



To:

Federal Election Commission
1050 First St., NE
Washington, DC 20463

Date:

Oct. 11, 2022

Re: Notice of Proposed Rulemaking on Technological Modernization

Coinbase Global, Inc. welcomes the opportunity to comment on the Federal Election Commission's (the "Commission") Notice of Proposed Rulemaking on Technological Modernization (2013-01, 2016-12, & 2022-18). Specifically, we focus our comment on "Contributions of Internet-Based Alternative Mediums of Exchange – 11 CFR §§ 102.10 & 103.3," and also on "Other Considerations in Electronic Contributions and Disbursements – 'Currency' and 'Cash' – 11 CFR § 110.4," both from the 2016 notice.

We applaud the Commission for recognizing the need to modernize its regulations. We believe that no conversation about technological modernization would be complete without consideration of crypto and blockchain technology. These technologies have grown immensely in their societal impact, and have a clear role to play in US elections. Crypto should be embraced by the Commission because of its ability to advance the Commission's dual-mandate of promoting political speech while also preventing corruption.

To that end, our responses to the three relevant questions encourage the Commission to amend its regulations in order to make clear that (1) in-kind contributions that cannot be deposited must not be held in a campaign depository account, (2) such assets that were accepted as in-kind contributions may be disbursed without having been placed in a campaign depository account, and (3) contributions made in crypto are not made in currency, and are not subject to the special contribution limits for currency.

We appreciate your thoughtful efforts to develop a regulatory framework for crypto assets, and we look forward to continued engagement.

Sincerely,

Christopher Edwards
Chief of Staff and Counsel to the Chief Policy Officer
Coinbase Global, Inc.



Introduction to Coinbase:

Coinbase plays an integral role in the global cryptoeconomy as the largest and only publicly-traded crypto exchange in the United States. Coinbase was founded in 2012 as an easy and trusted place to buy and sell Bitcoin. Since then, Coinbase has helped fuel the development of an entire industry with thousands of different blockchains, tokens, and projects. Today, we offer much more than Bitcoin trading, enabling millions of individuals, businesses, and developers to easily and securely invest, spend, save, earn, and use crypto. We currently make 219 assets available for trading and 341 assets available for custody on our platform, all of which undergo rigorous legal, compliance, and security review before being added to the platform. We have also invested in more than 300 teams and projects in recent years through Coinbase Ventures, building everything from layer 1 protocols, Web 3.0 infrastructure, centralized on-ramps, decentralized finance, NFTs, metaverse technologies, to developer tooling and more.

Our mission is to increase economic freedom in the world. To do that, we have worked to build a company that is the most trusted, secure, and compliant onramp to the cryptoeconomy. Our early focus on regulatory compliance, consumer protection, and innovation has helped drive growth in both our products and services and our consumer base. We are a leading provider of end-to-end financial infrastructure and technology for the cryptoeconomy. Coinbase Global, Inc. (COIN) is a public company registered with the SEC and began trading on the Nasdaq in April 2021. Our primary operating company, Coinbase, Inc., and our affiliates (collectively, "Coinbase") make up one of the largest digital asset financial infrastructure platforms in the world, including our exchange for digital assets.

We believe that crypto can and will be based on the following three pillars, which recognize crypto as:

1. **Investment.** We want to empower everybody to achieve economic freedom through investing in and using crypto. At Coinbase, we believe we can enable customers to buy, sell, and hold crypto in a safe, informed, and compliant way. The world of crypto has expanded far beyond Bitcoin to include assets with diverse use cases and characteristics, and we are working to give consumers the tools they need to make informed decisions.
2. **New financial system.** Crypto is opening up a new financial system. This means creating digital tools and services that enable people to engage in financial transactions, such as extending or receiving credit, using payment instruments,



and settling payment obligations, all in a safe, compliant way. Decentralized finance, smart contracts, and other new technologies will drive innovation and exponentially expand opportunities to improve our financial system in the U.S. and globally.

3. App platform. Crypto and blockchain technologies will provide the next app platform. Fundamental to crypto is the decentralization of ownership, which gives individuals the opportunity to develop new financial and non-financial applications, like non-fungible tokens (NFTs). Coinbase is building tools that both enable individuals, institutions, and app developers to plug into the existing crypto infrastructure to create new products, as well as benefit from the distribution and use of these products. By supporting both the development of and access to these new applications, Coinbase can help fuel the development of Web 3.0.

