Res., <http://www.libertyreserve.com/en/help/whatis> (last visited Mar. 10, 2013).

n238. Bitcoin Morpheus, How to Buy Mt Gox USD With a Check or Money Order, Tumblr, [http://bitcoinmorpheus.tumblr.com/how\\_to\\_buy\\_mt\\_gox\\_usd\\_with\\_a\\_check\\_or\\_money\\_order](http://bitcoinmorpheus.tumblr.com/how_to_buy_mt_gox_usd_with_a_check_or_money_order) (last visited Feb. 26, 2013); Mick, Black Friday, *supra* note 26.

n239. Mick, Black Friday, *supra* note 26.

n240. J.P., *supra* note 14.

n241. Mick, Mega-Hack, *supra* note 214.

n242. Mick, Black Friday, *supra* note 26.

n243. Mick, Mega-Hack, *supra* note 214.

n244. Richard Chirgwin, Bitcoin Collapses on Malicious Trade - Mt. Gox Scrambling to Raise the Titanic, Register (June 19, 2011, 10:07 PM), [http://www.theregister.co.uk/2011/06/19/bitcoin\\_values\\_collapse\\_again/](http://www.theregister.co.uk/2011/06/19/bitcoin_values_collapse_again/) (graph of the Bitcoin crash); John Robb, The Bitcoin Bubble, Global Guerrillas (June 6, 2011, 10:00 PM), <http://globalguerrillas.typepad.com/globalguerrillas/2011/06/the-bitcoin-bubble.html> (graph of the steady climb in Bitcoin prices).

n245. What Is a Good Way to Concisely Explain Bitcoin?, *supra* note 177.

n246. J.P., *supra* note 14.

n247. *Id.*

n248. See generally David Miller Barbour, The Influence of the Gold Supply on Prices and Profits 14-18 (1913) (describing the impact of increases in the gold supply on market prices).

n249. Paul Krugman, Golden Cyberfettlers, N.Y. Times (Sept. 7, 2011, 12:00 AM), <http://krugman.blogs.nytimes.com/2011/09/07/golden-cyberfettlers/>. For an ideologically-based counter-argument, see Jon Matonis, Fear Not Deflation, Forbes (Dec. 23, 2012, 12:01 PM), <http://www.forbes.com/sites/jonmatonis/2012/12/23/fear-not-deflation/>.

n250. "Pump-and-Dumps" and Market Manipulations, U.S. Sec. & Exchange Commission, <http://www.sec.gov/answers/pumpedump.htm> (last visited Mar. 10, 2013).

n251. *Id.*

n252. Mick, Black Friday, *supra* note 26.

n253. This is exacerbated by the fact that most Bitcoins are hoarded and not spent. Dorit Ron & Adi Shamir, Quantitative Analysis of the Full Bitcoin Transaction Graph 13 (2012) (unpublished), available at <http://eprint.iacr.org/2012/584.pdf>.

n254. See Top Ten Threats, *supra* note 202 (demonstrating how much information Bitcoin users are willing to give away on the Internet).

n255. Nathan Willis, Bitcoin: Virtual Money Created by CPU Cycles, LWN.net (Nov. 10, 2010), <http://lwn.net/Articles/414452/>.

n256. Wallace, Rise and Fall, *supra* note 15 (elaborating on "mining-rig porn" - photos of expensive, souped-up computers to better mine Bitcoins).

n257. Press Release, FBI, *supra* note 83.

n258. Press Release, U.S. Mint, *supra* note 72.

n259. Frequently Asked Questions, *supra* note 75.

n260. Bitcoin, <http://bitcoin.org/> (last visited Mar. 10, 2013).

n261. See *What Is a Good Way to Concisely Explain Bitcoin?*, supra note 177 (explaining that Bitcoin is already utilized in today's market).

n262. Lipsky, supra note 86.

n263. Sulla, supra note 78.

n264. Personal Blog of Dustin D. Trammel, *The Problem With the Liberty Dollar*, Dustin D. Trammel, <http://blog.dustintrammell.com/2008/12/07/the-problem-with-the-liberty-dollar/> (last visited Feb. 26, 2013) (complaining that the Liberty Dollar warehouse receipts he holds after the FBI raid are "essentially worthless except for their collector's value").

n265. See generally Nakamoto, supra note 10.

n266. *Lee*, supra note 41.

n267. Of course, the government could delete the wallets to destroy the Bitcoins (at least those that weren't saved and backed-up by more cautious users). *Securing Your Wallet*, Bitcoin Wiki, [https://en.bitcoin.it/wiki/Securing\\_your\\_wallet](https://en.bitcoin.it/wiki/Securing_your_wallet) (last visited Mar. 10, 2013). However, the algorithm for Bitcoins is based on the number of block chains in the system. *Controlled Supply*, Bitcoin Wiki, [https://en.bitcoin.it/wiki/Controlled\\_Currency\\_Supply](https://en.bitcoin.it/wiki/Controlled_Currency_Supply) (last visited Feb. 26, 2013). If there are fewer block chains, mining Bitcoins will simply become easier in order to get the number of Bitcoins in the system back on track. Id. Or, put another way, seizing and destroying a lot of wallets, only makes those who are left mining for Bitcoins more wealthy, with more control over their relative share of all Bitcoins. And, ironically, a government-created oligopoly of Bitcoin holders just increases the capacity for fraud.

n268. Williamson, supra note 71.

n269. See generally Nakamoto, supra note 10.

n270. There are some guesses as to who Satoshi Nakamoto is. These include a team at Google, Bitcoin developer Gavin Andresen, WikiLeaks founder Julian Assange, and a combination of the corporate monikers: SAmSung TOSHIBA NAKAmichi MOTORola. Wallace, *Rise and Fall*, supra note 15.

n271. In the film, dozens of men claim, "I am Spartacus!" and face crucifixion rather than give up their brother-in-arms. *Spartacus* (Universal Pictures 1960). It should be noted that "I am Satoshi Nakamoto" shirts have already been sold. Wallace, *Rise and Fall*, supra note 15.

n272. MMORPGs are games that allow thousands of players to interact with each other in a virtual world. *MMORPG*, Webopedia, <http://www.webopedia.com/TERM/M/MMORPG.html> (last visited Feb. 26, 2013).

n273. *Hey Buddy, Can You Spare a Linden Dollar?*, *Forbes* (Oct. 21, 2005, 6:00 AM), [http://www.forbes.com/2005/10/20/onlinegaming-worldofwarcraft-gaming-cx\\_1021wharton.html](http://www.forbes.com/2005/10/20/onlinegaming-worldofwarcraft-gaming-cx_1021wharton.html).

n274. David Kirkpatrick, *Second Life: It's Not a Game*, *CNN Money* (Jan. 23, 2007, 2:24 PM), [http://money.cnn.com/2007/01/22/magazines/fortune/whatsnext\\_secondlife.fortune/index.htm?postversion=2007012211](http://money.cnn.com/2007/01/22/magazines/fortune/whatsnext_secondlife.fortune/index.htm?postversion=2007012211).

n275. Id.

n276. David Talbot, The Fleecing of the Avatars, MIT Tech. Rev. (Dec. 18, 2007), [http://www.technologyreview.com/printer\\_friendly\\_article.aspx?id=19844](http://www.technologyreview.com/printer_friendly_article.aspx?id=19844).

n277. Sarah Jane Hughes, A Case for Regulating Cyberpayments, *51 Admin. L. Rev.* 809, 812 n.10 (1999).

n278. *United States v. Van Auken*, 96 U.S. 366, 369 (1877); *United States v. Monongahela Bridge Co.*, 22 F. Cas. 1292, 1293 (W.D. Pa. 1863).

n279. *United States v. Gellman*, 44 F. Supp. 360, 362-64 (D. Minn. 1946).

n280. Bitcoin total value is at least \$ 30 million. *Lee*, supra note 41. NORFED claimed that Liberty Dollars were only worth \$ 20 million. Press Release, U.S. Mint, supra note 72.

n281. Echoes of the Past, supra note 49, at 467.

n282. The cases described in Part II.B.3. are some of the only charges in existence.

n283. Echoes of the Past, supra note 49, at 467.

n284. Kerry Lynn Macintosh, The New Money, *14 Berkeley Tech. L.J.* 659, 672 n.78 (1999).

n285. Grinberg, supra note 9, at 190.

n286. *18 U.S.C. § 336* (2006).

n287. "To issue" means "the first delivery of a negotiable instrument by its maker or holder." Black's Law Dictionary 908 (9th ed. 2009). Those who solve block chains are not delivering the coins, merely verifying that the delivery is valid.

n288. Hughes, supra note 277. Compared to the \$ 30 million USD of Bitcoin in existence, the U.S. economy has the size of \$ 13 trillion. *Lee*, supra note 41.

n289. Donna M. Nagy Et Al., *Securities Litigation and Enforcement 2* (3d ed. 2012).

n290. Id.

n291. Black's Law Dictionary 1162 (9th ed. 2009).

n292. Id. at 310.

n293. John Williams Nelson, Why Bitcoin Isn't a Security Under Federal Securities Law, *Lex Technologiae* (June 26, 2011, 11:49 PM),

<http://www.lextechnologiae.com/2011/06/26/why-bitcoin-isnt-a-security-under-federal-securities-law/> ("Bitcoin does not possess the general characteristics of a security.").

n294. *Id.*

n295. *SEC v. Am. Commodity Exch., Inc.*, 546 F.2d 1361, 1366 (10th Cir. 1976) (Securities are to be construed "in light of economic realities.").

n296. Robb, *supra* note 244.

n297. Buying Bitcoins, Bitcoin Wiki, [https://en.bitcoin.it/wiki/Buying\\_bitcoins](https://en.bitcoin.it/wiki/Buying_bitcoins) (last visited Feb. 26, 2013).

n298. *Bd. of Trade of City of Chi. v. SEC*, 923 F.2d 1270, 1272 (7th Cir. 1991).

n299. *Id.* For an overview of the behavior of the largest exchange, see Mt. Gox, Bitcoin Wiki, <https://en.bitcoin.it/wiki/MtGox> (last visited Feb. 26, 2013).

n300. Jason Mick, Cracking the Bitcoin: Digging into a \$ 131M USD Virtual Currency, Daily Tech (June 12, 2011, 7:35 PM), <http://www.dailytech.com/Cracking+the+Bitcoin+Digging+Into+a+131M+USD+Virtual+Currency/article21878.htm>.

n301. 15 U.S.C. §§77c(a)(4), 78(g)(2)(D) (2006).

n302. *Forman v. Cmty. Servs., Inc.*, 366 F. Supp. 1117, 1132 n.44 (S.D.N.Y.1973) (noting that antifraud provisions of both Securities Act and Exchange Act are applicable to securities exempt from registration), *rev'd on other grounds*, 500 F.2d 1246 (2d Cir. 1974), *rev'd sub nom. United Housing Found., Inc. v. Forman*, 421 U.S. 837 (1975).

n303. *SEC v. Bennett*, 889 F. Supp. 804, 807 n.2 (E.D. Pa. 1995).

n304. *United States v. Roberts*, No. 4:08 CR00181, 2008 WL 5111165, at 1 (E.D. Ark. Dec. 2, 2008).

n305. 15 U.S.C. §§77(e)(a), (e)(c).

n306. 17 C.F.R. § 229.601 (2011).

n307. See *Caravan Mobile Home Sales v. Lehman Bros. Kuhn Loeb*, 769 F.2d 561, 564 (9th Cir. 1985) (providing elements of scienter for liability).

n308. Some may argue that the exchanges can ill-afford greater costs due to their nonprofit nature. This author recognizes that risk. However, if Bitcoin is properly regulated, it is likely that it would be viewed as more stable and is thus more likely to attract more investors. The increased cost is easier to justify as demand rises.

n309. 31 U.S.C. § 5312(a)(2)(J) (2006).

n310. Press Release, U.S. Dept. of the Treasury Fin. Crimes Enforcement Network, FinCEN Releases the New Registration of Money Services Businesses (RMSB) (Mar. 14, 2012), available at [http://www.fincen.gov/news\\_room/nr/pdf/20120314.pdf](http://www.fincen.gov/news_room/nr/pdf/20120314.pdf).

n311. *31 U.S.C. § 5313(a)* (2006); *31 C.F.R. § 103.22* (2011).

n312. Forms, *supra* note 133.

n313. As noted in Part III.A.1 - for example, theft, computer fraud, and selling illegal items.

n314. In describing how to purchase illegal drugs on Silk Road, the author directs the reader to use Mt. Gox to buy Bitcoins. Broderick, *supra* note 5.

n315. Zetter, *supra* note 138.

n316. Mt. Gox, *supra* note 300.

n317. Mick, Mega-Hack, *supra* note 214.

n318. Wallace, *supra* note 15; Zetter, *supra* note 138.

n319. Chen, *supra* note 1; Herpel, *supra* note 141.

n320. Indictment, United States v. e-Gold LTD., No. 07-109, (D.D.C. 2006); Mt. Gox, *supra* note 300.

n321. Zetter, *supra* note 138.

n322. Kaminski, *supra* note 153, at 390.

n323. To their credit, the exchanges have stated that they are willing to monitor transactions and seek "legalized, regulated status." Wolf, *supra* note 228. Mt. Gox solicits information from traders who seek transactions greater than \$ 10,000 U.S. dollars. Transaction Limits, Mt.Gox (Sept. 29, 2011, 6:19 PM), <https://support.mtgox.com/entries/20490576-withdrawals-and-deposits>.

n324. Alexis Santos, Bitcoin-Central Becomes the First Bitcoin Exchange to Operate Like a Bank, Engadget (Dec. 9, 2012, 3:09 AM), <http://www.engadget.com/2012/12/09/bitcoin-exchange-bitcoin-central-licensed-bank/>.

n325. Bitcoin has already survived one major run. *Lee, supra* note 41.

n326. The argument was unavailing in the trial for von NotHaus. Press Release, FBI, *supra* note 83.

n327. U.C.C. § 7-202(2) (2007).



n328. Although it is true that some Bitcoin investors use the currency because they share the belief that U.S. legal tender is unconstitutional, Bitcoin as an organization - if it can even be called that - invites all. What Is a Good Way to Concisely Explain Bitcoin?, supra note 177.

n329. *Nat'l Commodity & Barter Ass'n v. United States*, 951 F.2d 1172, 1175 (10th Cir. 1991).

n330. 18 U.S.C. § 1343 (2006).

n331. This unit may find its best home within the DOJ's Computer Crime and Intellectual Property Section. The SEC's Enforcement Division could also house such a unit. The DEA might find best use for such a unit within their intelligence division. For the FBI, this unit could reside within the Cyber Division.



