



September 18, 2018

Submitted electronically to CommAsst@fppc.ca.gov

Alice T. Germond, Chair
California Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811

Re: Comments on Proposed Regulation of Cryptocurrency

Chair Germond,

The Campaign Legal Center (“CLC”) respectfully submits these written comments to the Fair Political Practices Commission (“FPPC”) in response to the Notice of Proposed Regulation, § 18215.4 (“Proposed Regulation”). Notice File No. Z2018-0807-01, Cal. Regulatory Notice Reg. 2018, No. 33-7, 1301 (Aug. 17, 2018).

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening the democratic process across all levels of government. Since the organization’s founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court as well as numerous other federal and state court cases. Our work promotes every citizen’s right to participate in the democratic process and to know the true sources of money spent to influence elections.

CLC commends the FPPC’s decision to promulgate regulations for political committees’ use of cryptocurrency in light of its growing popularity. We make the following comments and recommendations in an effort to assist the FPPC’s rulemaking on this important issue.

I. Background

Over the last decade, cryptocurrency has emerged as an increasingly popular and valuable alternative to fiat currency. The number of individuals who own bitcoin and other cryptocurrency is virtually impossible to track, but reasonable estimates

indicate tens of millions of cryptocurrency users across the globe.¹ As public attention to digital currency has grown, political campaigns also have begun to explore its possibilities.²

Like cash, cryptocurrency is essentially a medium of exchange used to purchase goods and services.³ Third-party exchanges allow holders of cryptocurrency, such as bitcoin, to convert it to government-issued currency, and vice-versa.⁴ However, cryptocurrency systems share two key features that distinguish them from other monetary forms: independence from any central authority issuing them or facilitating transactions; and the ability of users to transact pseudo-anonymously through cryptographic units.⁵

By design, cryptocurrency systems operate outside channels of central authority. In lieu of standard banking processes, the verification of cryptocurrency transfers occurs through the blockchain—a collective ledger of transactions maintained by a decentralized network of operators.⁶ As opposed to checks or credit cards, cryptocurrency transactions are not processed through a financial institution, which substantially impedes efforts to verify or trace the transactions with standard audit tools, such as account records.⁷

Likewise, cryptocurrency platforms permit users to transact without disclosing any personally identifying information. For example, although every bitcoin transaction is publicly recorded in the blockchain, along with the transacting

¹ See, e.g., Tess Bonn, *Politicians are getting in on the cryptocurrency craze to fund campaigns*, CNBC, March 2, 2018, <https://www.cnn.com/2018/03/01/cryptocurrency-candidates-politicians-embrace-bitcoin.html>.

² By March 2018, there were over 1,500 cryptocurrencies—with a collective market valuation in excess of \$600 billion. Alexander Pando, *Cryptocurrencies and the market*, FORBES, Mar. 20, 2018, <https://www.forbes.com/sites/forbestechcouncil/2018/03/20/cryptocurrencies-and-the-market/#139b74ae30f8>.

³ See SATOSHI NAKAMOTO, *BITCOIN: A PEER-TO-PEER ELECTRONIC CASH SYSTEM 1* (2009), <https://bitcoin.org/bitcoin.pdf> (describing Bitcoin as an “electronic payment system based on cryptographic proof”).

⁴ See U.S. GOV’T ACCOUNTABILITY OFFICE, *VIRTUAL ECONOMIES & CURRENCIES 5* (May 2013), <https://www.gao.gov/assets/660/654620.pdf> (hereinafter “GAO report”).

⁵ Jan Lansky, *Possible Approaches to Cryptocurrency*, 9 J. SYSTEMS INTEGRATION 19, 20 (Jan. 2018), <http://si-journal.org/index.php/JSI/article/viewFile/335/325>. “The term pseudo-anonymity is used for anonymity in cryptocurrencies. Transacting parties are not identified by their actual proper names or otherwise used identifiers but those parties still have identifiers (cryptocurrency account addresses).” *Id.* at 22.