Modernizing Campaign Finance Rules Requires Meaningful Consideration of Crypto:

We applaud the Commission for requesting comments on the need for technological modernization in campaign finance, and for specifically identifying “internet-based alternative mediums of exchange,” like crypto, as an area worthy of consideration.

No discussion of modernizing campaign finance would be complete without a consideration of crypto, because crypto has become increasingly popular as a means of transferring value. According to an NBC news poll of 1,000 adults taken in March, 2022, 21% of US adults have used or invested in crypto at least once.¹ Crypto has become integrated into a number of facets of US commerce – Redfin reports that one in nine first-time homebuyers surveyed in the fourth quarter of 2021 sold cryptocurrency to help save for a down payment,² and Visa reported that customers made \$2.5 billion in payments with its crypto-linked cards in its fiscal first quarter of 2022.³ As of March 31, 2022, Coinbase had more than 98 million verified users around the world, including both retail and institutional customers.

¹ One in five adults has invested in, traded or used cryptocurrency, NBC News poll shows, Thomas Franck, CNBC, available at <https://www.cnbc.com/2022/03/31/cryptocurrency-news-21percent-of-adults-have-traded-or-used-crypto-nbc-poll-shows.html>.

² 12% of First-Time Homebuyers Say Selling Crypto Helped Save for Down Payment, Up From 5% in 2019, Lily Katz and Tim Ellis, Redfin News, available at <https://www.redfin.com/news/real-estate-cryptocurrency-down-payments/>.

³ Visa says crypto-linked card usage hit \$2.5 billion in its first quarter, Frank Holland, CNBC, available at <https://www.cnbc.com/2022/01/28/visa-says-crypto-linked-card-usage-hit-2point5-billion-in-its-first-quarter.html>.



This interest in crypto has similarly translated into an interest in using crypto to make political contributions. The National Republican Congressional Committee became the first major party committee to accept crypto contributions in 2021. A number of candidate campaign committees have similarly started accepting contributions in crypto; this includes incumbents and challengers alike, and candidates whose ideologies range across the political spectrum. During the 2022 campaign cycle, a number of major media outlets ran pieces specifically on the topic of making political contributions in crypto, including Forbes,⁴ NPR,⁵ CBS,⁶ and Thompson Reuters.⁷

Despite the explosive growth in cryptocurrency and the demonstrated interest in using it to make political contributions, most of the Commission's guidance on contributing in crypto stems from a single Advisory Opinion that was issued in 2014, which leaves real uncertainty as to how crypto can be used for political contributions. This Advisory Opinion ultimately fails to allow for relatively basic uses of the technology by the public and federal campaign committees.⁸ Of course, when this Advisory Opinion was drafted in 2014, crypto was in a much more nascent stage than it is today.

For these reasons, we address the following questions posed in the "*Contributions of Internet-Based Alternative Mediums of Exchange – 11 CFR §§ 102.10 & 103.3*" section of the 2016 Notice of Proposed Rulemaking:

- Should the Commission revise 11 CFR § 103.3 to clarify that all receipts by a political committee must be deposited in campaign depositories, except for in-kind contributions that cannot be deposited?
- Should the Commission revise 11 § CFR 102.10 to specify that a disbursement need not be made from a campaign depository if the asset being disbursed was not required to be deposited into a campaign depository?

We proffer that both questions be answered with an unequivocal "yes," and encourage the Commission to amend these rules accordingly.

⁴ *2022 Midterm Elections: Can You Donate Crypto to Politicians?*, Kelly Anne Smith & Benjamin Curry, Forbes Advisor, available at <https://www.forbes.com/advisor/investing/cryptocurrency/crypto-political-donations/>.

⁵ *Political donations by cryptocurrency are on the rise*, Ayesha Rascoe (host), NPR, available at <https://www.npr.org/2022/04/24/109453874/political-donations-by-cryptocurrency-are-on-the-rise>.

