



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

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

**Subject:** Cryptocurrency Research and Proposed Regulation 18215.4

**Date:** September 10, 2018

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### **Executive Summary**

At the Commission's request, staff presents research providing an overview of cryptocurrency, the approaches that other jurisdictions have taken concerning campaign contributions in cryptocurrency. Additionally, staff has prepared alternative drafts of a regulation to address the use of cryptocurrencies for campaign contributions and expenditures for the Commission's consideration. These alternatives include:

- Option One prohibits all contributions in cryptocurrency.
- Option Two permits cryptocurrency contributions as cash contributions, limited to contributions of less than \$100 from any source, and requiring cryptocurrency contributions to be converted to cash upon receipt and deposited into the campaign bank account.
- Option Three permits cryptocurrency contributions as in-kind contributions, but requires that the contributions be converted to cash upon receipt and deposited into the campaign bank account.
- Option Four permits cryptocurrency contributions as in-kind contributions, without requiring conversion to cash, and allows committees to make contributions to maintain a separate cryptocurrency account and make expenditures from the account.

### **Background/Overview**

The Political Reform Act ("Act")<sup>1</sup> prohibits persons from making, and committees from receiving, cash contributions of \$100 or more. Committees are also prohibited from making expenditures of \$100 or more in cash. Section 84300 provides:

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. All further statutory references are to the Government Code. The regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations.

“(a) No contribution of one hundred dollars (\$100) or more shall be made or received in cash. A cash contribution shall not be deemed received if it is not negotiated or deposited and is returned to the contributor before the closing date of the campaign statement on which the contribution would otherwise be reported. If a cash contribution, other than a late contribution, as defined in Section 82036, is negotiated or deposited, it shall not be deemed received if it is refunded within 72 hours of receipt. In the case of a late contribution, as defined in Section 82036, it shall not be deemed received if it is returned to the contributor within 48 hours of receipt.

“(b) No expenditure of one hundred dollars (\$100) or more shall be made in cash.

“(c) No contribution of one hundred dollars (\$100) or more other than an in-kind contribution shall be made unless in the form of a written instrument containing the name of the donor and the name of the payee and drawn from the account of the donor or the intermediary, as defined in Section 84302.

“(d) The value of all in-kind contributions of one hundred dollars (\$100) or more shall be reported in writing to the recipient upon the request in writing of the recipient.”

Additionally, Section 85201 provides that all contributions or loans made to a candidate, or the candidate’s controlled committee, shall be deposited into a single campaign bank account. This is typically, referred to as the “one-bank account” rule.

In light of the restrictions on cash contributions and expenditures as well as the one-bank account rule, a question has arisen as to the permissible use of cryptocurrencies, such as bitcoin, for campaign contributions and expenditures. While cryptocurrencies share some characteristics of cash, they are a relatively modern form of currency and not issued by a governmental entity.

### **Proposed Regulation 18215.4**

Addressing the use of cryptocurrencies for campaign contributions and expenditures, staff has prepared alternative drafts of proposed Regulation 18215.4 for the Commission’s consideration. These alternatives are intended to encompass the various approaches used in other jurisdictions to address cryptocurrency issues, as discussed below.

#### **Option One: Prohibit any and all contributions in cryptocurrency.**

This option is consistent with the advice currently contained in the “Campaign Activity” FAQs, adopted in 2014, which states that “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....” As a complete prohibition, this option would not need to address expenditures, and eliminates any concern over the traceability of cryptocurrency contributions.

Option Two: Regulate cryptocurrency contributions like cash contributions.

This option restricts cryptocurrency contributions to less than \$100 per source. This option also requires cryptocurrency contributions to be converted to U.S. dollars and deposited into the campaign bank account.

In allowing cryptocurrency contributions not exceeding the \$100 cash contribution limit, this option would be consistent with FEC's Advisory Opinion 2014-02. Option Two also alleviates issues with traceability because only small cryptocurrency contributions may be received and the contributions must be converted to cash upon receipt and deposited into the campaign bank account.