⁶ Marco Iansiti & Karim R. Lakhani, *The Truth About Blockchain*, HARV. BUS. REV., Jan.-Feb. 2017, <https://hbr.org/2017/01/the-truth-about-blockchain>.

⁷ “It may seem elegant [] to simply treat a Bitcoin address as a bank account. However, KYC-compliant bank accounts differ from Bitcoin addresses in that they require full legal names be attached to [an] account. Because it is impossible to find the true owner of a Bitcoin address, or even a list of persons with access to the account, there is no particular way to determine the owner of any of the funds or the person that authorized the donation. Even a full police investigation would be unlikely to trace the origin of any particular funds. This means that a single pool of funds can be used, untraceably, to make unlimited donations to any particular committee.” Comment of Louis Joyce on Fed. Election Comm’n Draft Advisory Op. 2014-02 (Apr. 17, 2014), <https://www.fec.gov/files/legal/aos/2014-02/1255510.pdf>.

parties' respective "bitcoin addresses," no information about the "real life" identify of either party is documented in the exchange.⁸ This pseudo-anonymity is further enhanced by users' ability to generate a limitless number of bitcoin addresses, and a bitcoin user may use a new address for every transaction made in his or her lifetime.⁹

Decentralization and functional anonymity are deliberate features of cryptocurrency's design, intended to insulate bitcoin and derivative platforms from central control.¹⁰ Still, these design qualities make regulation of cryptocurrency challenging under existing legal frameworks, including campaign finance law.

II. Existing Regulation

Whether and how to regulate cryptocurrency is an issue of mounting concern for election administrators at the federal and state levels.¹¹ Since 2014, the Federal Election Commission ("FEC") and at least seven states, plus Washington, D.C., have considered whether political committees may accept cryptocurrency under existing laws. Although multiple regulatory bodies have grappled with questions around cryptocurrency in campaigns, a consensus has not formed on the best approach to this novel currency.

In 2014, the FEC issued an advisory opinion authorizing a political committee's receipt of bitcoin contributions, subject to certain valuation and reporting procedures.¹² The FEC also determined the political committee could use its campaign funds to purchase bitcoin for investment purposes, provided that the committee liquidated the bitcoin and deposited the proceeds into its campaign account prior to making any expenditures with the proceeds.¹³ The Commission did not reach a consensus on whether the committee could make expenditures for goods and services using bitcoin, or whether bitcoin contributions are equivalent to cash contributions under federal law.¹⁴

State regulators have adopted a range of approaches to campaigns' receipt of cryptocurrency thus far. A handful of jurisdictions have opted to regulate cryptocurrency similarly to "in-kind" contributions.¹⁵ For instance, the Massachusetts Office of Campaign and Political Finance ("OCPF") determined a

⁸ See GAO report, *supra* note 4, at 7, fig. 2. A bitcoin address consists of a string alphanumeric characters, randomly generated at no cost for a bitcoin user. Lansky, *supra* note 5, at 21.

⁹ Lansky, *supra* note 5, at 21.

¹⁰ See generally, Nakamoto, *supra* note 3; Alan Feuer, *The Bitcoin Ideology*, N.Y. TIMES, Dec. 14, 2013, <https://www.nytimes.com/2013/12/15/sunday-review/the-bitcoin-ideology.html>.

¹¹ See, e.g., Tess Bonn, *Politicians are getting in on the cryptocurrency craze to fund campaigns*, CNBC, Mar. 2, 2018, <https://www.cnbc.com/2018/03/01/cryptocurrency-candidates-politicians-embrace-bitcoin.html>.

¹² Fed. Election Comm'n Advisory Op. 2014-02 at 3-7 (May 8, 2014), <https://www.fec.gov/files/legal/aos/2014-02/2014-02.pdf> [hereinafter "FEC AO"].

¹³ *Id.* at 7.

¹⁴ *Id.* at 9.