⁶ *Crypto campaign donations grow more popular, though state rules vary*, CBS News, available at <https://www.cbsnews.com/news/cryptocurrency-campaign-donation-rules-vary/>.

⁷ *Crypto contributions to US election campaigns require legal navigation*, Todd Ehret, Thompson Reuters, available at <https://www.thomsonreuters.com/en-us/posts/news-and-media/crypto-election-contributions/>.

⁸ See FEC Advisory Op. 2014-02 (Make Your Laws PAC) (May 8, 2014).



We also address the following question from the “*Other Considerations in Electronic Contributions and Disbursements – ‘Currency’ and ‘Cash’ – 11 CFR § 110.4*” section of the 2016 Notice of Proposed Rulemaking:

- If the Commission should revise its regulations to address internet-based alternative mediums of exchange, should the Commission treat contributions of internet-based alternative mediums of exchange in the same manner as it proposes to treat cash cards?

We proffer that this question be answered with an unequivocal “no.” We instead encourage the Commission to adopt regulations stating that crypto and digital assets are not cash or currency. We propose the Commission revise 11 CFR § 110.4, and add the following provision at 11 CFR § 110.4(c)(4), stating:

“Contributions made using internet-based alternative mediums of exchange, such as cryptocurrency or other digital assets, are not cash or currency contributions, and are not subject to the limit on cash contributions set forth in this section.”

These proposed changes will result in better adherence to both the spirit and letter of the Federal Election Campaign Act of 1971, as amended (the “Act”), for the reasons explained below.

Amending the Regulations as Proposed is Good Campaign Finance Policy:

United States election policy has long recognized the importance of political spending, and the intricate connection between political contributions and our constitutionally protected right to free speech. As the Supreme has recognized “[a] restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.”⁹

Crypto provides a new tool that empowers everyday citizens to engage in political speech by making political contributions. Anyone who has an internet connection can directly access crypto networks, and that access is not limited by race, gender, education, or socioeconomic status. While the financial system has long been inequitable for many populations, recent studies have shown that populations historically underrepresented in traditional finance are turning to the cryptoeconomy to find avenues for economic

⁹ *Buckley v. Valeo*, 424 U.S. 1, 19 (1976).



opportunity.¹⁰ This stands in contrast to the traditional financial system where Black and Hispanic communities are underrepresented.¹¹ Crypto allows for a fairer system, where the potential for discrimination and disparities is significantly reduced. Crypto is also in continuous operation, allowing transactions to be processed 24 hours a day, 365 days per year.

Simply put – crypto is more accessible than most traditional financial products. Allowing contributions to be made using crypto will thus allow a more diverse range of citizens to express their political preference via political contributions.

The majority of political contributions made today are made using credit cards and online money transmitters like Venmo and Paypal. While the use of these tools is widespread, they are not universal – the Federal Reserve Bank of Atlanta found that in 2020, 79% of US consumers had a credit card or charge card.¹² The exact same percentage used online banking tools, which are normally required in order to gain access to online money transmitters.¹³ While the majority of US citizens may have access to money transmission tools that are conventionally used to make political contributions, a meaningful contingent of the US population, representing up to 21% of citizens, do not. Most of these citizens are unbanked or underbanked. Crypto can help to solve this problem by providing easier access to financial services using crypto.

Despite the increased access crypto could provide to citizens to participate in the political process, the current Commission guidance on using crypto for political contributions is lacking. The Commission's primary guidance on the issue is a 2014 Advisory Opinion that stems from a request made by Make Your Laws PAC ("MYL PAC").¹⁴ In that matter, MYL

¹⁰ See 16% of Americans Say They Have Ever Invested in, Traded or Used Cryptocurrency, Andrew Perrin, Pew Research (Nov. 11, 2021), <https://www.pewresearch.org/fact-tank/2021/11/11/16-of-americans-say-they-have-ever-invested-in-traded-or-used-cryptocurrency/>.

¹¹ See Stocks are Soaring, and Most Black People are Missing Out, Stan Choe, AP News (Oct. 12, 2020), <https://apnews.com/article/virus-outbreak-race-and-ethnicity-business-us-news-ap-top-news-69fe836e19a8dfe89d73e8e4be6d480c>.