Option Three: Permit cryptocurrency contributions as in-kind, or non-monetary, contributions requiring committees to convert contributions to cash upon receipt.

Under this option, cryptocurrency contributions may be accepted in any amount not exceeding any applicable contribution limit. However, Option Three does require that cryptocurrency contributions are converted to cash upon receipt and deposited into the campaign bank account.

Like Option Two, this option is consistent with the "one bank account rule," which generally requires all contributions to be deposited in, and all expenditures must be made from, a single designated campaign bank account. Requiring cryptocurrency contributions to be deposited into the campaign bank account, and not allowing committees to maintain a bitcoin wallet, alleviates some traceability concerns helping to ensure that all campaign expenditures are "fully and truthfully disclosed" and that "adequate enforcement mechanisms" exist to verify that expenditures are properly reported.<sup>2</sup>

Option Four Permit cryptocurrency contributions, without requiring conversion to cash, and allow committees to make contributions to other committees and expenditures for goods and services, with these funds.

This option would allow for the broadest use of cryptocurrency, including the payment of expenditures. However, allowing committees to maintain separate cryptocurrency accounts is inconsistent with the one bank account rule and would severely thwart enforcement efforts. Not only will it will be extremely difficult to identify to source of any particular contribution given the very nature of cryptocurrency transactions, the Enforcement Division would also face substantial hurdles in even accessing a committee's cryptocurrency accounts giving the large number of different cryptocurrencies in circulation and the possibility the account is located outside of California or the United States. For these reasons, staff recommends against Option Four.

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<sup>2</sup> Section 81002.

## Cryptocurrency

Currency (also referred to as “real” currency) is “the coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance.”<sup>3</sup> In contrast to real currency, “virtual” currency is a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction, is not backed by a governmental body, and is entirely digital.<sup>4</sup> In contrast, the Internal Revenue Service has taken the position that virtual currencies that can be converted into traditional currency are property for tax purposes, and a taxpayer can have a gain or loss on the sale or exchange of a virtual currency.<sup>5</sup>

As of September 4, 2018, there are 2,216 different virtual currencies, with more being created regularly. (There were less than 1,600 in early March of this year).<sup>6</sup> Of these many virtual currencies, bitcoin is perhaps the most well-known, although there are also other cryptocurrencies that are now being more widely used.

### Bitcoin

Bitcoin is a privately issued currency that was created in 2009.<sup>7</sup> Bitcoins are purely digital, “exist[ing] only as a long string of numbers and letters in a user’s computer file.” Bitcoins “act as real world currency in that users pay for real goods and services . . . with bitcoins as opposed to U.S. dollars or other government issued currencies.” A user transfers bitcoins from the user’s online bitcoin “wallet” (essentially, an encrypted computer file) either to other users, to merchants who accept bitcoins as payment, or through “[t]hird-party exchanges [that] allow bitcoin users to exchange their bitcoins back to government-issued currencies.”<sup>8</sup> The value of bitcoins is established by exchanging them for goods or services or for U.S. dollars or other currency. There are numerous online exchanges on which potential buyers and sellers of bitcoins post “bid” and “ask” prices akin to those on securities or commodities exchanges. Although a single bitcoin is currently valued in the thousands of dollars (approximately \$7,400 as of September 4, 2018), bitcoin can be divided into smaller amounts, up to 8 decimal places (0.00000001), to facilitate lower value transactions.<sup>9</sup>

### Block Chain and Traceability

The traceability of bitcoin transactions is cause for concern. Each bitcoin transaction is public in that it is added to a “block chain,” which is a public ledger of all bitcoin transactions

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<sup>3</sup> 31 CFR § 1010.100(m).

<sup>4</sup> Department of the Treasury, Financial Crimes Enforcement Network, FIN-2013-G001.

<sup>5</sup> [IRS Notice 2014-21](#).

<sup>6</sup> Listing of actively traded cryptocurrencies. <https://www.investing.com/crypto/currencies>.

<sup>7</sup> U.S. Gov’t Accountability Office, GAO-13-516, Virtual Economies and Currencies 5 (2013), available at: <https://www.gao.gov/assets/660/654620.pdf>.