¹⁵ See 3 D.C. Mun. Regs. § 3008.10(a) ("Bitcoin contributions shall be reported as in-kind contributions . . .").

political committee could receive bitcoin contributions, subject to applicable limits and reporting requirements, if the committee liquidated the bitcoins and deposited the funds into its official account within five days of receipt.¹⁶ In the advisory opinion, the OCPF explained bitcoins did not qualify as “money” under Massachusetts law, since they are not “authorized or adopted by a domestic or foreign government,” but were clearly a “thing of value” within the statutory scope of a “contribution.”¹⁷ Thus, the OCPF determined the political committees could receive contributions of bitcoin in accordance with other requirements under Massachusetts law. The OCPF also concluded that the political committee could *not* use bitcoins for campaign expenditures, as state law required all expenditures over \$50 to be made with checks drawn from the committee’s campaign account.¹⁸

Similarly, Montana’s Commissioner of Political Practices, in a 2014 advisory opinion, allowed a state candidate to receive bitcoin donations, as Montana’s statutory definition of “contribution” encompassed “anything of value.”¹⁹ However, the Commissioner did not authorize the candidate to maintain a bitcoin “wallet” due to Montana law’s requirement for candidates to use “one primary campaign depository” for all contributions and expenditures.²⁰

By contrast, a few states have prohibited political committees from accepting bitcoins and other cryptocurrency. In April 2018, the South Carolina House Legislative Ethics Committee released an advisory opinion proscribing legislative candidates’ receipt of cryptocurrency on the basis that the statutory definition of “contribution” did not explicitly include “virtual” or “digital currency.”²¹ Within the last year, regulators in Kansas and North Carolina also have decided against allowing cryptocurrency contributions through less formal guidance,²² while the

¹⁶ Mass. Office of Campaign & Political Finance Advisory Op. 2014-01 at 2-3 (Jan. 17, 2014), <http://files.ocpf.us/pdf/legaldocs/AO-14-01.pdf>.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 6.

¹⁹ Mont. Comm’n of Political Practices Advisory Op. 2014-001 (Jan. 23, 2014),

<https://politicalpractices.mt.gov/Portals/144/5campaignfinance/EricFultonBitcoinUseOpinion.pdf>.

²⁰ *Id.*

²¹ S.C. House Leg. Ethics Committee Advisory Op. 2018-3 (Apr. 11, 2018),

<https://www.scstatehouse.gov/CommitteeInfo/HouseEthicsCommittee/AdvisoryOpinions/HEC%202018.3.pdf>.

²² In October 2017, the Kansas Governmental Ethics Commission denied a candidate’s request to raise bitcoin contributions, citing concerns about transparency and an inability to audit the transactions. Matthew De Silva, *Kansas Governmental Ethics Commission Recommends Against Bitcoin Campaign Contributions*, ETHNEWS, Oct. 20, 2017, <https://www.ethnews.com/kansas-governmental-ethics-commission-recommends-against-bitcoin-campaign-contributions>. Likewise, in July 2018, the Executive Director of North Carolina’s State Board of Elections informed a legislative candidate that cryptocurrency donations were not permissible due to the State Board’s inability to “adequately regulate contributions . . . in the form of cryptocurrency.” Lynn Bonner, *You can’t make donations with Bitcoins or other cryptocurrencies in NC*, NEWS & OBSERVER, July 31, 2018, <https://www.newsobserver.com/news/politics-government/article215857190.html>.

Wisconsin Ethics Commission requested that legislators address cryptocurrency in legislation.²³

At least two states have chosen to regulate cryptocurrency analogously to monetary or cash contributions. Tennessee law specifies that a contribution of “[d]igital currency shall be considered a *monetary contribution* with the value of the digital currency being the market value of the digital currency at the time the contribution is received.”²⁴ A candidate or political committee in Tennessee must liquidate the cryptocurrency and deposit the proceeds into a campaign account before spending the funds.²⁵ In July 2018, the Office of the Colorado Secretary of State adopted a new regulation permitting a political committee to accept cryptocurrency “up to the acceptable limit for a cash or coin contribution.”²⁶ Colorado’s new rule specifies the cryptocurrency’s value is determined at the time of the contribution.²⁷