2 of 3 DOCUMENTS

**SECURITIES AND EXCHANGE COMMISSION v. TRENDON T. SHAVERS and  
BITCOIN SAVINGS AND TRUST**

CASE NO. 4:13-CV-416

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
TEXAS, SHERMAN DIVISION**

*2013 U.S. Dist. LEXIS 110018; Fed. Sec. L. Rep. (CCH) P97,596*

**August 6, 2013, Decided  
August 6, 2013, Filed**

**COUNSEL:** [\*1] For Securities and Exchange Commission, Plaintiff: Jessica B Magee, LEAD ATTORNEY, United States Securities and Exchange Commission, Fort Worth, TX; Matthew Gulde, US Securities & Exchange Commission - Fort Worth, Fort Worth, TX; Philip Moustakis, PRO HAC VICE, U.S. Securities and Exchange Commission - NY, New York, NY.

Trendon T Shavers, Defendant, Pro se, McKinney, TX.

**JUDGES:** AMOS L. MAZZANT, UNITED STATES MAGISTRATE JUDGE.

**OPINION BY:** AMOS L. MAZZANT

**OPINION**

**MEMORANDUM OPINION REGARDING THE  
COURT'S SUBJECT MATTER JURISDICTION**

The question currently before the Court is whether or not it has subject matter jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §§ 77t and 77v] and Sections 21 and 27 of the Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78u and 78aa]. On August 5, 2013, the Court conducted a hearing at which Defendant, Trendon T. Shavers ("Shavers"), challenged the Court's subject matter jurisdiction over this case.

Shavers is an individual residing in McKinney, Texas, and is the founder and operator of Bitcoin Savings and Trust ("BTCST"), formerly known as First Pirate Savings & Trust. According to the facts stated by the

[\*2] SEC, <sup>1</sup> Shavers made a number of solicitations aimed at enticing lenders to invest in Bitcoin-related investment opportunities.

1 These facts were not challenged at the hearing on August 5, 2013.

Bitcoin is an electronic form of currency unbacked by any real asset and without specie, such as coin or precious metal. Derek A. Dion, *I'll Gladly Trade You Two Bits on Tuesday for a Byte Today: Bitcoin, Regulating Fraud in the E-Economy of Hacker-Cash*, 2013 U. Ill. J.L. Tech & Pol'y 165, 167 (2013). "It is not regulated by a central bank or any other form of governmental authority; instead, the supply of Bitcoins is based on an algorithm which structures a decentralized peer-to-peer transaction system." *Id.* Bitcoin was designed to reduce transaction costs, and allows users to work together to validate transactions by creating a public record of the chain of custody of each Bitcoin. *Id.* Bitcoin can be used to purchase items online, and some retail establishments have begun accepting Bitcoin in exchange for gift cards or other purchases. The value of Bitcoin is volatile and ranges from less than \$2 per Bitcoin to more than \$260 per Bitcoin (Dkt. #3 at 1).

Beginning in November of 2011, Shavers began [\*3] advertising that he was in the business of "selling Bitcoin to a group of local people" and offered investors up to 1% interest daily "until either you withdraw the funds or my local dealings dry up and I can no longer be profitable" (Dkt. #3 at 3). During the relevant period, Shavers obtained at least 700,467 Bitcoin in principal investments from BTCST investors, or \$4,592,806 in

U.S. dollars, based on the daily average price of Bitcoin when the BTCST investors purchased their BTCST investments (Dkt. #3 at 4). The BTCST investors who suffered net losses (compared to investors who received more in withdrawals and purported interest payments than they invested in principal), collectively lost 263,104 Bitcoin in principal, that is \$1,834,303 based on the daily average price of Bitcoin when they purchased their BTCST investments, or in excess of \$23 million based on currently available Bitcoin exchange rates. *Id.*

The SEC asserts that Shavers made a number of misrepresentations to investors regarding the nature of the investments and that he defrauded investors. However, the question currently before the Court is whether the BTCST investments in this case are securities as defined by Federal [\*4] Securities Laws. Shavers argues that the BTCST investments are not securities because Bitcoin is not money, and is not part of anything regulated by the United States. Shavers also contends that his transactions were all Bitcoin transactions and that no money ever exchanged hands. The SEC argues that the BTCST investments are both investment contracts and notes, and, thus, are securities.

The term "security" is defined as "any note, stock, treasury stock, security future, security-based swap, bond...[or] investment contract..." *15 U.S.C. § 77b*. An investment contract is any contract, transaction, or scheme involving (1) an investment of money, (2) in a common enterprise, (3) with the expectation that profits will be derived from the efforts of the promoter or a third party. *SEC v. W.J. Howey & Co.*, 328 U.S. 293, 298-99, 66 S. Ct. 1100, 90 L. Ed. 1244 (1946); *Long v. Shultz Cattle Co.*, 881 F.2d 129, 132 (1989). First, the Court must determine whether the BTCST investments constitute an investment of money. It is clear that Bitcoin can be used as money. It can be used to purchase goods or services, and as Shavers stated, used to pay for individual living expenses. The only limitation of Bitcoin is that it is limited [\*5] to those places that accept it as currency. However, it can also be exchanged for conventional currencies, such as the U.S. dollar, Euro, Yen, and Yuan. Therefore, Bitcoin is a currency or form of money, and investors wishing to invest in BTCST provided an investment of money.

Next, the Court looks at whether there is a common enterprise. To show a common enterprise, the Fifth Circuit requires interdependence between the investors and the promotor, which "may be demonstrated by the investors' collective reliance on the promotor's expertise even where the promotor receives only a flat fee or commission rather than a share in the profits of the venture." *Long*, 881 F.2d at 141. That interdependence is established in this case because the investors here were dependent on Shavers' expertise in Bitcoin markets and his local connections. In addition, Shavers allegedly promised a substantial return on their investments as a result of his trading and exchanging Bitcoin. Therefore, the Court finds that there is a common enterprise.

Finally, the Court considers whether there is an expectation that profits will be derived from the efforts of the promotor or third party. The Court finds that this [\*6] prong is also met. At the outset, Shavers allegedly promised up to 1% interest daily, and at some point during the relevant period the interest promised was at 3.9%. Clearly any investors participating in the BTCST investments were expecting profits from the efforts of Shavers.

## CONCLUSION

Therefore, the Court finds that the BTCST investments meet the definition of investment contract, and as such, are securities.<sup>2</sup> For these reasons, the Court finds that it has subject matter jurisdiction over this matter, pursuant to Sections 20 and 22 of the Securities Act of 1933 (the "Securities Act") [*15 U.S.C. §§ 77t and 77v*] and Sections 21 and 27 of the Exchange Act of 1934 (the "Exchange Act") [*15 U.S.C. §§ 78u and 78aa*].

<sup>2</sup> Having found that the BTCST investments are "investment contracts" and, thus, securities, the Court will not consider whether the BTCST investments are also "notes."

**SIGNED this 6th day of August, 2013.**

/s/ Amos Mazzant

AMOS L. MAZZANT

UNITED STATES MAGISTRATE JUDGE



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May 2013

# VIRTUAL ECONOMIES AND CURRENCIES

## Additional IRS Guidance Could Reduce Tax Compliance Risks

# GAO Highlights

Highlights of [GAO-13-516](#), a report to the Committee on Finance, U.S. Senate

## Why GAO Did This Study

Recent years have seen the development of virtual economies, such as those within online role-playing games, through which individual participants can own and exchange virtual goods and services. Within some virtual economies, virtual currencies have been created as a medium of exchange for goods and services. Virtual property and currency can be exchanged for real goods, services, and currency, and virtual currencies have been developed outside of virtual economies as alternatives to government-issued currencies, such as dollars. These innovations raise questions about related tax requirements and potential challenges for IRS compliance efforts.

This report (1) describes the tax reporting requirements for virtual economies and currencies, (2) identifies the potential tax compliance risks of virtual economies and currencies, and (3) assesses how IRS has addressed the tax compliance risks of virtual economies and currencies.

To accomplish these objectives, GAO reviewed tax laws, IRS guidance and program documents, federal program internal control guidance, and interviewed IRS officials and knowledgeable experts on the topics.

## What GAO Recommends

GAO recommends that IRS find relatively low-cost ways to provide information to taxpayers, such as on its website, on the basic tax reporting requirements for virtual currencies. In commenting on a draft of this report, IRS agreed with our recommendation.

View [GAO-13-516](#). For more information, contact James R. White at (202) 512-9110 or [whitej@gao.gov](mailto:whitej@gao.gov).

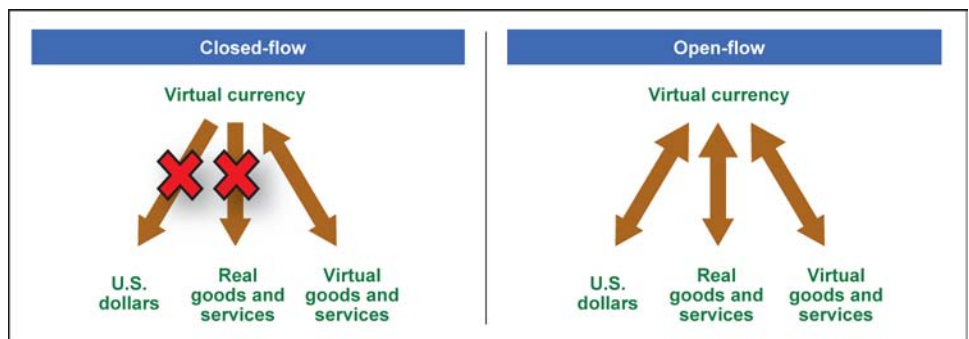
May 2013

## VIRTUAL ECONOMIES AND CURRENCIES

### Additional IRS Guidance Could Reduce Tax Compliance Risks

## What GAO Found

Transactions within virtual economies or using virtual currencies could produce taxable income in various ways, depending on the facts and circumstances of each transaction. For example, transactions within a “closed-flow” virtual currency system do not produce taxable income because a virtual currency can be used only to purchase virtual goods or services. An example of a closed-flow transaction is the purchase of items to use within an online game. In an “open-flow” system, a taxpayer who receives virtual currency as payment for real goods or services may have earned taxable income since the virtual currency can be exchanged for real goods or services or readily exchanged for government-issued currency, such as U.S. dollars.



Source: GAO.

Virtual economies and currencies pose various tax compliance risks, but the extent of actual tax noncompliance is unknown. Some identified risks include taxpayers not being aware that income earned through virtual economies or currencies is taxable or not knowing how to calculate such income. Because of the limited reliable data available on their size, it is difficult to determine how significant virtual economy and currency markets may be or how much tax revenue is at risk through their usage. Some experts with whom we spoke indicated a potential for growth in the use of virtual currencies.

Beginning in 2007, IRS assessed the tax compliance risks from virtual economies, and in 2009 posted information on its website on the tax consequences of virtual economy transactions. However, IRS has not provided taxpayers with information specific to virtual currencies because of other priorities, resource constraints, and the need to consider the use of these recently-developed currencies, according to IRS officials. By not issuing guidance, IRS may be missing an opportunity to address virtual currency tax compliance risks. Given the uncertain extent of noncompliance with virtual currency transactions, formal guidance, such as regulations, may not be warranted. According to IRS officials, formal guidance requires extensive review, which adds to development time and cost. However, IRS may be able to develop more timely and less costly informal guidance, which, according to IRS officials, requires less extensive review and can be based on other existing guidance. An example is the information IRS provides to taxpayers on its website on the tax consequences of virtual economy transactions. Posting such information would be consistent with IRS’s strategy for preventing and minimizing taxpayers’ noncompliance by helping them understand and meet their tax responsibilities.