<sup>8</sup> FEC Advisory Opinion 2014-02.

<sup>9</sup> *Frequently Asked Questions*, Bitcoin. <https://bitcoin.org/en/faq>.

ever made. However, the block chain only identifies the bitcoin addresses<sup>10</sup> to and from which bitcoins are transferred. The identities of individuals making transactions are not provided. Indeed, a bitcoin user's personal identity, IP address, and even country of operation "cannot be reliably traced to a real human by an auditor of ordinary technical skill." Moreover, a bitcoin user may control any number of bitcoin addresses. The requestor indicates that "[k]nowing that a given [b]itcoin transaction comes from a specific person depends primarily on asking them and just trusting their response."<sup>11</sup> Strictly speaking, bitcoins are nothing more than amounts associated with addresses, unique strings of letters and numbers.

Tracking bitcoin users has proven difficult at best. According to the Internal Revenue Service ("IRS"), only 802 individuals declared bitcoin related profits or losses on tax filings in 2015. As it is clear that the majority of bitcoin users are not declaring bitcoin income for tax purposes, the IRS has been forced into litigation against third-party services that facilitate bitcoin transactions attempting to compel the services into turning over customer information and transaction history.<sup>12</sup> Additionally, the IRS has had to contract with a third-party software vendor in an attempt to track and analyze bitcoin transactions.<sup>13</sup>

## **Cryptocurrency Contributions in other Jurisdictions**

### Federal Election Commission

In 2014, the Federal Election Commission ("FEC") issued an advisory opinion regarding the issue of political campaigns accepting bitcoin contributions. Make Your Laws PAC, Inc. ("MYL") requested an advisory opinion from the FEC concerning the PAC's proposed acceptance, purchase, and disbursement of bitcoins under the Federal Election Campaign Act of 1971. In the FEC Advisory Opinion 2014-02, May 8, 2014, MYL proposed to accept up to a total of \$100 in bitcoins as contributions to its contribution and non-contribution accounts and accept the bitcoins only through an online form on which each bitcoin contributor, regardless of the proposed contribution amount, would have to provide his or her name, physical address, occupation, and employer. MYL also requested that each bitcoin contributor affirm that he or she owned the bitcoins that he or she will contribute and to affirm that he or she is not a foreign national. MYL noted that only after the bitcoin contributor had provided identity and ownership information, and associated affirmations, will the committee send that contributor a one-time only "linked address," a bitcoin address that identifies the individual transaction, to use to send the bitcoins.

Because FEC advisory opinions are official Commission responses to questions regarding the application of federal campaign finance law to specific factual situations and MYL only asked for an opinion regarding the acceptance of bitcoin contributions up to a total of \$100, the

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<sup>10</sup> A *Bitcoin address* is an identifier of 26-35 alphanumeric characters, beginning with the number 1 or 3, that represents a possible destination for a bitcoin payment.

<sup>11</sup> FEC Advisory Opinion 2014-02.

<sup>12</sup> *Only 802 People Told the IRS About Bitcoin—Lawsuit*, Fortune. (March 19, 2017), <http://fortune.com/2017/03/19/irs-bitcoin-lawsuit/>.

<sup>13</sup> *IRS Now Has a Tool to Unmask Bitcoin Tax Cheats*, Daily Beast (August 22, 2017), <https://www.thedailybeast.com/irs-now-has-a-tool-to-unmask-bitcoin-tax-cheats>.

FEC decided only that a \$100 contribution limit per person and per electoral cycle was acceptable. Therefore, the FEC opinion did not specifically address larger bitcoin contributions. In addition, the Commission could not reach a consensus regarding whether MYL may purchase goods and services with bitcoins it receives as contributions.