III. Recommendation for Option 1 in Proposed Regulation

The decentralized structure and the pseudo-anonymity of cryptocurrency transactions pose challenges to the Political Reform Act’s (“PRA”) disclosure requirements as well as its source restrictions and amount limitations on campaign contributions.²⁸ As an initial matter, we believe a contribution of cryptocurrency clearly falls within the scope of California’s campaign finance law. Under the PRA, a “contribution” generally is defined as a “payment” received by a candidate or political committee “except to the extent that full and adequate consideration is received or if it is clear from surrounding circumstances that the payment is not made for political purposes.”²⁹ A “payment” includes any “distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or *anything else of value, whether tangible or intangible.*”³⁰ As something of “value,” a contribution of cryptocurrency provided to a candidate or committee in California would satisfy the PRA’s definition of “contribution” if made for “political purposes.”³¹

²³ Letter from Colette Reinke, Comm’n Adm’r, Wis. Ethics Comm’n, to Devin LaMahieu, Chair, Senate Committee on Elections & Local Gov’t, and Scott Allen, Chair, Assembly Committee on Constitution & Ethics (May 4, 2018).

²⁴ Tenn. Code Ann. § 2-10-113(a) (emphasis added); *see also id.* § 2-10-102(4) (“‘Contribution’ means any advance, conveyance, deposit, distribution, transfer of . . . digital currency . . . made for the purpose of influencing [an election]”). Tennessee may be the only state that has enacted legislation regarding the receipt of cryptocurrency by candidates and political committees.

²⁵ *Id.* § 2-10-113(c).

²⁶ 8 Colo. Code Regs. § 1505-6:10.7.

²⁷ *Id.*

²⁸ *See, e.g.*, Cal. Gov’t Code §§ 84304 (prohibiting anonymous contributions of \$100 or more); 84301 (requiring contributions to be made in contributor’s legal name); 84391 (barring contributions from lobbyists to elected official or candidate that lobbyist is registered to lobby); 85320 (proscribing contributions from “foreign principals” and “foreign governments”).

²⁹ Cal. Gov’t Code § 82015(a); *see also* 2 Cal. Code Regs. § 18215(a) (“A contribution is any payment made for political purposes for which a donor does not receive full and adequate consideration.”).

³⁰ Cal. Gov’t Code § 82044 (emphasis added).

³¹ Cal. Code Regs. § 18215(a) (explaining when a payment is made for “political purposes”).

Although its digital underpinning is unique, cryptocurrency presents some of the same enforcement challenges as cash contributions. Like cash, cryptocurrency offers a “facile[]medium for unethical and illegal activities” because of its “untraceability and easy transferability.”³² For instance, unlike contributions made by check or credit card, a bitcoin contribution requires only a bitcoin address, “which does not contain any personal identifying information.”³³ Thus, the inability to uncover the actual source of a cryptocurrency contribution with standard audit mechanisms could facilitate a range of unlawful conduct.³⁴ Since cryptocurrency systems allow users to create an unlimited number of addresses for transactions, they readily furnish a means for unscrupulous donors to funnel excess contributions through straw donor transactions.³⁵ Moreover, cryptocurrency could provide a relatively simple method for foreign entities and other prohibited sources to direct money into California elections surreptitiously.³⁶

In light of these similarities between digital currency and cash, we recommend that the FPPC adopt Option 1 in the Proposed Regulation, which would regulate cryptocurrency contributions like cash and subject them to a \$100 limit per donor.³⁷ Additionally, Option 1 would require the recipient of a cryptocurrency contribution to convert it to U.S. dollars and deposit the proceeds into the committee’s bank account within two days of receipt. Of the options under consideration, the approach in Option 1 would most appropriately balance the need for heightened regulation of cryptocurrency with the interests of donors and political committees seeking to make and receive contributions of digital currency. Option 1’s conversion and reporting requirements likewise would ensure that committees promptly convert cryptocurrency into an accountable form, and disclose its value at the time of receipt. Accordingly, we believe Option 1 presents the best policy to address cryptocurrency contributions that is consistent with the PRA.³⁸

As an alternative, the FPPC has proposed regulating cryptocurrency donations as “in-kind contributions” under Option 2 of the Proposed Regulation. However, because cryptocurrency qualitatively differs from other types of in-kind support, we believe Option 2 is an ill-advised approach. Cryptocurrency is dissimilar from the consumable goods commonly donated to campaigns as nonmonetary contributions, such as computers and office equipment. Unlike consumable goods,

³² 120 Cong. Rec. 7832 (1974) (statement of Rep. Boland).