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## Abbreviations

EBEI	Electronic Business and Emerging Issues
IRS	Internal Revenue Service
MMORPG	massively multiplayer online role-playing game

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May 15, 2013

The Honorable Max Baucus  
Chairman  
The Honorable Orrin Hatch  
Ranking Member  
Committee on Finance  
United States Senate

Recent years have seen the development of virtual economies, such as those within online role-playing games, through which individual participants can earn and exchange virtual goods and services. Within some virtual economies, virtual currencies have been created as a medium of exchange for goods and services. Virtual property and currency can have economic value outside of virtual economies, such as when individuals trade these virtual goods for dollars or other government-issued currencies. More recently, virtual currencies have been developed outside of virtual economies as alternatives to government-issued currencies to exchange for real-world goods and services. These innovations raise questions about their related tax requirements and whether their increased adoption could pose challenges for the Internal Revenue Service (IRS) in its efforts to ensure tax compliance.

You asked us to review virtual economies and currencies and IRS's approach to addressing their tax implications. This report's objectives are to (1) describe the tax reporting requirements for virtual economies and currencies, (2) identify the potential tax compliance risks of virtual economies and currencies, and (3) assess how IRS has addressed the tax compliance risks of virtual economies and currencies.

To describe reporting requirements for virtual economies and currencies, we reviewed the Internal Revenue Code and applicable IRS regulations, including relevant sections of the Internal Revenue Manual, and interviewed IRS officials. We also reviewed academic articles and interviewed academics whose research focuses on virtual currencies and taxation of virtual transactions, as well as tax practitioners and representatives from the American Institute of Certified Public Accountants. We selected academics to interview based on criteria including the recognition and citations of their research in the relevant literature. We selected tax practitioners and representatives based on



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their association with an organization with widely-recognized expertise in federal tax matters.

To identify potential compliance risks associated with virtual currencies and virtual economies, we reviewed and analyzed legal and academic literature and government reports, including the National Taxpayer Advocate's 2008 Annual Report to Congress and the European Central Bank's October 2012 report on virtual currencies. We then discussed these compliance risks with knowledgeable experts, including the Bitcoin Foundation, a virtual currency user group; tax professionals, including members of the American Institute of Certified Public Accountants; representatives from a company that publishes a virtual economy platform; and academics who have written about virtual currencies and taxation of virtual economy transactions. We selected experts based on criteria including their recognition and citations in the literature, and their expertise and recognition in representing taxpayers in federal tax matters or in representing virtual economy or currency concerns. We interviewed IRS officials knowledgeable on virtual economies and currencies and overall IRS tax compliance enforcement efforts. We also performed Internet searches to see what information was circulating for determining the proper tax treatment of virtual economy and currency transactions.

To assess how IRS has addressed compliance risks, we reviewed IRS documentation, including training manuals, examination guides, and internal reports detailing compliance challenges posed by virtual economies. We also interviewed knowledgeable IRS staff on the agency's efforts to learn about virtual economies and currencies and address them through compliance efforts. We compared IRS's efforts to federal program management guidance on gathering and monitoring information to identify and assess program risks, including the internal control standards for federal government and our *Internal Control Management and Evaluation Tool*.<sup>1</sup> Such guidance stipulates that agencies should have adequate mechanisms to identify risks to agency programs arising from external factors and that agencies should consider and, if appropriate, address the risks associated with technological advancements and developments and risks resulting from business and economic changes, among other types of changes. We also reviewed

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<sup>1</sup>GAO, *Internal Control Management and Evaluation Tool*, [GAO-01-1008G](#) (Washington, D.C.: August 2001).

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general IRS procedures and plans for providing information to taxpayers to help them comply with tax requirements included in IRS's Taxpayer Assistance Blueprint and related progress reports to Congress.<sup>2</sup>

We conducted this performance audit from September 2012 to May 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

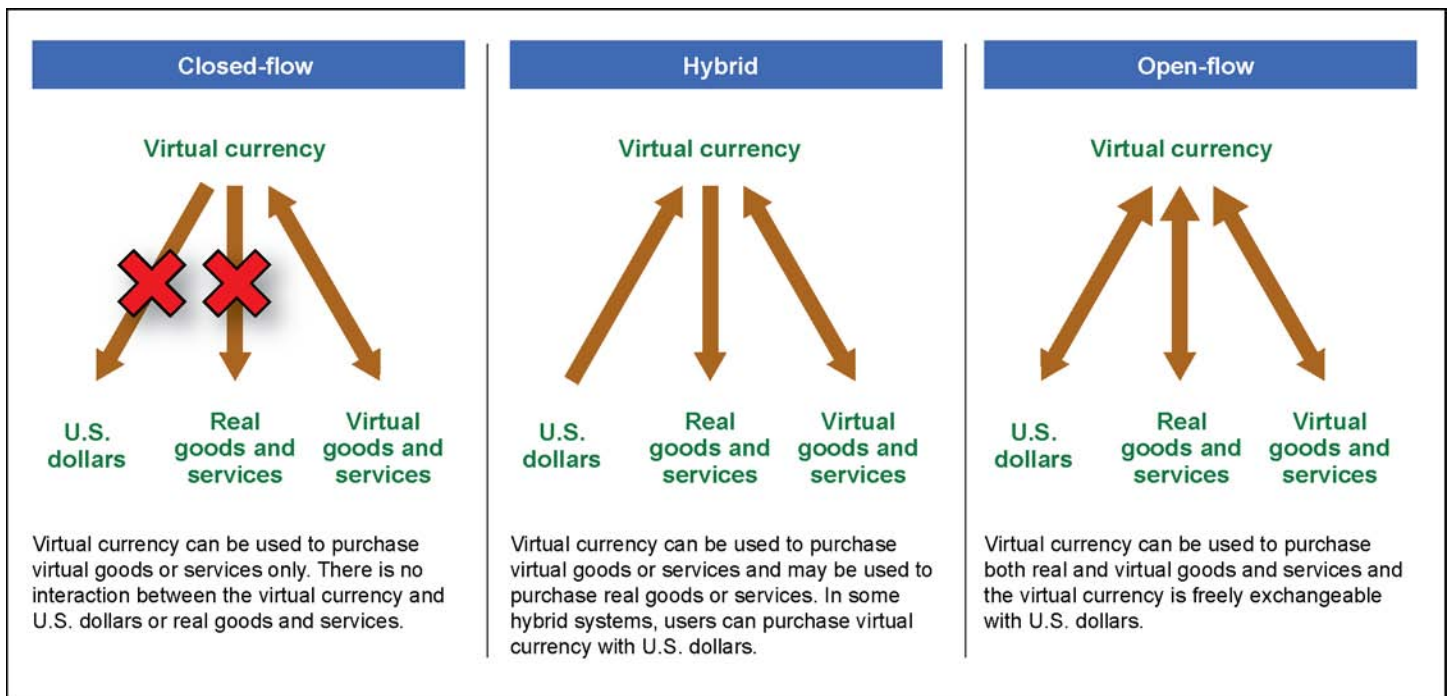
There are no legal definitions for a virtual economy or currency, but generally, a virtual economy is comprised by the economic activities among a community of entities that interact within a virtual setting, such as an online, multi-user game. Virtual economies can be closed, meaning the economic activities and units of exchange used within the community do not interact with the real economy outside of the virtual environment setting, or they can be open, with some economic activity occurring in both the virtual setting and the real economy. A virtual currency is, generally, a digital unit of exchange that is not backed by a government-issued legal tender. Virtual currencies can be used entirely within a virtual economy, or can be used in lieu of a government-issued currency to purchase goods and services in the real economy. Some virtual economies may function similarly to barter exchanges,<sup>3</sup> where bartering is the exchange of goods or services in lieu of monetary payments. For example, a carpenter may build a desk for a dentist in exchange for dental work. Barter transactions are taxable transactions, and taxpayers must report the fair market value of the good or service received on their tax returns. Some of the variations in virtual currencies and their interaction with the real economy are shown in figure 1.

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<sup>2</sup>The 2007 Taxpayer Assistance Blueprint—a 5-year strategic plan for improving service to taxpayers—is a collaborative effort of IRS, the National Taxpayer Advocate, and the IRS Oversight Board. Congress has received annual update reports on the implementation of the blueprint.

<sup>3</sup>The term “barter exchange” means any organization of members providing property or services who jointly contract to trade or barter such property or services. 26 U.S.C. § 6045.

**Figure 1: Types of Virtual Currency Systems**



Source: GAO.

In a “closed-flow” virtual currency system, a virtual currency can be used only within a game or virtual environment to purchase virtual goods or services, such as additional tools to use within a game. Virtual tools amassed by players can be traded in a game for other in-game assets or to advance to higher play levels, but they hold no value outside of the game and cannot be cashed out for dollars or other government-issued currencies.

In a hybrid system, one or more of the flows between the virtual currency and real dollars or goods and services is closed. For example, participants can purchase virtual currency with real dollars or earn virtual currency by completing tasks, such as taking surveys, and then use the currency to purchase real or virtual goods and services. However, the virtual currency might not be exchangeable back into real dollars. An example of a hybrid system is some massively multiplayer online role-playing games (MMORPG). MMORPGs allow users to create avatars, or graphical representations of themselves, that exist within a digital world and interact with other avatars around the globe to carry out tasks. Some MMORPGs operate as a closed-flow system, but some of these closed-

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flow systems can leak into the real economy via third-party transactions. Some MMORPGs, like World of Warcraft<sup>®</sup>, a large MMORPG, have third-party exchanges that allow users to exchange virtual goods for real dollars. This interaction between the virtual and real economies can be limited by the game's distributor through terms of use agreements.

In an "open-flow" system, virtual currencies can be used to purchase both real and virtual goods and services, as well as be readily exchanged for government-issued currency, such as U.S. dollars. One example of an open-flow currency designed primarily for use in a virtual economy is Second Life<sup>®</sup> Linden<sup>™</sup> dollars. Second Life, a product of Linden Lab<sup>®</sup>, is a virtual economy created in 2003 that has its own virtual currency. "Residents" of Second Life create avatars and interact with other avatars in a user-defined and user-created environment. Within Second Life, residents can create virtual assets, such as buildings that they rent or sell to other residents, or operate virtual businesses, such as virtual clothing stores that sell virtual goods to other residents. Transactions taking place within Second Life use Linden Lab's virtual currency, Linden dollars. Second Life residents can sell their Linden dollars to other residents for U.S. dollars through the LindeX<sup>™</sup> exchange, which uses third-party payment networks to process the payments and allows residents to cash out of the Second Life world.

An open-flow currency can also be developed and designed primarily to be used to purchase real goods and services outside an online game virtual economy. An example is bitcoin, a decentralized digital currency that uses a peer-to-peer computer network to move bitcoins around the world. Developed in 2009 by an anonymous programmer or programmers, bitcoin is a privately-issued digital currency that exists only as a long string of numbers and letters in a user's computer file. Bitcoins use cryptography to secure and safeguard against counterfeiting. Unlike U.S. dollars and other currencies, bitcoin is not government issued and does not have a physical coin or bill associated with its circulation, such as a Federal Reserve note. Bitcoin has grown in popularity since its introduction and, according to academics and user groups with whom we spoke, is the most widely circulated virtual currency available. Bitcoins act as a real world currency in that users pay for real goods and services, such as coffee or web development services, with bitcoins as opposed to U.S. dollars or other government-issued currencies. Third-party exchanges allow bitcoin users to exchange their bitcoins back to government-issued currencies, such as U.S. dollars, euro, or yen.