As a result of FEC Advisory Opinion 2014-02, under current federal campaign rules:

- A committee can receive bitcoins as contributions. The Act defines a “contribution” to include “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” The Commission concluded that bitcoins are “money or anything of value” within the meaning of the Act.
- Bitcoins may be received into and held in a bitcoin wallet until the committee liquidates them. Holding bitcoins in a bitcoin wallet does not relieve the committee of its obligations to return or refund a bitcoin contribution that is from a prohibited source, exceeds the contributor’s contribution limit, or is otherwise not legal.
- However, committees cannot use bitcoins to purchase goods or services. Committees must sell the bitcoins and deposit the proceeds into the campaign depository before using the funds to make disbursements for goods and services.
- If the committee sells the bitcoins through an established market mechanism where the purchaser is not known, the purchaser is not considered to have made a contribution to the committee. If the committee sells the bitcoins directly to a purchaser, and therefore knows the identity of the purchaser, the purchaser is considered to have made a contribution to the committee.
- A political committee that receives a contribution in bitcoins should value that contribution based on the market value of bitcoins at the time the contribution is received.

Notably, the FEC had previously considered other broader approaches for governing bitcoin contributions but could not reach a consensus. In 2013, the FEC received a request for an advisory opinion from a committee that wished to accept bitcoin contributions, as well as retain the bitcoins it receives in its bitcoin wallet for later disposition. The committee intended to either sell bitcoins at a later date, spend them directly to purchase goods and services, or use them to make contributions to other political committees. The FEC could not reach a consensus concerning cryptocurrency contributions, and did not approve any of the following proposed draft opinions:

- Draft A stated that the Commission concludes that bitcoins are not “money” within the meaning of Commission regulations, and that a committee may accept bitcoins as in-kind contributions under valuation, reporting, and disbursement procedures, but may not make disbursements using bitcoins. Instead the committee must sell its bitcoins and deposit the proceeds in its campaign bank account.

- Draft B stated that the Commission need not determine whether bitcoins fit within the definition of “money” as set forth in Commission regulations to resolve the opinion request, and that a committee may accept bitcoins as in-kind contributions under valuation, reporting, and disbursement procedures, but may not make disbursements using bitcoins. Instead the committee must sell its bitcoins and deposit the proceeds in its campaign bank account.
- Draft C stated that the committee may accept bitcoins as in-kind contributions under valuation, reporting, and disbursement procedures, and may also contribute bitcoins to other federal political committees as in-kind contributions within the applicable source prohibitions and amount limitations. The committee may not, however, make disbursements for the purchase of goods and services using bitcoins. Instead the committee must sell its bitcoins and deposit the proceeds in its campaign bank account.
- Draft D stated that the committee may accept bitcoins as in-kind contributions under valuation, reporting, and disbursement procedures, and may also use bitcoins it receives to purchase goods and services or to make contributions to other committees.

#### Washington. D.C.

In March 2015, the District of Columbia Board of Elections adopted administrative rule, 3 DMCR §3008.10.

Under this rule, cryptocurrency is allowed as an in-kind contribution, and assessed at the current local fair market value at the time of the contribution. It must be reported as received at the date it is liquidated into U.S. dollars. Any charge incurred or discount received in the exchange process must be reported in the same manner as credit card transactions. If the liquidated amount exceeds contribution limits, a refund check for any liquidated amount exceeding the contribution limit must be issued to the contributor.

#### Colorado

In July 2018, Colorado adopted Rule 10.7, allowing cryptocurrency campaign contributions which states, “A committee may accept contributions in cryptocurrency, up to the acceptable limit for a cash or coin contribution [\$100]. The amount of the contribution is the value of the cryptocurrency at the time of the contribution. The committee must report any gain or loss after the contribution as other income or receipts.”

This rule was codified in the Code of Colorado Regulations as 8 CCR 1505-6, and is included in the Colorado Secretary of State’s Rules to Campaign and Political Finance Guide.

#### Kansas

In October 2017, the Kansas Governmental Ethics Commission (“GEC”) considered a request from a candidate who inquired about the legality of accepting bitcoin contributions. The

GEC did not issue a formal written opinion, but stated that “the digital currency known as bitcoin is too secretive to be allowed as a form of campaign contributions in state and local elections.”