³³ GAO report, *supra* note 4, at 8.

³⁴ As the FEC’s advisory opinion noted, “a bitcoin user’s real-life identify, IP address, and even country of operation, cannot be reliably traced to a real human by an auditor of ordinary technical skill.” FEC AO, *supra* note 12, at 2.

³⁵ See Cal. Gov’t Code § 84302 (“No contribution shall be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes.”).

³⁶ *Id.* § 85320 (prohibiting contributions and expenditures by “foreign principals” or “foreign governments” in California elections).

³⁷ “No contribution of one hundred dollars (\$100) or more shall be made or received in cash.” *Id.* § 84300(a).

³⁸ Note that three FEC commissioners would have voted to regulate bitcoin contributions like cash under federal election law. See Statement of Vice Chair Ann M. Ravel & Comm’rs. Steven T. Walther & Ellen L. Weintraub on Fed. Election Comm’n Advisory Op. 2014-02 (May 8, 2014), <https://www.fec.gov/files/legal/aos/2014-02/1256453.pdf>.

which the recipient committee uses directly, cryptocurrency is “a digital representation of value that functions as a medium of exchange”;³⁹ in other words, cryptocurrency’s main use is to purchase goods and services. Cryptocurrency’s primary function as a medium of exchange also distinguishes it from stocks, bonds, and other securities necessitating liquidation before they can be used to make campaign expenditures. Option 2’s approach therefore fails to account for cryptocurrency’s principal usage as a form of electronic cash, which differentiates it from other types of in-kind support.

Like Option 2, Option 3 would regulate donations of cryptocurrency as in-kind contributions; however, this option also would allow a candidate committee to maintain and spend cryptocurrency separately from its campaign bank account. We believe this option facially conflicts with the PRA’s “one-bank account rule.” Government Code Section 85201 requires California candidates who intend to raise or spend \$2,000 or more to establish “one campaign contribution account at an office of a *financial institution located in the state*.”⁴⁰ The statute further stipulates that all contributions made to a candidate must be deposited in the campaign account, and all expenditures by the candidate must be made from the account.⁴¹

Since cryptocurrency accounts are not maintained “at an office of a financial institution” in California, a candidate’s establishment of a bitcoin wallet would be incompatible with Section 82501. Additionally, Option 2 does not comport with Section 85201’s clear requirement that all contribution and expenditure activity by a candidate’s campaign go through a single account. While FPPC regulations do permit candidates to maintain certain funds outside of their campaign accounts for investment purposes, candidates must deposit these funds into their campaign accounts prior to making any expenditures.⁴² Option 3 would go far beyond the narrow FPPC rule for investments, though, by sanctioning candidates’ sustained use of cryptocurrency accounts, such as bitcoin “wallets,” for campaign expenditures. In short, we are unable to ascertain a reasonable interpretation of Section 85201 that would allow candidates to use cryptocurrency accounts in the manner proposed by Option 3.

IV. Additional Recommendations

A. Valuation

In the Proposed Regulation, all three options specify that cryptocurrency’s valuation is “the fair market value of the cryptocurrency at the time the contribution is made.” However, cryptocurrencies are volatile and exchange rates can fluctuate substantially within short periods of time.⁴³ In recognition of the medium’s volatility,

³⁹ Internal Revenue Service, Notice 2014-21(2014), <https://www.irs.gov/pub/irs-drop/n-14-21.pdf>.

⁴⁰ *Id.* § 85201(a).

⁴¹ *Id.* §§ 85201(c), (e); 2 Cal. Code Regs. § 18524(a).

⁴² 2 Cal. Code Regs. § 18524(b).