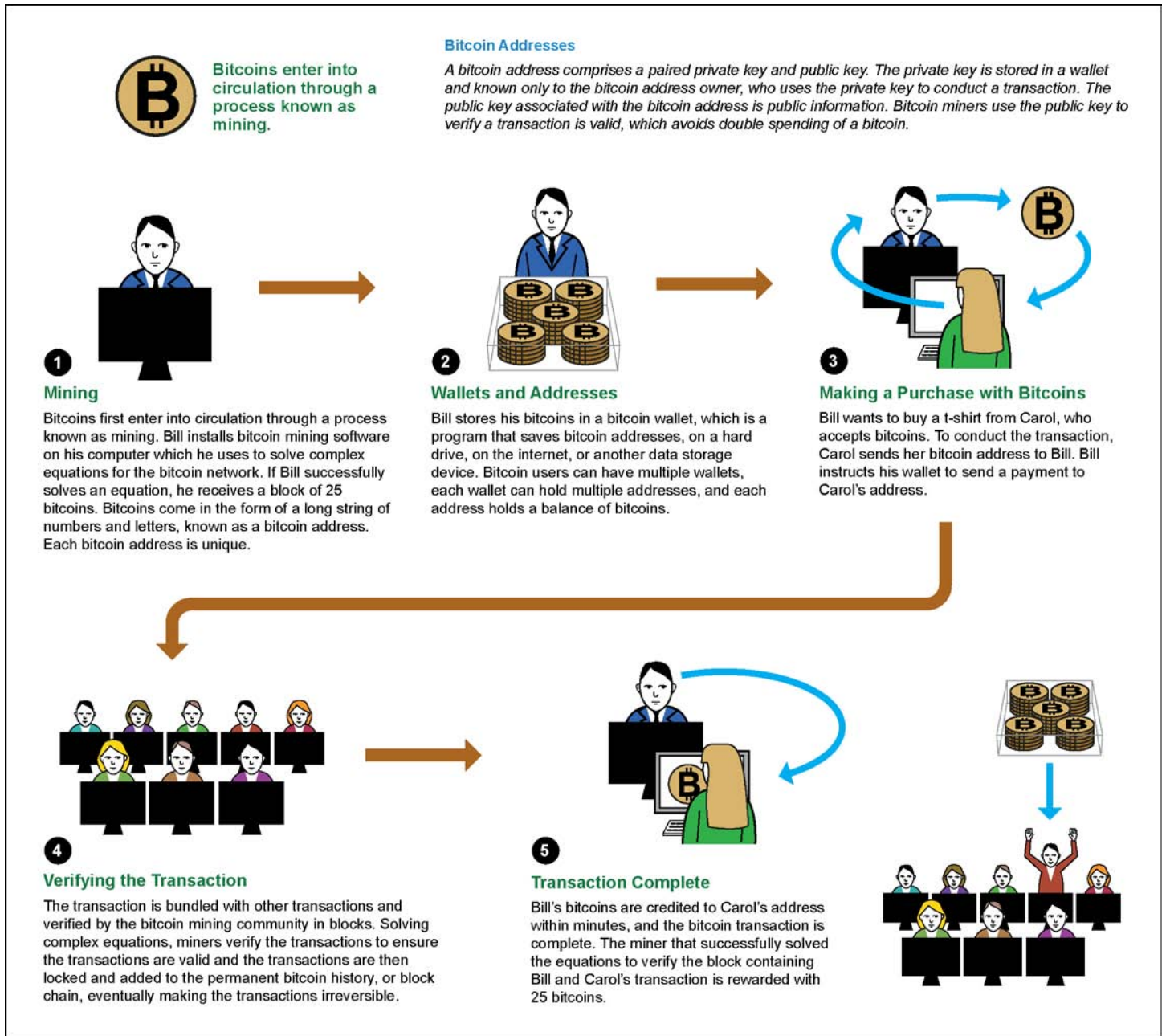
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Bitcoins are created and entered into circulation through a process, called mining, that members of the bitcoin network perform. To perform the work of mining, bitcoin miners download free bitcoin software that they use to solve complex equations. These equations serve to verify the validity of bitcoin transactions by grouping several transactions into a block and mathematically proving that the transactions occurred and do not represent double spending of a bitcoin. When a miner's computer solves an equation, the bitcoin network accepts the block of transactions as valid and creates 25 new bitcoins and awards them to the successful miner.<sup>4</sup> By the bitcoin program's design, there will be a maximum of 21 million bitcoins in circulation once all bitcoins have been mined, which the program's design projects to be in the year 2140. In addition to mining new bitcoins, users can also acquire bitcoins already in circulation by purchasing them on third-party exchanges or accepting bitcoins as gifts or payments for goods or services. Figure 2 shows an example of how bitcoins enter circulation and how an individual can use bitcoins to pay for real goods or services.

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<sup>4</sup>According to bitcoin's design, the number of bitcoins issued to successful miners will halve every time the network reaches 210,000 blocks, or approximately every four years. From inception through November 2012, rewards were 50 bitcoins. In 2016, rewards are expected to halve again to 12.5 bitcoins.

**Figure 2: How Bitcoins Enter Circulation and Are Used in Transactions**



Source: GAO.

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Bitcoin transactions can be anonymous, since all that is needed to complete a transaction is a bitcoin address, which does not contain any personal identifying information. Only the private key holder knows the identity of the bitcoin address owner.

The size of the virtual economy and currency markets is unclear due to limitations in available data. For example, some companies that offer virtual economy platforms are private firms and do not report statistics about their virtual worlds' activities. Further, due to the global nature of the Internet, borderless transactions, and an individual's ability to have multiple virtual economy or currency accounts, we did not find reliable data available indicating the use of virtual economies or currencies by individuals or exclusively by U.S. taxpayers.<sup>5</sup> Even with these limitations, some data exist that may provide some context for the size of virtual economy and currency markets.

- According to bitcoin's peer-to-peer-network-generated statistics,<sup>6</sup> as of May 1, 2013, approximately 11 million bitcoins were in circulation.<sup>7</sup> Bitcoin exchange rates against the U.S. dollar historically have been volatile. From May 2012 through February 2013, prices ranged between \$5 and \$20 for 1 bitcoin. Prices increased through March 2013, and then from April 1, 2013, to May 1, 2013, ranged between \$79 and over \$237 for 1 bitcoin.<sup>8</sup> In the same time period, the number of bitcoin transactions per day ranged from approximately 8,000 to 70,000 transactions per day.
- As of December 31, 2012, there were over 9.6 million active users of World of Warcraft, a large MMORPG, according to Blizzard Entertainment<sup>®</sup>, the company that develops and publishes the World of Warcraft games.

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<sup>5</sup>Given these limitations, we did not test the reliability of data, such as the data generated from the bitcoin network, but are providing some figures to provide context for the possible size of these markets.

<sup>6</sup><http://blockchain.info>. (Date accessed May 1, 2013.)

<sup>7</sup>Due to data limitations, it is difficult to calculate the velocity, or the rate at which bitcoins are spent, and the number of transactions between unique users in a given time period.

<sup>8</sup><https://mtgox.com>. (Date accessed May 1, 2013.) <https://mtgox.com> operates the largest bitcoin exchange. The site has daily and monthly limits on how many bitcoins may be exchanged back to U.S. dollars or other virtual or government-issued currencies. These limits may be raised if users provide additional documentation confirming their identity.

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- According to Linden Lab, creators of Second Life, residents exchanged more than US\$150 million worth of Linden dollars within Second Life's economy in the third quarter of 2010.

IRS is responsible for ensuring taxpayer compliance for all economic areas, including virtual economies and currencies. One mechanism that assists IRS in enforcing tax laws is information reporting, through which third parties report to IRS and taxpayers on certain taxpayer transactions. For example, subject to certain thresholds, third-party settlement organizations are required to report on Form 1099-K payments in settlement of third-party network transactions.<sup>9</sup> A common example of a third-party settlement organization is an online auction-payment facilitator, which operates as an intermediary between buyers and sellers by transferring funds between their accounts in settlement of purchases. Another type of third-party information reporting is performed by barter exchanges, which, generally, are organizations that facilitate barter transactions among exchange members. Such barter exchanges are required to report on Form 1099-B each member's barter transactions proceeds. Third-party information reporting is widely acknowledged to increase voluntary tax compliance, in part because taxpayers know that IRS is aware of their income.

Likewise, in its role in administering the tax code, IRS must implement the laws Congress enacts through detailed guidance. To accomplish this responsibility, IRS publishes several forms of guidance, such as regulations, revenue rulings and procedures, and notices. IRS also provides more informal guidance on its website based on factors such as perceived need, media coverage, or IRS staff identifying an emerging tax compliance issue. As outlined in IRS's Taxpayer Assistance Blueprint and related reports, a key part of IRS's strategy for preventing and minimizing noncompliance is to outreach to taxpayers to help them understand and meet their tax responsibilities. One of the guiding principles of this approach is to enhance IRS's website so that it becomes the first choice of taxpayers for obtaining the information they need to comply.

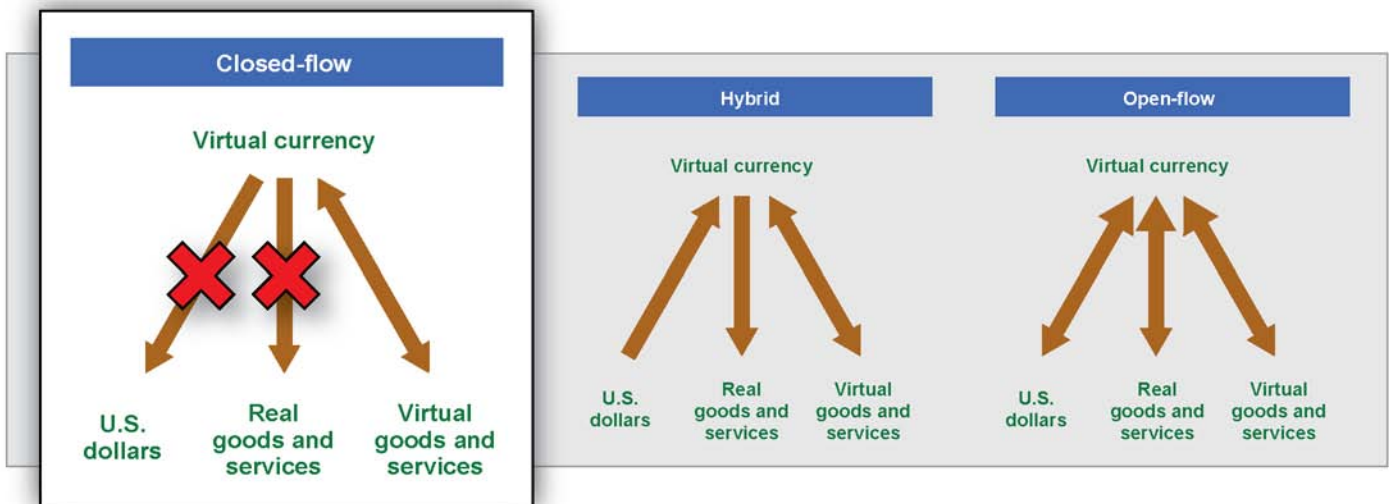
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<sup>9</sup>Third-party settlement organizations must file Form 1099-K if gross payments to a payee exceed \$20,000 and there are more than 200 transactions with the payee in a given tax year.



## Virtual Economy and Currency Transactions May Be Taxable If They Produce Income

Transactions within virtual economies or using virtual currencies could produce taxable income in a number of ways depending on their specific facts and circumstances. U.S. tax laws and regulations generally require taxpayers to report and pay taxes on all income, regardless of the source from which the income was derived;<sup>10</sup> there are no additional rules specific to virtual currencies or economies. For example, similar to cash transactions, there are no third-party reporting requirements specific to virtual economy or currency transactions, as there are with some other types of electronic funds transactions, such as with transactions conducted through third-party payment networks. Taxpayers are required to account for any taxable income, including income that is not subject to third-party information reporting. The following examples show how some taxpayers may incur a tax liability when using a virtual currency for the three types of virtual currency systems described in the background of this report. We discussed these examples with IRS officials, who agreed with how we characterized the potential tax implications.

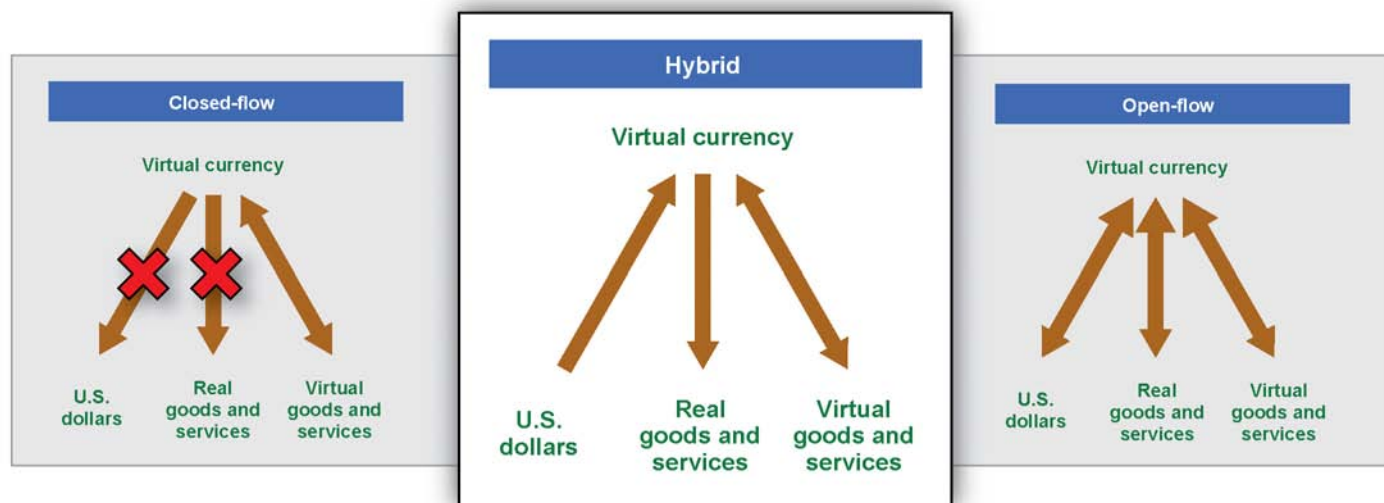


Source: GAO.