¹² The 2020 Survey of Consumer Payment Choice: Summary Results, Kevin Foster, Claire Greene, Joanna Stavins, Federal Reserve Bank of Atlanta, available at <https://www.atlantafed.org/-/media/documents/banking/consumer-payments/survey-of-consumer-payment-choice/2020/2020-survey-of-consumer-payment-choice.pdf>.

¹³ *Id.*

¹⁴ FEC Advisory Op. 2014-02 (Make Your Laws PAC) (May 8, 2014).



PAC wished to accept Bitcoin contributions up to \$100.¹⁵ MYL PAC also wished to purchase Bitcoin, sell it, and disburse Bitcoin to pay for expenses.¹⁶

The Commission ultimately approved MYL PAC receiving contributions in Bitcoin that were worth up to \$100, purchasing Bitcoin, and selling Bitcoin.¹⁷ But the Commission could not approve a response by the required four affirmative votes as to whether MYL PAC could purchase goods and services using Bitcoin.¹⁸

Perhaps more importantly, the Statements of Reasons published in that matter showed significant disagreement as to whether campaign committees were permitted to receive contributions in crypto worth more than \$100. The Statement of Reasons from Vice Chair Ravel and Commissioners Walther and Weintraub said that “the \$100 limitation on MYL’s acceptance of Bitcoins was a material aspect of this proposed transaction upon which we relied when joining MYL’s request.”¹⁹ That Statement of Reasons discussed provisions in the Act that limit cash contributions to \$100 per contributor per election, and concluded that Bitcoin should be treated similarly due to concerns about the anonymity of Bitcoin transactions. In so writing, the Commissioners cited to legislative history showing that Congress imposed the cash contribution limitation “because it was concerned that ‘cash offers too facile a medium for unethical and illegal activities’ due to ‘it’s untraceability and easy transferability.’”²⁰

The Statement of Reasons from Commissioner Goodman, however, took the opposite position, and said that the Commission lacks statutory authority to impose a \$100 limit on Bitcoin as a general rule.²¹

These differing perspectives create meaningful uncertainty as to how much a person may contribute in crypto to federal campaign committees. Further, the lack of definitive Commission guidance on whether committees can spend their crypto – an otherwise common practice among those who use crypto – creates a practical uncertainty about how campaign committees can use the crypto they receive. This uncertainty does nothing but hobble committees that wish to use crypto, and does not advance any of the

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 3, 7-8.

¹⁸ *Id.* at 8.

¹⁹ Statement of Vice Chair Ravel and Commissioners Walther and Weintraub, FEC Advisory Op. 2014-02 (Make Your Laws PAC) (May 8, 2014).

²⁰ *Id.* citing 120 Cong Rec. 7832 (1974) (statement of Rep. Boland).

²¹ Statement of Lee Goodman, FEC Advisory Op. 2014-02 (Make Your Laws PAC) (May 8, 2014).



Commission's goals of preventing corruption, providing transparency, or promoting political speech.

The Commission should provide guidance to the public that removes this uncertainty. That guidance should permit both contributors and committees to use crypto in a manner that is reasonable and consistent with how the public currently uses it on a daily basis. This would be best accomplished by amending the Commission regulations as proposed above.

These amendments will result in an increased freedom of expression by a diverse range of Americans, and these increases in free expression greatly outweigh any perceived risk. The Act's legislative history cited by Commissioners Ravel, Walther, and Weintraub in their 2014-02 Statement of Reasons explained that cash contributions were capped at \$100 in part due to cash's "untraceability." But crypto is far from untraceable. Crypto transactions leave a permanent and traceable record on the blockchain that has demonstrated to be of tremendous benefit to law enforcement. Unlike cash and other mediums of exchange, these transactions are publicly visible. And industry players have developed tools for identifying and tracing the source of crypto transactions. For example, committees that use Coinbase Commerce, Coinbase's tool for facilitating political contributions in crypto, can leverage Coinbase Tracer, our proprietary blockchain compliance solution. Coinbase Tracer provides background analytics on the source of crypto contributions – helping committees to flag potentially impermissible contributions to ensure compliance with the Act's contribution limits and foreign national prohibition. These analytic tools are the same ones used by federal and state law enforcement to identify and pursue illicit use of digital asset technologies.