⁴³ See David Meyer, *Bitcoin’s Latest Price Crash May be Over. But There’s Still Reason To Worry*, FORTUNE, June 14, 2018, <http://fortune.com/2018/06/14/bitcoin-crash-over-for-now/> (“Bitcoin’s price fell from more than \$7,600 on Sunday to little over \$6,100 on Wednesday, marking a

the FPPC should clarify in the final rule how committees should determine a cryptocurrency contribution's fair market value, prevailing rate of exchange, and the timing of receipt.

The public exchange rate of a particular cryptocurrency to U.S. dollars offers an objective measure to determine both the fair market value of the cryptocurrency contribution and its prevailing rate of exchange. For example, in its 2014 advisory opinion, the FEC advised recipients to value bitcoin contributions based on the public exchange rate of bitcoin to U.S. dollars provided by the entity processing the bitcoin contribution.⁴⁴ If no exchange rate was given by the processing entity for the transaction, the FEC concluded that the PAC could rely on a "reasonable exchange rate of bitcoins for dollars" provided on a high-volume public exchange open to transactions in the U.S.⁴⁵

Regarding timing, all three options in the Proposed Regulation state that a cryptocurrency contribution's value is determined "at the time the contribution is made." However, the final rule should clarify this timing element to ensure a contemporaneous and accurate valuation is made. For instance, the rule could explain that a cryptocurrency contribution is made on the *date* that the recipient committee obtains the cryptocurrency. This approach to valuation is consistent with the FPPC's requirements for disclosing contributions received via the internet and other electronic means.⁴⁶

B. Reporting of Transactions

Options 1 and 2 in the Proposed Regulation require a political committee to liquidate cryptocurrency and deposit the proceeds into its campaign account within two days of the contribution's receipt. However, a committee's receipt and the subsequent liquidation of cryptocurrency often will entail separate transactions: the initial receipt of the cryptocurrency from a donor, and the subsequent conversion of the cryptocurrency to U.S. dollars through an exchange.

four-month low for a virtual currency that has already fallen precipitously from its almost-\$20,000 high last December.").

⁴⁴ FEC AO, *supra* note 12, at 6-7. For example, through the popular bitcoin processor Bitpay, a contributor could choose to convert a bitcoin donation to U.S. dollars, at a rate set by Bitpay, at the time of the transaction. Alternately, Bitpay permits a bitcoin recipient to denominate the value of the bitcoin received, in U.S. dollars, with a rate of conversion established at the time of the transaction, even if the contribution is received in the form of bitcoin. *About Bitpay*, <https://bitpay.com/about/> (last visited Sept. 18, 2018).

⁴⁵ FEC AO, *supra* note 12, at 7.

⁴⁶ 2 Cal. Code Regs. § 18421.1(e) ("[A] monetary contribution made through wire transfer, credit card transaction, debit account transaction or similar electronic payment option (including those made via the Internet) is 'received' on the date the candidate or committee . . . obtains possession or has control of the debit/credit account information or other payment information by which the contribution is made, or *on the date the candidate or committee . . . obtains possession or has control of the funds*, whichever is earlier.")(emphasis added); *id.* § 18421.3(b)("[T]ext message contributions are received on the date that a mobile fundraising vendor, acting as agent of the candidate or committee, *obtains possession or control of the contributions.*") (emphasis added).

In records and reports, political committees should account for both of these transactions. The initial receipt of cryptocurrency should be treated as a direct contribution, whether cash or in-kind, made by the donor; any fees deducted from the contribution by the transaction's processor should not be subtracted from the total value of the contribution.⁴⁷ The subsequent liquidation of the cryptocurrency then should be recorded as a subsequent transaction, with the proceeds constituting a separate receipt. Only the initial transaction should be attributable to the original donor as a contribution, while proceeds from the liquidation transaction should be recorded as "other receipts" attributable either to the purchaser of the cryptocurrency, if known, or to the exchange that converted the cryptocurrency to U.S. dollars, if the purchaser is unknown.⁴⁸

C. Recordkeeping & Contributor Information

The PRA requires candidates and treasurers of political committee to maintain "detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to otherwise comply" with state law.⁴⁹ In its corresponding regulation, the FPPC has interpreted these recordkeeping duties to include the collection of detailed information for each contribution received between \$25 and \$99, including the date and amount of the contribution along with the name and address of its source.⁵⁰ For a contribution of \$100 or more, a committee's records must also include the occupation and employer of the contributor.⁵¹ Importantly, this type of recordkeeping helps to facilitate compliance as well as audits of political committees' financial activities.