- David plays an online game through which he is issued money that he can use to purchase properties within the game. These properties

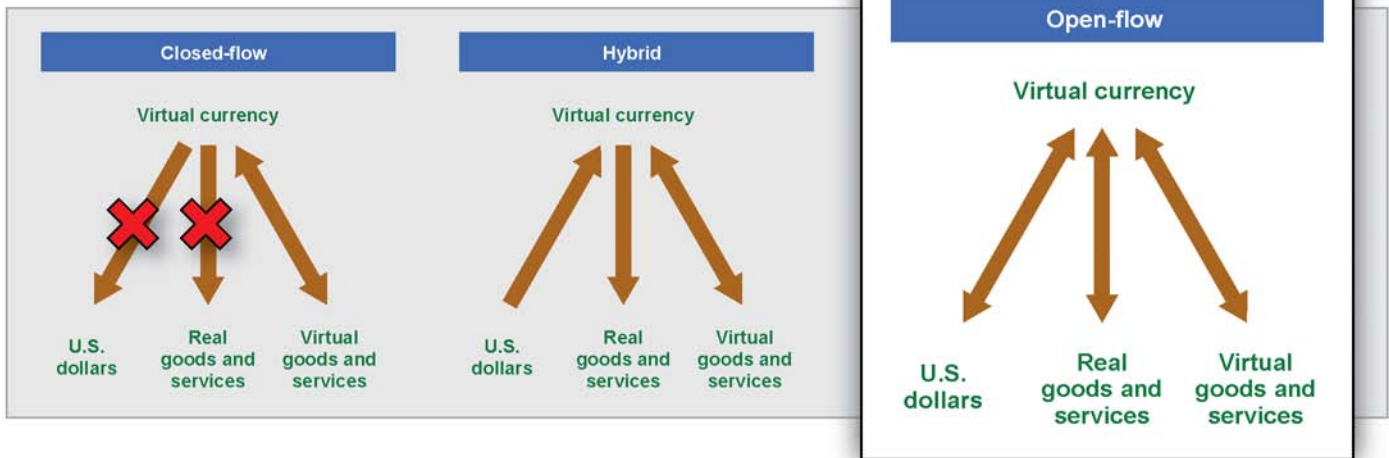
<sup>10</sup>For federal tax purposes, all income is taxable, although the tax code excludes some items from income, such as gifts or inheritances, subject to exceptions, while it allows other items to be deducted to reduce taxable income, subject to limitations and restrictions, such as trade or business expenses.

have no value outside the game and David cannot exchange his online money for U.S. dollars. David has not engaged in a taxable transaction.



Source: GAO.

- Ann plays an online game and amasses virtual tools that are valuable to her avatar. The online game does not allow users to directly exchange their virtual tools for U.S. dollars, but rather they can do so using a third-party, making this a hybrid system. Ann uses a third-party exchange not affiliated with the online game to coordinate the transfer of her virtual tools to another player in exchange for U.S. dollars. The transfer is conducted by the third-party exchange and payment is mediated by a third-party payment network. Ann may have earned taxable income from the sale of these virtual tools.



Source: GAO.

- John is a resident of Second Life. He rents virtual property to other residents who pay him in Linden dollars. At the end of the year, John exchanges his Linden dollars for U.S. dollars and realizes a profit. John may have earned taxable income from his activities in Second Life.
- Bill is a bitcoin miner. He successfully mines 25 bitcoins. Bill may have earned taxable income from his mining activities.
- Carol makes t-shirts and sells them over the Internet. She sells a t-shirt to Bill, who pays her with bitcoins. Carol may have earned taxable income from the sale of the t-shirt.

## Virtual Economies and Currencies Pose Various Tax Compliance Risks, but the Extent of Noncompliance Is Unknown

IRS, tax experts, academics, and others have identified various tax compliance risks associated with virtual economies and currencies, including underreporting, mischaracterization, and evasion. These risks are not unique to virtual economies and currencies, as they also exist for other types of transactions, such as cash transactions, where there are not always clear records or third-party tracking and reporting of transactions. The tax compliance risks we identified for virtual economies and currencies are described below.

- **Taxpayer lack of knowledge of tax requirements.** Income is generally defined as any undeniable accessions to wealth, clearly

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realized, and over which the taxpayers have complete dominion.<sup>11</sup>

The unsophisticated taxpayer may not properly identify income earned through virtual economies or currencies, such as virtual online game assets exchanged for real world currency, as taxable income. If taxpayers using virtual currencies turn to the Internet for tax help, they may find misinformation in the absence of clear guidance from IRS. For example, when we performed a simple Internet search for information on taxation of bitcoin transactions, we found a number of websites, wikis, and blogs that provided differing opinions on the tax treatment of bitcoins, including some that could lead taxpayers to believe that transacting in virtual currencies relieves them of their responsibilities to report and pay taxes.

- **Uncertainty over how to characterize income.** Even if taxpayers are aware that they may have a tax liability, they may be uncertain about the proper tax treatment of virtual transactions, according to tax experts, including academics and tax practitioners with whom we spoke. For example, characterization depends on whether the virtual economy activity or virtual currency unit is to be treated as property, barter, foreign currency, or a financial instrument. According to some experts with whom we spoke, some virtual currency transactions could be considered barter transactions, which may not be an obvious characterization to unsophisticated taxpayers.<sup>12</sup> This characterization could result in noncompliance with requirements for reporting and paying tax on barter income.
- **Uncertainty over how to calculate basis for gains.** Income earned from virtual economy or currency transactions may not be taxable if it is equivalent to that from an occasional online garage sale, meaning occasional income from selling goods for less than their original purchase price. It may be difficult for individuals receiving income from virtual economies to determine their basis for calculating gains. For example, some online games require players to pay a monthly fee in exchange for use of the game and a monthly allowance of virtual currency. If a player then sells a virtual tool gained in the game for real money, calculating the basis for any taxable gain may be difficult for the unsophisticated taxpayer.

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<sup>11</sup> *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955).

<sup>12</sup> 26 U.S.C. § 6045 addresses barter exchanges and barter transactions.

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- **Challenges with third-party reporting.** Third-party information reporting requirements do not apply specifically to transactions using virtual economies or currencies. Virtual economy or currency transactions may be subject to third-party information reporting to the extent that these transactions involve the use of a third-party payment network to mediate the transaction and the taxpayer meets reporting threshold requirements.<sup>13</sup> Because virtual economy and currency transactions are inherently difficult to track, including identifying the true identities of the parties to the transaction, third-party information reporting may be difficult or prohibitively burdensome for some virtual economy and currency issuers to administer.
  - **Evasion.** Some taxpayers may use virtual economies and currencies as a way to evade taxes. Because transactions can be difficult to trace and many virtual economies and currencies offer some level of anonymity, taxpayers may use them to hide taxable income.

Because of the limited reliable data available on their size, it is difficult to determine how significant virtual economy and currency markets may be or how much tax revenue is at risk through their usage. Some experts with whom we spoke indicated that there is potential for growth in the use of virtual currencies. Additionally, the European Central Bank recently issued a report on virtual currencies, acknowledging their potential for future growth and interaction with the real economy.<sup>14</sup> If the use of virtual economies and currencies expands, it can be expected that associated revenue at risk of tax noncompliance will grow.

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<sup>13</sup>26 U.S.C. § 6050W and applicable regulations define third-party payment networks.

<sup>14</sup>European Central Bank, *Virtual Currency Schemes* (Frankfurt am Main, Germany: October 2012).

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## IRS Has Provided Some Guidance on Tax Reporting Requirements for Virtual Economies but Not for Virtual Currencies Used Outside of Virtual Economies

IRS has assessed the tax compliance risks from virtual economies and virtual currencies used within those economies, and developed a plan to address them in a manner consistent with internal control standards. Beginning in 2007, IRS's Electronic Business and Emerging Issues (EBEI) policy group identified and surveyed internal and external information sources, gathered data on the industry, and collect trend information, among other efforts. EBEI determined that virtual economies presented opportunities for income underreporting and developed (1) a potential compliance strategy, including initiating a compliance improvement project to gather research data and analyze compliance trends, and (2) a potential action plan for specific compliance activities. According to IRS compliance officials, IRS ultimately decided not to pursue these actions in light of available IRS resources and other higher priority needs. Also, IRS did not find strong evidence of the potential for tax noncompliance related to virtual economies, such as the number of U.S. taxpayers involved in such activity or the amount of federal tax revenue at risk.

However, in November 2009, based on EBEI having determined the need, IRS posted information on its website on the tax consequences of virtual economy transactions. The web page points out that, in general, taxpayers can receive income in the form of money, property, or services from a virtual economy, and that if taxpayers receive more income than they spend, they may be required to report their gains as taxable income. The page further states that IRS has provided guidance on the tax treatment of issues similar to online gaming activities, including bartering, gambling, business, and hobby income, and provides links to IRS publications on those topics. IRS officials who were involved in issuing this guidance reported it cost less to make an online statement pointing taxpayers to existing guidance than it would have cost to develop and publish new guidance specific to virtual economies.

IRS has not assessed the tax compliance risks of open-flow virtual currencies developed and used outside of virtual economies. These types of currencies, generally, were introduced after IRS's last review of compliance related to virtual economy transactions. According to IRS compliance officials, IRS would learn about tax compliance issues related to virtual currencies as it would any other tax compliance issue, such as IRS examiners identifying compliance problems during examinations or taxpayers requesting guidance on how to comply with certain tax requirements. To date, these processes have not resulted in IRS identifying virtual currencies used outside of virtual economies as a compliance risk that warrants specific attention.

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Likewise, IRS has not issued guidance specific to virtual currencies used outside of virtual economies due to competing priorities and resource constraints, and because the use of virtual currencies is a relatively recent development that requires further consideration before guidance can be issued, according to IRS's Office of Chief Counsel and compliance officials.<sup>15</sup> As previously discussed, taxpayers may be unaware that income from transactions using this type of virtual currency may be taxable, or if they are aware, uncertain on how to characterize it. By not issuing guidance, IRS may be missing an opportunity to address these compliance risks and minimize their impact and the potential for noncompliance. Given the uncertain extent of noncompliance related to virtual currency transactions, formal guidance, such as regulations, revenue rulings, or revenue notices, may not be warranted at this time. According to officials from IRS's Office of Chief Counsel, these types of guidance require extensive review within IRS and the Department of the Treasury and, in some cases, public comment, which add to the time and cost of development. However, IRS may be able to develop informal guidance, which, according to Chief Counsel officials, requires less extensive agency review and can be based on other existing guidance. As such, IRS can develop informal guidance in a more timely and less costly manner than formal guidance, according to the officials. An example of such informal guidance is the information IRS provides to taxpayers on its website on the tax consequences of virtual economy transactions. Posting such information to its website would be consistent with IRS's strategy for preventing and minimizing taxpayers' noncompliance by helping them understand and meet their tax responsibilities, as outlined in IRS's Taxpayer Assistance Blueprint.

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## Conclusions

Virtual economies and the use of virtual currencies intended as alternatives to government-issued currencies are a recent phenomenon, and the extent to which their use results in tax noncompliance is unknown. Given this uncertainty, available funding, and other priorities, IRS made a reasoned decision not to implement a compliance approach specific to virtual economies and currencies. However, IRS did see value

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<sup>15</sup>Although IRS has not issued guidance, another Department of the Treasury agency, the Financial Crimes Enforcement Network, recently issued interpretive guidance clarifying the treatment of persons creating, obtaining, distributing, exchanging, accepting, or transmitting virtual currencies. However, such guidance does not discuss the tax treatment of virtual currency transactions. FIN-2013-G001

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in providing taxpayers with information on the tax consequences of virtual economy transactions, a low-cost step to potentially mitigate some of the noncompliance risk associated with such transactions. The uncertainty about the extent virtual currencies are used in taxable transactions and any associated tax noncompliance means that costly compliance activities are not merited at this time. However, the fact that misinformation is circulating and the possibility of growth in the use of virtual currencies outside virtual economies suggest that it would be prudent to take low-cost steps, if available, to mitigate potential compliance risks. The type of information IRS provided about virtual economy transactions is one model.

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## Recommendation for Executive Action

To mitigate the risk of noncompliance from virtual currencies, the Commissioner of Internal Revenue should find relatively low-cost ways to provide information to taxpayers, such as the web statement IRS developed on virtual economies, on the basic tax reporting requirements for transactions using virtual currencies developed and used outside virtual economies.

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## Agency Comments and Our Evaluation

We sent a draft of this report to the Acting Commissioner of Internal Revenue for comment. In written comments, reproduced in appendix I, IRS agreed with our recommendation and stated it would provide information to taxpayers on the basic tax reporting requirements for transactions involving virtual currencies by linking to existing relevant guidance. IRS noted that it was aware of the tax compliance risks associated with virtual currencies and was taking other steps, such as developing training resources for agents, to address them. IRS also provided technical comments on our draft report, which we incorporated, as appropriate.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to interested congressional committees, the Secretary of the Treasury, the Acting Commissioner of Internal Revenue, and other interested parties. In addition, the report also will be available at no charge on the GAO website at <http://www.gao.gov>.



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If you or your staff have any questions about this report, please contact me at (202) 512-9110 or [whitej@gao.gov](mailto:whitej@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.

A handwritten signature in black ink that reads "James R. White". The signature is written in a cursive style with a large, stylized initial 'J'.

James R. White  
Director, Tax Issues  
Strategic Issues

# Appendix I: Comments from the Internal Revenue Service



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

May 3, 2013

Mr. James R. White  
Director, Tax Issues  
Strategic Issues Team  
U.S. Government Accountability Office  
441 G. Street NW  
Washington, DC 20548

Dear Mr. White:

Thank you for the opportunity to review your draft report entitled, "VIRTUAL ECONOMIES AND CURRENCIES: Additional IRS Guidance Could Reduce Tax Compliance Risks" (GAO 13-516). We are pleased your report acknowledges the Service's efforts to provide taxpayers with information on the tax consequences of virtual economy transactions by posting information on our website and providing links to existing IRS guidance on bartering, gambling, business, and hobby income.

As your report notes, we began evaluating the tax compliance risks associated with virtual economies and virtual currencies in 2007. Although the Service did not specifically use the term "virtual currency," which was not well-defined at the time, this evaluation included all types of electronic payment systems. The systems evaluated included what is now covered by the term "virtual currency" whether used inside or outside the virtual world.