Commissioner Jerome Hellmer suggested that bitcoin could have a more detrimental effect on elections than alleged Russian interference had on the 2016 U.S. presidential election. “The greatest problem would be the strong probability of the influencing of local elections by totally unidentifiable lobbyists trying to come in,” he said. “If you think the Russians affected the presidential elections, just wait. This is what’s going to happen.”

Commissioner Hellmer added that bitcoin’s opacity is antithetical to the “transparency” that elections commissions are supposed to ensure. “It’s totally contrary to the transparency we’re asking for our political system to provide to the public,” he concluded.<sup>14</sup>

### Montana

In January 2014, the Montana Commissioner of Political Practices issued a written administrative advisory opinion in response to a request by a candidate regarding the use of bitcoin. The opinion states that Montana law does not allow a candidate to maintain a bitcoin wallet for accumulation of resources and to pay for services. Montana law requires “one primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate ...” §13-37-205 MCA. A proper depository is limited to a “bank, credit union, savings and loan association, or building and loan association authorized to transact business in Montana.” *Id.* The bitcoin wallet does not qualify as such a depository.

Montana law allows acceptance of a bitcoin contribution by a campaign, as a contribution includes “anything of value.” §13-1-101(7) MCA. The bitcoin, however, must be valued and converted to U.S. Dollars or used to purchase some service or product (the value of the service or product is then reported as “in-kind” value) upon receipt. This must be done in order to provide a definite value for the purpose of disclosure and measuring conformance to campaign contribution limits. Once a bitcoin is converted to U.S. Dollars, those U.S. dollars may be placed in the depository. A bitcoin contribution must follow all rules applicable to contributions including timely disclosure, timely reporting, adherence to the applicable limitation on amount contributed and conformance to the prohibition on corporate contributions.

The campaign treasurer is required to keep “detailed accounts of all contributions received and all expenditures made.” §13-37-208 MCA. In an administrative rule adopted in 2016, Montana requires that a contribution made in bitcoin or other electronic peer-to-peer systems, must be converted to U.S. dollars at the prevailing rate within twenty-four hours of receipt. (Mont. Admin. R. 44.11.408).

### Oregon

In August 2018, Oregon adopted a rule permitting bitcoin contributions. Secretary of State Dennis Richardson claimed that the change would “expand participation” in state elections.

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<sup>14</sup> *Worse Than ‘the Russians’: Kansas Panel Prohibits Bitcoin Campaign Contributions*, CNN (October 27, 2017) <https://www.cnn.com/worse-than-the-russians-kansas-panel-prohibits-bitcoin-campaign-contributions/>.



“Cryptocurrency is here to stay, and Oregon needs to adapt to that reality by allowing this new form of donating,” Richardson said. “Allowing cryptocurrency to be a part of our elections process is a new and innovative way to expand participation in Oregon elections.”<sup>15</sup>

Oregon State Treasurer Tobias Read, feared the change could make the state’s campaign finance system less transparent stating that cryptocurrency could potentially let people more easily use straw donors to conceal their contributions, a crime, due to cryptocurrency’s secretive nature. “Cryptocurrency is by its nature opaque,” Read said, in a prepared statement. “Oregonians want clean, transparent, accountable and open elections and the two would seem to be at odds with each other.”<sup>16</sup>

Oregon’s cryptocurrency contribution rules were adopted by the Oregon Secretary of State’s office, and included in the most recent Campaign Finance Manual. They state that if a person contributes stock to a committee or cryptocurrency, the contributor is the person that is giving the stock or cryptocurrency to the committee. The contribution amount is the market value of the stock or cryptocurrency the day it is received. A committee may not make expenditures using cryptocurrency.

If the stock or cryptocurrency is sold for more than the amount originally reported as a contribution, the difference is reported as an “Other Receipt” using subtype “Interest/Investment Income.” If it is sold for less than the amount originally reported the difference is reported as an “Other Disbursement” using subtype “Investment Lost.”