The inherent anonymity of cryptocurrency transactions is not conducive to recordkeeping requirements under California law. If the FPPC permits cryptocurrency contributions, the agency should determine how a political committee should collect the information necessary to meet the PRA's recordkeeping requirements.

Notably, the FEC addressed similar questions about recordkeeping in 2014. In its advisory opinion request, the FEC approved a bitcoin recipient's proposal to take specific measures to collect information required by federal law and to ensure

⁴⁷ Similarly, FPPC regulations specify that any fees deducted by a vendor or agent collecting contributions on behalf of a committee are *not* deducted from the total amount of each contribution. 2 Cal. Code Regs. § 18421.3(a).

⁴⁸ 2 Cal. Code Regs. § 18401.1; FPPC Form 460, *Recipient Committee Campaign Statement*, <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Forms/460.pdf>. This approach would be similar to the FPPC's recordkeeping requirements for sales of corporate stock, which are grouped under Schedule I as "Miscellaneous Increases to Cash." Fair Political Practices Comm'n, Campaign Manual 1, Chapter 4.17 (Aug. 2018), http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Manuals/Manual_1/Manual-1-Chapter-4-Contributions.pdf.

⁴⁹ Cal. Gov't Code § 84104.

⁵⁰ 2 Cal. Code Regs. § 18401(a)(2).

⁵¹ *Id.* § 18401. On a recipient committee's reports, contributors of \$100 or more must be itemized. Cal. Gov't Code § 84211(f).

the legality of bitcoin contributions.⁵² That proposal chiefly involved providing “a unique linked address by which an individual may make a bitcoin contribution *only after* that contributor provides his or her name, physical address, and employer, and affirms that the contributed bitcoins are owned by him or her and that the contributor is not a foreign national.”⁵³ The FEC concluded that this procedure fulfilled the PAC’s legal duties under federal law to collect information about its contributors.⁵⁴

As it considers the regulation of cryptocurrency, the FPPC should assess whether to establish a similar procedure for collecting information from contributors of cryptocurrency. The resulting procedure could function as either a safe harbor option or as a regulatory mandate. Whether it is detailed in the Proposed Regulation or through the advisory opinion process, the FPPC should start to weigh how it will approach recordkeeping for cryptocurrency donations.

D. Refund of Illegal Contributions

As part of its final rule, the FPPC should consider detailing the procedure for committees to return illegal or excessive cryptocurrency contributions. Many cryptocurrency transactions are irreversible, and it may be difficult or impossible for a political committee to return an illegal or excessive donations of cryptocurrency in a digital form.⁵⁵ Hence, the FPPC should formulate regulatory guidelines for committees to refund or disgorge illegal contributions of cryptocurrency in an equivalent dollar amount, or in digital form if feasible.⁵⁶ The PRA’s governance of excessive cash contributions could provide a useful framework for this process.⁵⁷

Conclusion

We thank the FPPC for considering our recommendations for its final rule, and we applaud the agency’s decision to address cryptocurrency contributions through the rulemaking process. In conclusion, we would be happy to answer questions or provide additional information to assist the FPPC’s development of cryptocurrency regulations.

Respectfully submitted,

/s/

Austin Graham,
Legal Counsel

⁵² MYL PAC Advisory Opinion Request re. Bitcoin contributions (Feb. 10, 2014), <https://www.fec.gov/files/legal/aos/2014-02/1251666.pdf>.

⁵³ FEC AO, *supra* note 12, at 5.

⁵⁴ *Id.*

⁵⁵ Lansky, *supra* note 5, at 25.

⁵⁶ *See* FEC AO, *supra* note 12, at 6.

⁵⁷ *See* Cal. Gov’t Code § 84300(a).