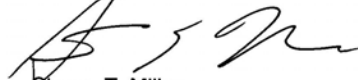
The Service is aware of the potential tax compliance risks posed by off-shore and anonymous electronic payment systems, and we are working to address these risks. Our efforts have included discussions with other federal agencies, evaluating our agents' expertise, developing continuing professional education curricula, providing on-line and classroom training, and creating lead sheets and questionnaires for agent use during examinations.

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We agree that providing taxpayers with information on the basic tax reporting requirements for transactions involving virtual currencies could further aid our efforts. The enclosed response addresses your recommendation.

If you have questions, please call me, or members of your staff may contact Faris Fink, Commissioner, Small Business/Self Employed Division at (202)622-0600.

Sincerely,



Steven T. Miller

Deputy Commissioner for Services and Enforcement

Enclosure

Enclosure

GAO Recommendation and IRS Response to GAO Draft Report  
VIRTUAL ECONOMIES AND CURRENCIES: Additional IRS Guidance Could Reduce  
Tax Compliance Risks (GAO-13-516)

**Recommendation**

To mitigate the risk of noncompliance from virtual currencies, the Commissioner of Internal Revenue should find relatively low-cost ways to provide information to taxpayers - such the Web statement IRS developed on virtual economies - on the basic tax reporting requirements for transactions using virtual currencies developed and used outside virtual economies.

**Comment**

We will provide information to taxpayers on the basic tax reporting requirements for transactions involving virtual currencies by linking to existing relevant guidance.

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# Appendix II: GAO Contact and Staff Acknowledgments

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## GAO Contact

James R. White, (202) 512-9110 or [whitej@gao.gov](mailto:whitej@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Jeff Arkin (Assistant Director), David Dornisch, Lois Hanshaw, Richard Hung, Ronald W. Jones, Donna Miller, Ed Nannenhorn, Danielle N. Novak, and Sabrina Streagle made key contributions to this report.

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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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

November 7, 2013

**MEMORANDUM**

TO: The Commission

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

Adav Noti *AN*  
Acting Associate General Counsel

Robert M. Knop *RMK*  
Assistant General Counsel

Jessica Selinkoff *JS by RMK*  
Attorney

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

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on November 13, 2013.

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

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

Attachment

1 ADVISORY OPINION 2013-15

2

3 Dan Backer, Esq.  
4 DB Capitol Strategies PLLC  
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**DRAFT**

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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.<sup>1</sup> CAF wishes to accept contributions in Bitcoins for both its contribution and  
2 non-contribution accounts.

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

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

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

1 May 2012 and May 2013, the value of one Bitcoin ranged between \$5 and \$237. GAO  
2 Report at 8.<sup>2</sup>

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

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

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<sup>2</sup> *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/](http://www.wired.com/magazine/2011/11/mf_bitcoin/all/); Bitcoin charts, <http://bitcoincharts.com/charts/> (last visited Sept. 25, 2013) (providing historical valuation data from more than 100 Bitcoin exchanges, including more than 35 Bitcoin-to-dollar exchanges).

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

#### 5 ***Questions Presented***

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

#### 12 ***Legal Analysis and Conclusions***

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

#### 20 ***A. Bitcoins as In-Kind Contributions***<sup>3</sup>

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

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

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

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<sup>4</sup>           *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](http://www.fec.gov/law/cfr/ej_compilation/1977/95-44.pdf) (characterizing “in-kind contributions” as “contributions other than cash or check”).

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

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

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

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

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

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

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

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

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

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

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

### 12 *1. Deposits*<sup>9</sup>

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

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

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

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

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

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

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

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

## 14 2. Valuation<sup>11</sup>

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<sup>10</sup> 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).

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



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

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

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

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

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

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

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

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<sup>13</sup> 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.

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

1 for the transaction being valued.<sup>15</sup>

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

### 12           3. Reporting<sup>16</sup>

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

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

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

1 Under this regulation, as explained in Advisory Opinions 2000-30 (pac.com) and  
2 1989-06 (Boehlert), if a committee receives a contribution in Bitcoin form and does not  
3 liquidate the Bitcoins in the same reporting period, the committee should first report the  
4 contribution during the reporting period in which it is received. The initial receipt of  
5 Bitcoins should be reported on Schedule A supporting Line 11(a)(i) (Contributions from  
6 Individuals) as a memo entry that includes the fair market value of the contribution (as  
7 described above) and the required identification of the contributor. *See* 11 C.F.R. §  
8 104.13(b)(1); Advisory Opinion 1989-06 (Boehlert), Attachment A (providing sample  
9 form for reporting fair market value of in-kind contribution of stock to candidate's  
10 committee); Advisory Opinion 2000-30 (pac.com) at 8.<sup>17</sup>

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

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

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

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

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

### 3 ***C. Bitcoin Disbursements***<sup>18</sup>

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

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

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

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

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

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

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

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

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

7 On behalf of the Commission,  
8  
9

10  
11 Ellen L. Weintraub  
12 Chair



**RECEIVED**

By Commission Secretary's Office at 3:20 pm, Nov 13, 2013



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 13-45-A**  
**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

Robert M. Knop *DMK*  
Assistant General Counsel

Jessica Selinkoff *JS*  
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

3 Dan Backer, Esq.

**DRAFT B**

4 DB Capitol Strategies PLLC

5 717 King Street, Suite 300

6 Alexandria, VA 22314

7

8 Paul D. Kamenar, Esq.

9 Coolidge Reagan Foundation

10 1629 K Street, NW, Suite 300

11 Washington, DC 20006

12

13

14 Dear Messrs. Backer and Kamenar:

15 We are responding to the advisory opinion request you submitted on behalf of  
16 Conservative Action Fund (“CAF”) concerning CAF’s acceptance and disbursement of  
17 Bitcoins under the Federal Election Campaign Act of 1971, as amended (the “Act”), and  
18 Commission regulations. The Commission concludes that CAF may accept Bitcoins as  
19 in-kind contributions under valuation, reporting, and disbursement procedures, as  
20 described below. CAF may not, however, make disbursements using Bitcoins. Instead  
21 CAF must sell its Bitcoins and deposit the proceeds in its campaign depositories before  
22 using the funds.

23 ***Background***

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

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

1 account.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup>

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

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<sup>2</sup> 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/](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**<sup>3</sup>

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).<sup>4</sup>

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.<sup>5</sup>  
12 Instead, the Commission will for practical reasons treat the receipt and contribution of

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<sup>3</sup> 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?”).

<sup>4</sup> *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](http://www.fec.gov/law/cfr/ej_compilation/1977/95-44.pdf) (characterizing “in-kind contributions” as “contributions other than cash or check”).

<sup>5</sup> 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](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.<sup>6</sup> *See* Advisory Opinion 2012-30 (Revolution Messaging) (permitting

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<sup>6</sup> 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*<sup>7</sup>

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”).

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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.

<sup>7</sup> 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.<sup>8</sup>

3 *2. Valuation*<sup>9</sup>

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.<sup>10</sup> 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

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<sup>8</sup> 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).

<sup>9</sup> 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?").

<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

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

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<sup>11</sup> 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.

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

<sup>13</sup> *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*<sup>14</sup>

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

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<sup>14</sup> 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.<sup>15</sup>

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

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<sup>15</sup> 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***<sup>16</sup>

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,

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<sup>16</sup> 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)).<sup>17</sup>

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<sup>17</sup> 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.<sup>18</sup>

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

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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.<sup>18</sup> 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.

<sup>18</sup> 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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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) <b>A. John Contributor</b>		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								
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Mailing Address <b>123 First Street</b>		Amount of Each Receipt this Period <table border="1"> <tr> <td>550.00</td> </tr> </table>	550.00									
550.00												
City <b>Alexandria</b>	State Zip Code <b>VA 22314</b>											
FEC ID number of contributing federal political committee. <b>C</b>	Name of Employer <b>First Bank</b>	In-kind: Bitcoin contr not sold during reporting period										
Occupation <b>Teller</b>												
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City	State Zip Code											
FEC ID number of contributing federal political committee. <b>C</b>	Name of Employer	Occupation										
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Attachment 2 - Bitcoin sold during reporting period to known purchaser

**SCHEDULE A (FEC Form 3X)**

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NAME OF COMMITTEE (In Full)  
**XYZ Action Fund**

Full Name (Last, First, Middle Initial) <b>A. Jane Purchaser</b>		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 <b>456 Main Street</b>		Amount of Each Receipt this Period <table border="1"> <tr> <td>600.00</td> </tr> </table> <b>Purchase of Bitcoin</b>	600.00									
600.00												
City <b>Arlington</b>	State Zip Code <b>TX 76006</b>											
FEC ID number of contributing federal political committee. <b>C</b>		Aggregate Year-to-Date ▼ <table border="1"> <tr> <td>600.00</td> </tr> </table>	600.00									
600.00												
Name of Employer <b>Memorial Hospital</b>	Occupation <b>Physician</b>											
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Full Name (Last, First, Middle Initial) <b>B. John Contributor</b>		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								
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Mailing Address <b>123 First Street</b>		Amount of Each Receipt this Period <table border="1"> <tr> <td>550.00</td> </tr> </table> <b>In-kind: Bitcoin contribution, previously disclosed</b>  <b>[MEMO ITEM]</b>	550.00									
550.00												
City <b>Alexandria</b>	State Zip Code <b>VA 22314</b>											
FEC ID number of contributing federal political committee. <b>C</b>		Aggregate Year-to-Date ▼ <table border="1"> <tr> <td></td> </tr> </table>										
Name of Employer <b>First Bank</b>	Occupation <b>Teller</b>											
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FEC ID number of contributing federal political committee. <b>C</b>		Aggregate Year-to-Date ▼ <table border="1"> <tr> <td></td> </tr> </table>										
Name of Employer	Occupation											
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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"/>	15	<input type="checkbox"/>
<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.**

Mailing Address  
**789 West Street**

City State Zip Code  
**New York NY 10005**

FEC ID number of contributing federal political committee. **C**

Name of Employer Occupation

Receipt For:  
 Primary  General  
 Other (specify) ▼

Aggregate Year-to-Date ▼  
**600.00**

Date of Receipt  
**01 / 20 / 2014**

Amount of Each Receipt this Period  
**600.00**

**Bitcoin sale via ABC Exchange - Purchaser unknown**

Full Name (Last, First, Middle Initial)  
**B. John Contributor**

Mailing Address  
**123 First Street**

City State Zip Code  
**Alexandria VA 22314**

FEC ID number of contributing federal political committee. **C**

Name of Employer Occupation  
**First Bank Teller**

Receipt For:  
 Primary  General  
 Other (specify) ▼

Aggregate Year-to-Date ▼

Date of Receipt  
**08 / 09 / 2013**

Amount of Each Receipt this Period  
**550.00**

**In-kind: Bitcoin contribution, previously disclosed**

**[MEMO ITEM]**

Full Name (Last, First, Middle Initial)  
**C.**

Mailing Address

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 ▼

Date of Receipt

Amount of Each Receipt this Period

**SUBTOTAL** of Receipts This Page (optional)..... ▶

**TOTAL** This Period (last page this line number only)..... ▶

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.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup>

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

---

<sup>2</sup> 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/](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**<sup>3</sup>

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

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.<sup>6</sup>

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<sup>3</sup> 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?”).

<sup>4</sup> 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.

<sup>5</sup> *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](http://www.fec.gov/law/cfr/ej_compilation/1977/95-44.pdf) (characterizing “in-kind contributions” as “contributions other than cash or check”).

<sup>6</sup> 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.<sup>7</sup> *See* Advisory Opinion 2012-30 (Revolution Messaging) (permitting

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[http://fincen.gov/statutes\\_regs/guidance/pdf/FIN-2013-G001.pdf](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.

<sup>7</sup> 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*<sup>8</sup>

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

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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.

<sup>8</sup> 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.<sup>9</sup>

3 *2. Valuation*<sup>10</sup>

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.<sup>11</sup> 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

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<sup>9</sup> 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).

<sup>10</sup> 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?").

<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup>

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

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<sup>12</sup> 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.

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

<sup>14</sup> *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*<sup>15</sup>

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

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<sup>15</sup> 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.<sup>16</sup>

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

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<sup>16</sup> 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 Committees<sup>17</sup>***

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.

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<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>

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

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<sup>18</sup> 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.

<sup>19</sup> 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.”<sup>20</sup> *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***<sup>21</sup>

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,

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<sup>20</sup> 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.

<sup>21</sup> 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.<sup>22</sup>

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

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<sup>22</sup> 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

**RECEIVED**

By Office of the Commission Secretary at 5:10 pm, Nov 20, 2013



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 13-45-B**  
**AGENDA ITEM**  
**For meeting of November 21, 2013**  
**SUBMITTED LATE**

November 20, 2013

**MEMORANDUM**

TO: The Commission

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

Adav Noti *AN*  
Acting Associate General Counsel

Robert M. Knop *RMK*  
Assistant General Counsel

Jessica Selinkoff *JS*  
Attorney

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

Attached is a proposed draft of the subject advisory opinion.

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

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

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

Attachment



1 ADVISORY OPINION 2013-15

2

3 Dan Backer, Esq.

**DRAFT D**

4 DB Capitol Strategies PLLC

5 717 King Street, Suite 300

6 Alexandria, VA 22314

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

22 ***Background***

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

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

1 account.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup>

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

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<sup>2</sup> 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/](http://www.wired.com/magazine/2011/11/mf_bitcoin/all/); Bitcoin charts, <http://bitcoincharts.com/charts/> (last visited Sept. 25, 2013) (providing historical valuation data from more than 100 Bitcoin exchanges, including more than 35 Bitcoin-to-dollar exchanges).