### South Carolina

In South Carolina, the House Legislative Ethics Committee (“Committee”) received a request from a House Candidate for an advisory opinion questioning whether he or she may receive campaign contributions in the form of bitcoin. The candidate explained that he or she has a supporter who has asked to contribute in cryptocurrency to the candidate’s campaign as the supporter is paid and purchases primarily using bitcoin. The candidate noted that the potential supporter deals chiefly in bitcoin whereby most transactions for which he needs U.S. dollars are taxed for capital gains at exchange. In April 2018, the Committee found that bitcoin may not be accepted as a campaign contribution.

In reaching this conclusion, the Committee stated that:

“The S.C. Ethics Act Section 8-13-100(9) provides the following definition for ‘contribution’:

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<sup>15</sup> *Oregon could open campaigns to cryptocurrency donations*, Portland Tribune (June 27, 2018) <https://portlandtribune.com/pt/9-news/399267-294500-oregon-could-open-campaigns-to-cryptocurrency-donations>.

<sup>16</sup> *Sec. of State Richardson wants to let Oregon political campaigns accept cryptocurrency donations*, The Register-Guard (June 23, 2018) <https://www.registerguard.com/news/20180623/sec-of-state-richardson-wants-to-let-oregon-political-campaigns-accept-cryptocurrency-donations>.

“(9) ‘Contribution’ means a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit or money or anything of value made to a candidate or committee, as defined in Section 8-13-1300(6), for the purpose of influencing an election: or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge. ‘Contribution’ does not include volunteer personal services on behalf of a candidate or committee for which the volunteer receives no compensation from any source.”

The Commission went on to explain that current South Carolina law does not include “virtual” or “digital currency” in its definition of contribution. Thus, the Committee determined that it is not permissible for candidates for and Members of the South Carolina House of Representatives to receive campaign contributions in the form of bitcoin or other digital currency. The Committee notes that there are many issues that need to be resolved regarding the acceptance of bitcoin as a contribution to a political campaign for House office. Therefore, the Committee recommended that, should this practice be permitted in South Carolina, it should be done through legislation rather than through an ethics committee advisory opinion.

### Tennessee

State Senator Steve Dickerson introduced legislation to allow cryptocurrency contributions in early 2015, after the FEC issued its opinion permitting cryptocurrency contributions, stating “[t]hat ruling applies to federal elections. There was possible ambiguity as far as state races. This bill would remove any ambiguity.”<sup>17</sup>

In 2015, the state of Tennessee passed Section 2-10-113 which provides:

“(a) A candidate or political campaign committee is allowed to accept digital currency as a contribution. Digital 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.

“(b) Any increase in the value of digital currency being held by a candidate or political campaign committee shall be reported as interest on any statement filed pursuant to § 2-10-105.

“(c) A candidate or political campaign committee must sell any digital currency and deposit the proceeds from those sales into a campaign account before spending the funds.”

To allow for this change, the state also amended Section 2-10-1 02(4) to include “digital currency” in its definition of “contribution.”

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<sup>17</sup> *Tennessee Bill Aims to Clarify Bitcoin Campaign Donation Rules*, Coindesk (February 20, 2015), <https://www.coindesk.com/tennessee-bill-bitcoin-campaign-donations/>.

## Wisconsin

In May 2018, in response to a request for an opinion concerning the acceptance of cryptocurrency contributions, the Wisconsin Ethics Commission referred the matter to the Legislature because it found a contribution in cryptocurrency “does not appear to fit” the acceptable categories spelled out in statutes. The Commission wrote that as it stands, “allowing cryptocurrency contributions presents a serious challenge to the commission’s ability to ensure compliance with state law.”

The Commission’s request noted that Wisconsin law currently permits committees to accept contributions of money, tangible personal property, or services subject to certain requirements and restrictions. However, the Commission found that cryptocurrency does not appear to fit into any of these categories. Additionally, the Commission stated:

- The prior version of Wisconsin’s campaign finance law defined a contribution more broadly by including the words “or anything of value,” but the current law does not include such broad language.
- If the Legislature intends for cryptocurrencies like bitcoin to be contributed to Wisconsin committees, the Ethics Commission would advise a change to the statute to clarify whether cryptocurrencies may be accepted and if so whether such a contribution is to be treated as money, property, or something else entirely.
- While cryptocurrency may be more like money than tangible personal property due to its digital nature, the value of cryptocurrency can change significantly over a short period of time, and therefore, if it were to be treated as money the Legislature may wish to require such contributions to be valued promptly upon receipt to ensure that the contribution was not in excess of the statutory limits.
- If the Legislature considers cryptocurrency a type of property, it may wish to modify the definition of contribution to allow for contributions of intangible assets as well as require additional reporting of the disposition of cryptocurrency contributions as under current law committees would not have any obligation to further report on the use of the cryptocurrency once it was received.
- The Legislature should affirmatively address cryptocurrency issue due to the Ethics Commission’s concerns with cryptocurrency being used as a channel for anonymous or pseudonymous contributions. Under current law a committee is required to report the name and address of every contributor and may only keep up to \$10 of any anonymous contribution. While this requirement would continue if contributions of cryptocurrency were to be allowed, it is much easier for a potential bad actor to falsify his or her identity or channel multiple donations of cryptocurrency through strawman accounts than it is to do the same via cash contributions. As a cryptocurrency contributor’s real-life identity, IP address, or country of operation cannot be reliably traced with current technology, allowing cryptocurrency

contributions presents a serious challenge to the Commission's ability to ensure compliance with state law.

The Wisconsin Legislature has not yet passed legislation addressing cryptocurrency contributions.

**Attachment:**

**Proposed Regulation 18215.4 (Four Options)**

1 Adopt 2 Cal. Code Regs. Section 18215.4 to read:

2 [OPTION 1]

3 **§ 18215.4. Cryptocurrency Contributions.**

4 No contribution may be made or received in cryptocurrency.

5 Note: Authority cited: Section 83112, Government Code. Reference: Sections 84300 and  
6 85201, Government Code.

7 [OPTION 2]

8 **§ 18215.4. Cryptocurrency Contributions.**

9 (a) A cryptocurrency contribution shall be considered a cash contribution for  
10 purposes of the Act. Under Section 84300(a), a person may not make and a committee  
11 may not accept a contribution in cryptocurrency, of \$100 or more. The amount of the  
12 contribution is the fair market value of the cryptocurrency at the time the contribution is  
13 made.

14 (b) A cryptocurrency contribution must be converted to U.S. dollars at the  
15 prevailing rate of exchange and deposited into the committee's campaign bank account  
16 prior to expending the funds and within 2 business days of the receipt.

17 Note: Authority cited: Section 83112, Government Code. Reference: Sections 84300 and  
18 85201, Government Code.

19 [OPTION 3]

20 **§ 18215.4. Cryptocurrency Contributions.**

21 (a) A person may make and a committee may accept a contribution in  
22 cryptocurrency as an in-kind contribution. The amount of the contribution is the fair  
23 market value of the cryptocurrency at the time the contribution is made.

1 (b) A cryptocurrency contribution must be converted to U.S. dollars at the  
2 prevailing rate of exchange and deposited into the committee’s campaign back account  
3 prior to expending the funds and within 2 business days of receipt.

4 Note: Authority cited: Section 83211, Government Code. Reference: Sections 84300 and  
5 85201, Government Code.

6 [OPTION 4]

7 **§ 18215.4. Cryptocurrency Contributions.**

8 (a) A person may make and a committee may accept a contribution in  
9 cryptocurrency as an in-kind contribution. The amount of the contribution is the fair  
10 market value of the cryptocurrency at the time the contribution is made.

11 (b) A cryptocurrency contribution may be maintained, in the form received,  
12 separately from the committee’s campaign bank account. A committee may make  
13 expenditures using cryptocurrency, in the form received, without converting to U.S.  
14 dollars and depositing into the committee’s campaign bank.

15 (c) A cryptocurrency contribution may be converted to U.S. dollars at the  
16 prevailing rate of exchange. If converted, the funds must be deposited into the  
17 committee’s campaign back account prior to expending the funds and within 2 business  
18 days.

19 Note: Authority cited: Section 83211, Government Code. Reference: Sections 84300 and  
20 85201, Government Code.