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

### 9 ***Questions Presented***

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

### 15 ***Legal Analysis and Conclusions***

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

1           **A. Bitcoins as In-Kind Contributions**<sup>3</sup>

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).<sup>4</sup>

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.<sup>5</sup>  
12 Instead, the Commission will for practical reasons treat the receipt and contribution of

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<sup>3</sup> 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?”).

<sup>4</sup> *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](http://www.fec.gov/law/cfr/ej_compilation/1977/95-44.pdf) (characterizing “in-kind contributions” as “contributions other than cash or check”).

<sup>5</sup> The Commission’s goal in this advisory opinion is to provide practical guidance to the requestor regarding its proposed conduct. Bitcoins may constitute a private medium of exchange and may share many common elements with the traditional monetary mediums of exchange enumerated in the Commission’s regulation. However, it is unclear at this time if Bitcoins are of a similar enough kind to constitute a private form of “money.” The Commission acknowledges that virtual and other private currencies are the subject of complex legal and philosophical debates regarding their status as “money.” *See, e.g., SEC v. Shavers*, No. 4:13-CV-416, 2013 WL 4028182, at \*2 (E.D. Tex. Aug. 6, 2013); U.S. Dep’t of the Treasury, FIN-2013-G001, Financial Crimes Enforcement Network, Guidance: Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies (2013), *available at* [http://fincen.gov/statutes\\_regs/guidance/pdf/FIN-2013-G001.pdf](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.<sup>6</sup> *See* Advisory Opinion 2012-30 (Revolution Messaging) (permitting

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<sup>6</sup> 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*<sup>7</sup>

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”).

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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.

<sup>7</sup> This section addresses CAF’s questions 4 (“Do these answers, or answers to subsequent questions, change depending upon whether the contribution is made to a [contribution] or non-[contribution] account?”) and 14 (“Can CAF hold the Bitcoins indefinitely in either its virtual wallet, or another account as the FEC deems fit, for disposition at a later time?”).

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

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

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



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

3 *2. Valuation*<sup>9</sup>

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.<sup>10</sup> 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

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<sup>8</sup> 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).

<sup>9</sup> 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?").

<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

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

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<sup>11</sup> 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.

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

<sup>13</sup> *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*<sup>14</sup>

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

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<sup>14</sup> 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?").

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

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

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

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

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

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

9         If the committee disburses the Bitcoins to obtain goods or services from a vendor,  
10 as discussed below, the committee should report the disbursement as an operating  
11 expenditure as indicated in Attachment 3(A). If the committee disburses the Bitcoins to  
12 make a contribution to another committee, as discussed below, the committee should  
13 report the transaction as indicated in Attachment 3(B). Attachment 3(B) contains two  
14 pages, with the first page showing an offsetting entry to the second page, which shows  
15 the in-kind contribution.  
16

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

1           ***C. Bitcoin Disbursements***<sup>17</sup>

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

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

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<sup>17</sup> This section addresses CAF’s questions 17 (“Can CAF pay directly for goods and services using Bitcoins?”), 18 (“When paying for goods and services in Bitcoin, in order to avoid charging an individual less than the normal or usual charge for services rendered, 11 C.F.R. §100.52(d), so the individual would be deemed to have made an in-kind contribution, how should CAF calculate the usual or normal charge for services rendered?”), 19 (“When paying for goods and services in Bitcoin, if a vendor or service provider offers CAF a discounted rate for using Bitcoins, will the vendor or servicer be deemed to have made an in-kind contribution if the vendor or servicer offers the same discount to all other purchasers who pay in Bitcoin?”), and 20 (“Can CAF contribute Bitcoins directly from its Bitcoin account or virtual wallet to another PAC, candidate, or committee to the full extent of the law?”).

1 contributions to candidates and to procure goods and services from vendors. The  
2 Commission approved these transactions, concluding that “nothing in the Act or the  
3 Commission’s regulations would prohibit the making of contributions in the form of  
4 credit units.”<sup>18</sup> *Id.* Consistent with these opinions, the Commission’s current guidance  
5 notes that committees may make in-kind contributions to other committees. *See*  
6 *Campaign Guide for Nonconnected Committees* 25 (May 2008),  
7 <http://www.fec.gov/pdf/nongui.pdf> (“In addition to contributing money, a nonconnected  
8 committee may donate goods or services to candidates and their committees.”). Such  
9 transactions would not be permissible if the campaign depository rule were interpreted to  
10 require every contribution or thing of value disbursed by a committee to be spent from a  
11 traditional bank account.

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

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



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

3 A Bitcoin wallet, as discussed above, is not a campaign depository. Bitcoins  
4 received into a Bitcoin wallet cannot be deposited into a campaign depository without  
5 first being liquidated.<sup>19</sup> Because Bitcoins are in-kind contributions that cannot be  
6 deposited into or spent from a campaign depository, CAF may use the Bitcoins it receives  
7 to make in-kind contributions to other political committees and to purchase goods and  
8 services from vendors who accept Bitcoins as payment. CAF may do so directly from its  
9 Bitcoin wallet, provided that such contributions and purchases comply with the  
10 applicable source and amount limitations<sup>20</sup> and recordkeeping requirements<sup>21</sup> of the Act  
11 and Commission regulations. To determine the value of in-kind contributions or  
12 purchases made by CAF with Bitcoins, CAF should apply the same valuation  
13 methodology described above for the receipt of Bitcoins. That is, CAF should rely on  
14 any contemporaneous determination provided by the entity that processes the Bitcoin  
15 contribution or payment, if provided, or use a reasonable exchange rate of Bitcoins for  
16 dollars closest in time to the payment being valued. For purchases made with Bitcoins,  
17 this valuation method will be used to determine whether CAF paid the vendor a usual and  
18 normal charge.<sup>22</sup>

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

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

<sup>21</sup> See *supra* n.6.

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



Attachment 1: Receiving in-kind contributions of Bitcoins (page 1 of 2)

**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
	<input checked="" type="checkbox"/> 11a 13	<input type="checkbox"/> 11b 14	<input type="checkbox"/> 11c 15	<input type="checkbox"/> 12 16

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) <b>A. John Contributor</b>		Date of Receipt M M / D D / Y Y Y Y <b>08 09 2013</b>
Mailing Address <b>123 First Street</b>		Amount of Each Receipt this Period  <b>1,000.00</b>
City <b>Alexandria</b>	State Zip Code <b>VA 22314</b>	
FEC ID number of contributing federal political committee. <b>C</b>		<b>In-kind: 50 Bitcoins not liquidated/disbursed</b>
Name of Employer <b>First Bank</b>	Occupation <b>Teller</b>	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	Aggregate Year-to-Date ▼  <b>1,000.00</b>	

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

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

<b>SUBTOTAL</b> of Receipts This Page (optional)..... ▶	<b>1,000.00</b>
<b>TOTAL</b> This Period (last page this line number only)..... ▶	

Attachment 1: Receiving in-kind contributions of Bitcoins (page 2 of 2)

**SCHEDULE B (FEC Form 3X)  
ITEMIZED DISBURSEMENTS**

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

FOR LINE NUMBER:  
(check only one)

PAGE OF

<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 26
<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29	<input type="checkbox"/> 30b

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) <b>A. John Contributor</b>		Date of Disbursement MM / DD / YYYY <b>08 09 2013</b>
Mailing Address <b>123 First Street</b>		Amount of Each Disbursement this Period  <b>1,000.00</b>  <b>In-kind: 50 Bitcoins not liquidated/disbursed</b>
City <b>Alexandria</b>	State <b>VA</b>	
Zip Code <b>22314</b>		
Purpose of Disbursement <b>In-kind: 50 Bitcoins</b>		
Candidate Name		Category/ Type
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
State: _____	District: _____	

Full Name (Last, First, Middle Initial) <b>B.</b>		Date of Disbursement MM / DD / YYYY
Mailing Address		Amount of Each Disbursement this Period
City	State	
Zip Code		
Purpose of Disbursement		
Candidate Name		Category/ Type
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
State: _____	District: _____	

Full Name (Last, First, Middle Initial) <b>C.</b>		Date of Disbursement MM / DD / YYYY
Mailing Address		Amount of Each Disbursement this Period
City	State	
Zip Code		
Purpose of Disbursement		
Candidate Name		Category/ Type
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
State: _____	District: _____	

<b>SUBTOTAL</b> of Disbursements This Page (optional)..... ▶	<b>1,000.00</b>
<b>TOTAL</b> This Period (last page this line number only)..... ▶	

Attachment 2(A) - Bitcoins sold during reporting period to known purchaser (appreciated value)

**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)			
<input checked="" type="checkbox"/> 11a	<input type="checkbox"/> 11b	<input type="checkbox"/> 11c	<input type="checkbox"/> 12
<input type="checkbox"/> 13	<input type="checkbox"/> 14	<input type="checkbox"/> 15	<input type="checkbox"/> 16
		<input type="checkbox"/> 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) <b>A. Jane Purchaser</b>		Date of Receipt M M / D D / Y Y Y Y <b>01 20 2014</b>
Mailing Address <b>456 Main Street</b>		Amount of Each Receipt this Period <b>2,500.00</b>
City <b>Arlington</b>	State <b>TX</b>	
Zip Code <b>76006</b>		<b>Purchase of 50 Bitcoins</b>
FEC ID number of contributing federal political committee. <b>C</b>		
Name of Employer <b>Memorial Hospital</b>	Occupation <b>Physician</b>	Aggregate Year-to-Date ▼ <b>2,500.00</b>
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		

Full Name (Last, First, Middle Initial) <b>B. John Contributor</b>		Date of Receipt M M / D D / Y Y Y Y <b>08 09 2013</b>
Mailing Address <b>123 First Street</b>		Amount of Each Receipt this Period <b>1,000.00</b>
City <b>Alexandria</b>	State <b>VA</b>	
Zip Code <b>22314</b>		<b>In-kind: 50 Bitcoins, contribution previously disclosed</b>
FEC ID number of contributing federal political committee. <b>C</b>		
Name of Employer <b>First Bank</b>	Occupation <b>Teller</b>	Aggregate Year-to-Date ▼ <b>[MEMO ITEM]*</b>
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		

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

<b>SUBTOTAL</b> of Receipts This Page (optional)..... ▶	<b>2,500.00</b>
<b>TOTAL</b> This Period (last page this line number only)..... ▶	

\*A memo entry provides information that does not affect the total on the schedule, line item totals on the Detailed Summary Page, or the committee's cash on hand.

Attachment 2(B) - Bitcoins sold during reporting period to unknown purchaser (appreciated value)

**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
	<input checked="" type="checkbox"/> 11a 13	<input type="checkbox"/> 11b 14	<input type="checkbox"/> 11c 15	<input type="checkbox"/> 12 16

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) <b>A. ABC Bitcoin Exchange, Inc.</b>		Date of Receipt MM / DD / YYYY <b>01 / 20 / 2014</b>
Mailing Address <b>789 West Street</b>		Amount of Each Receipt this Period  <b>2,500.00</b>
City <b>New York</b>	State Zip Code <b>NY 10005</b>	
FEC ID number of contributing federal political committee. <b>C</b>		<b>50 Bitcoins sold via ABC Exchange - purchaser unknown</b>
Name of Employer	Occupation	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	Aggregate Year-to-Date ▼  <b>2,500.00</b>	

Full Name (Last, First, Middle Initial) <b>B. John Contributor</b>		Date of Receipt MM / DD / YYYY <b>08 / 09 / 2013</b>
Mailing Address <b>123 First Street</b>		Amount of Each Receipt this Period  <b>1,000.00</b>
City <b>Alexandria</b>	State Zip Code <b>VA 22314</b>	
FEC ID number of contributing federal political committee. <b>C</b>		<b>In-kind: 50 Bitcoins, contribution previously disclosed</b>  <b>[MEMO ITEM]*</b>
Name of Employer <b>First Bank</b>	Occupation <b>Teller</b>	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	Aggregate Year-to-Date ▼  .	

Full Name (Last, First, Middle Initial) <b>C.</b>		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. <b>C</b>		.
Name of Employer	Occupation	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	Aggregate Year-to-Date ▼  .	

<b>SUBTOTAL</b> of Receipts This Page (optional)..... ▶	<b>2,500.00</b>
<b>TOTAL</b> This Period (last page this line number only)..... ▶	.

Attachment 3(A): Disbursement of Bitcoins for purchase of goods/services (appreciated value)

**SCHEDULE B (FEC Form 3X)  
ITEMIZED DISBURSEMENTS**

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

FOR LINE NUMBER:  
(check only one)

PAGE OF

<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 26
<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29	<input type="checkbox"/> 30b

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) <b>A. Common Vendor, Inc.</b>		Date of Disbursement MM / DD / YYYY <b>01 / 09 / 2014</b>
Mailing Address <b>2224 Market Street</b>		Amount of Each Disbursement this Period  , , <b>1,250.00</b>  <b>Website services paid with 25 Bitcoins</b>
City <b>Boston</b>	State <b>MA</b>	
Zip Code <b>02201</b>		
Purpose of Disbursement <b>Website Services - 25 Bitcoins</b>		
Candidate Name _____		Category/ Type
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
State: _____ District: _____		

Full Name (Last, First, Middle Initial) <b>B. Common Vendor, Inc.</b>		Date of Disbursement MM / DD / YYYY <b>01 / 09 / 2014</b>
Mailing Address <b>2224 Market Street</b>		Amount of Each Disbursement this Period  , , <b>-1,250.00</b>  <b>Website services paid with 25 Bitcoins; offsetting entry, see above</b>
City <b>Boston</b>	State <b>MA</b>	
Zip Code <b>02201</b>		
Purpose of Disbursement <b>Website Services - 25 Bitcoins, offsetting entry</b>		
Candidate Name _____		Category/ Type
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
State: _____ District: _____		

Full Name (Last, First, Middle Initial) <b>C.</b>		Date of Disbursement MM / DD / YYYY _____
Mailing Address _____		Amount of Each Disbursement this Period  , , .
City _____	State _____	
Zip Code _____		
Purpose of Disbursement _____		
Candidate Name _____		Category/ Type
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
State: _____ District: _____		

<b>SUBTOTAL</b> of Disbursements This Page (optional)..... ▶	, , <b>0.00</b>
<b>TOTAL</b> This Period (last page this line number only)..... ▶	, , .

Attachment 3(B): In-kind contribution of Bitcoins to another committee (appreciated value, page 1 of 2)

**SCHEDULE B (FEC Form 3X)  
ITEMIZED DISBURSEMENTS**

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

FOR LINE NUMBER:  
(check only one)

PAGE OF

<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 26
<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29	<input type="checkbox"/> 30b

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) <b>A. Joe Smith for Congress</b>		Date of Disbursement MM / DD / YYYY <b>01 / 09 / 2014</b>
Mailing Address <b>456 Second Street</b>		Amount of Each Disbursement this Period  <b>- 1,250.00</b>  <b>In-kind: 25 Bitcoins</b> <b>Offsetting entry, see Line 23</b>
City <b>Alexandria</b>	State <b>VA</b>	
Zip Code <b>22314</b>		
Purpose of Disbursement <b>In-kind: 25 Bitcoins, offsetting entry</b>		
Candidate Name <b>Joe Smith</b>		Category/ Type
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <b>2014</b> <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
State: <b>VA</b>	District: <b>01</b>	

Full Name (Last, First, Middle Initial) <b>B.</b>		Date of Disbursement MM / DD / YYYY
Mailing Address		Amount of Each Disbursement this Period
City	State	
Zip Code		
Purpose of Disbursement		
Candidate Name		Category/ Type
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
State:	District:	

Full Name (Last, First, Middle Initial) <b>C.</b>		Date of Disbursement MM / DD / YYYY
Mailing Address		Amount of Each Disbursement this Period
City	State	
Zip Code		
Purpose of Disbursement		
Candidate Name		Category/ Type
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
State:	District:	

<b>SUBTOTAL</b> of Disbursements This Page (optional)..... ▶	<b>-1,250.00</b>
<b>TOTAL</b> This Period (last page this line number only)..... ▶	



**SCHEDULE B (FEC Form 3X)  
ITEMIZED DISBURSEMENTS**

Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)						PAGE	OF
	<input type="checkbox"/> 21b	<input type="checkbox"/> 22	<input checked="" type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 26		
	<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29	<input type="checkbox"/> 30b		

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) <b>A. Joe Smith for Congress</b>		Date of Disbursement MM / DD / YYYY <b>01 / 09 / 2014</b>
Mailing Address <b>456 Second Street</b>		Amount of Each Disbursement this Period  <b>, , 1,250.00</b>  <b>In-kind: Contribution of 25 Bitcoins</b>
City <b>Alexandria</b>	State <b>VA</b>	
Zip Code <b>22314</b>		
Purpose of Disbursement <b>In-kind: 25 Bitcoins</b>		
Candidate Name <b>Joe Smith</b>		Category/ Type
Office Sought: <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <b>2014</b> <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
State: <b>VA</b>	District: <b>01</b>	

Full Name (Last, First, Middle Initial) <b>B.</b>		Date of Disbursement MM / DD / YYYY
Mailing Address		Amount of Each Disbursement this Period  <b>, , .</b>
City	State	
Zip Code		
Purpose of Disbursement		
Candidate Name		Category/ Type
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
State:	District:	

Full Name (Last, First, Middle Initial) <b>C.</b>		Date of Disbursement MM / DD / YYYY
Mailing Address		Amount of Each Disbursement this Period  <b>, , .</b>
City	State	
Zip Code		
Purpose of Disbursement		
Candidate Name		Category/ Type
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
State:	District:	

<b>SUBTOTAL</b> of Disbursements This Page (optional)..... ▶	<b>, , 1,250.00</b>
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**AGENDA DOCUMENT NO. 13-56**

**MINUTES OF AN OPEN MEETING  
OF THE  
FEDERAL ELECTION COMMISSION  
THURSDAY, NOVEMBER 21, 2013**

**PRESENT:**

**Ellen L. Weintraub, Chair, presiding**

**Lee E. Goodman, Vice Chairman**

**Caroline C. Hunter, Commissioner**

**Matthew S. Petersen, Commissioner**

**Ann M. Ravel, Commissioner**

**Steven T. Walther, Commissioner**

**Alec Palmer, Staff Director**

**Lisa J. Stevenson, Deputy General Counsel - Law**

**Shawn Woodhead Werth, Secretary and Clerk**

**Chair Ellen L. Weintraub called the Federal Election Commission to order in an open meeting at 10:13 A.M. on Thursday, November 21, 2013 with a quorum present.**

**\*\*\*\*\***

**Chair Weintraub recognized Vice Chairman Goodman who  
MOVED to suspend the rules on the timely submission  
of agenda documents in order to consider the late  
submission of Agenda Document Nos. 13-45-B, 13-49,  
13-47, and 13-48.**

**The motion carried by a vote of 6-0 with Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voting affirmatively for the decision.**

**\*\*\*\*\***

**I. DRAFT ADVISORY OPINION 2013-15**

**Conservative Action Fund  
by Dan Backer, Esq. and Paul D. Kamenar, Esq.**

**Agenda Document No. 13-45**

**Agenda Document No. 13-45-A (Drafts B and C)**

**Agenda Document No. 13-45-B (Draft D)  
(Submitted Late)**

**(Held over from the November 14, 2013 meeting)**

**Chair Weintraub recognized requestor's counsel, Mr. Dan Backer, who was available to answer Commissioners' questions. She also noted that the Commission appreciated the comments received in this matter.**

**Chair Weintraub recognized Ms. Jessica Selinkoff of the Office of General Counsel who presented the draft advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended, and Commission regulations to the request of the Conservative Action Fund, a non-connected committee, to accept contributions in Bitcoins, a privately issued digital currency. The requestor asks 24 questions which generally fall into 3 categories: 1) whether it may accept Bitcoins; 2) how it should deposit, value, and report contributions made using Bitcoins; and 3) whether it may disburse Bitcoins to pay for goods and services or to make contributions to other committees. Ms. Selinkoff summarized the distinctions among the four Drafts, three of which were discussed at the November 14 open meeting, and requested the authority to make technical and conforming changes to any Draft approved by the Commission.**

**Mr. Backer participated in the discussion that followed.**

**Chair Weintraub recognized Vice Chairman Goodman who**

**MOVED to approve Agenda Document No. 13-45-B,  
Draft D for Draft Advisory Opinion 2013-15.**

**The motion failed by a vote of 3-3 with Commissioners Goodman, Hunter, and Petersen voting affirmatively for the motion. Commissioners Ravel, Walther, and Weintraub dissented.**

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**Chair Weintraub stated that Item IV (Draft Interpretive Rule) would be considered before Item III (Draft Advisory Opinion 2013-17), because Vice Chairman Goodman is recused from the latter.**

\*\*\*\*\*

**II. DRAFT ADVISORY OPINION 2013-16**

**PoliticalRefund.org  
by Dan Backer, Esq. and Paul D. Kamenar, Esq.**

**Agenda Document No. 13-49  
(Submitted Late)**

**Chair Weintraub recognized requestor's counsel, Mr. Dan Backer, who was available to answer Commissioners' questions.**

**Chair Weintraub recognized Ms. Joanna Waldstreicher of the General Counsel's Office who presented the draft advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended, and Commission regulations to the request. PoliticalRefund.org asks whether it may: 1) use data obtained from reports filed with the Commission to contact persons who have made contributions to candidates, to inform those contributors of their right to seek refunds of their contributions, and to facilitate requests for refunds; 2) display on its website aggregate information about contributors' requests for refunds; and 3) accept advertising on its website and sponsorship of its communications to**

**contributors. Ms. Waldstreicher also requested the authority to make any necessary technical and conforming changes to any Draft approved by the Commission.**

**Mr. Backer participated in the discussion that followed.**

**Chair Weintraub recognized Vice Chairman Goodman who**

**MOVED to approve Agenda Document No. 13-49 and authorize the Office of the General Counsel to make any necessary technical and conforming edits.**

**The motion carried by a vote of 5-1 with Commissioners Goodman, Hunter, Petersen, Ravel, and Walther voting affirmatively for the decision.**

**Commissioner Weintraub dissented.**

**IV. DRAFT INTERPRETIVE RULE REGARDING DATE OF POLITICAL PARTY NOMINATIONS OF CANDIDATES FOR SPECIAL PRIMARY ELECTIONS IN NEW YORK**

**Agenda Document No. 13-48  
(Submitted Late)**

**Chair Weintraub recognized Ms. Cheryl Hemsley of the General Counsel's Office who presented the Draft Interpretive Rule (the "Rule").**

**The Rule addresses the issue of whether the date of a primary in a special election held pursuant to New York election law is: 1) the date on which the party committee votes for its nominee or 2) the date on which the party committee files a certification of nomination with the appropriate election board. The Rule clarifies that, for purposes of the Act, the date a New York**

**party committee chooses its candidate is the date of the special primary election, because the nomination is the direct result of the party election. The subsequent filing of a certification would formalize the nomination for state law, but it is not the primary itself. Ms. Hemsley also asked for authority to make any necessary technical and confirming amendments.**

**Chair Weintraub stated that this question arose recently. Because there appeared to be some confusion on this issue, the Commission wanted to provide guidance and is seeking comments before it votes on the Rule.**

**Mr. Noti of the General Counsel's Office participated in the discussion that followed.**

**Chair Weintraub recognized Vice Chairman Goodman who**

**MOVED to direct the Office of the General Counsel to make the Draft Interpretive Rule, as set forth in Agenda Document No. 13-48, available for public comment and authorize the Office of the General Counsel to make any technical and conforming changes.**

**The motion carried by a vote of 6-0 with Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voting affirmatively for the decision.**

**III. DRAFT ADVISORY OPINION 2013-17**

**Tea Party Leadership Fund  
by Dan Backer, Esq. and Paul D. Kamenar, Esq.**

**Agenda Document No. 13-47 (Drafts A and B)  
(Submitted Late)**

**Chair Weintraub noted that Vice Chairman Goodman was recused from this matter and would not participate in the discussion.**

**Chair Weintraub recognized Ms. Esther Gyory of the General Counsel's Office who presented the draft advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended, and Commission regulations to the request. The requestor is a non-connected hybrid political committee which seeks an exemption from various reporting and disclosure requirements of the Act and Commission regulations. The requestor asserts that it has established a reasonable probability that disclosing its contributors and recipients of its disbursements would subject those persons to threats, harassment, or reprisals from governmental officials and private parties. Ms. Gyory summarized the distinctions between the two Drafts and requested the authority to make technical and conforming changes to any Draft approved by the Commission.**

**Mr. Backer participated in the discussion that followed.**

**Chair Weintraub recognized Commissioner Walther who**

**MOVED to approve Draft B as set forth in Agenda Document No. 13-47 and authorize the Office of the General Counsel to make appropriate technical and conforming amendments.**



**The motion failed by a vote of 3-2 with Commissioners Ravel, Walther, and Weintraub voting affirmatively for the motion. Commissioners Hunter and Petersen dissented. Commissioner Goodman was recused and did not vote.**

**Chair Weintraub recognized Commissioner Petersen who**

**MOVED to approve Draft A as set forth in Agenda Document No. 13-47 subject to the following changes:**

**a) On Line 1, Page 7 after the parenthetical, add the sentence:**

**Perhaps the most significant is the report of the Treasury Inspector General for Tax Administration that concluded that “the IRS used inappropriate criteria that identified for review Tea Party and other organizations applying for tax exempt status based upon their names or policy positions instead of indications of potential political campaign intervention.” (Ex. A-1a).**

**b) On Line 20, Page 7 at the end of the sentence, add the sentence:**

**The Commission grants this exemption to reports covering through December 31, 2016.**

**c) Authorize the Office of the General Counsel to make any necessary technical and conforming edits.**

**The motion failed by a vote of 2-3 with Commissioners Hunter and Petersen voting affirmatively for the motion. Commissioners Ravel, Walther, and Weintraub dissented. Commissioner Goodman was recused and did not vote.**

**Chair Weintraub stated that the Commission does not condone any form of harassment against anyone who tries to express their political views.**

**V. MANAGEMENT AND ADMINISTRATIVE MATTERS**

**There being no further business to come before the Commission, the meeting adjourned at 11:30 A.M.**

**Signed:**

**Ellen L. Weintraub  
Chair of the Commission**

**Attest:**

**Shawn Woodhead Werth  
Secretary and Clerk of the Commission**