Applying analytic tools, law enforcement and financial institutions that facilitate crypto contributions have additional search capabilities not available with cash: they can trace the entire transaction history of a wallet from the very first transaction, follow transactions in real time, and even group transactions according to risk-level based on wallet addresses.²² These capabilities allow much more targeted identification of transactions of interest than has ever existed in traditional finance, and allow law enforcement instantaneous access to transaction records that could take months or even years to obtain in traditional finance.²³

²² See *Analytical Tools for Blockchain: Review, Taxonomy and Open Challenges*, Anastasios Balaskas and Virginia N.L. Franqueira, Int'l Conf. on Cyber Security and Protection of Digital Services, at 5 (2018), ("Blockchain analytic tools can offer law enforcement agencies considerable benefits" as they "could have all the needed records in order to trace transferred money, something that would not necessarily be feasible within the traditional economy.")

²³ See *Attribution in Cryptocurrency Cases*, Michele R. Korver, et al., 67 DOJ J. FED. L. & PRAC., No. 1, at 246 (Feb. 2019) ("Armed only with the knowledge of a target's cryptocurrency address and this single—but highly valuable—data set, law enforcement can learn a myriad of vital pieces of information about a target."); *An Analysis of Bitcoin's Use in Illicit Finance*, Michael Morrell, at 5-6 ("A currently serving official at the



Treasurers of campaign committees that accept contributions in crypto will still be required to use best efforts to obtain, maintain, and report a contributor's required information for any given contributor who gives more than \$200. Like with current online contributions, the contributor will self-report their identifying information so that it can be reported to the Commission. Treasurers can also take more stringent steps to verify crypto contributor identity. Committees that accept contributions using Coinbase Commerce, for example, can limit contributions exclusively to Coinbase users that have gone through an extensive know-your-customer (KYC) review – a multi-step way of identifying and confirming that a customer is who they say they are. This is the same process used to ensure compliance with anti-money laundering and anti-terrorist financing laws at banks and other money transmitters. This KYC verification is widespread throughout the crypto community – centralized crypto exchanges are required by law to know their customers. Because campaign committees generally use centralized platforms to accept crypto contributions, they are accepting contributions via a platform that is required to verify its customers' identities.

In short, the increased freedom of expression facilitated by our proposed regulatory changes will vastly outweigh any perceived risks, thus supporting the changes as a matter of good public policy.

Amending the Regulations as Proposed is the Most Accurate Interpretation of the Act:

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.”²⁴ “Anything of value” includes “all in-kind contributions.”²⁵

Political contribution limits are set forth in Section 30116 the Act.²⁶ A separate provision of the Act, located at Section 30123, provides that no person shall make contributions of the currency of the United States or currency of any foreign country which, in the aggregate, exceed \$100.²⁷

[Commodity Futures Trading Commission] added that it ‘is easier for law enforcement to trace illicit activity using Bitcoin than it is to trace cross-border illegal activity using traditional banking transactions, and far easier than cash transactions.’”)

²⁴ 52 USC § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.52(a).

²⁵ See 11 C.F.R. § 100.52(d)(1).

²⁶ 52 USC § 30116(a), (c) (providing base contribution limits and that those base limits are subject to inflation increases on a yearly basis).

²⁷ 52 USC § 30123.



Political contributions made using crypto and digital assets are not made using currency. Guidance from the Treasury Department's Financial Crimes Enforcement Network ("FinCEN"), an agency that is solely devoted to protecting the financial system from illicit use, for example, makes clear that "virtual currency," which includes crypto and digital assets, does not have the attributes of "real" currency, including legal tender status.²⁸ The IRS has similarly determined that crypto is not money.²⁹ The Commission's Advisory Opinion in 2014-02 considered Bitcoin contributions to be in-kind – not contributions in cash or currency.³⁰

The Office of General Counsel's first draft advisory opinion in 2014-02, in particular, made the following points clear:

- "Nothing in the Act or Commission regulations prohibits a political committee from accepting Bitcoins as in-kind contributions,"³¹
- "[I]n-kind contributions of Bitcoins, like other in-kind contributions . . . need not be deposited in a campaign depository within 10 days of receipt,"³²
- "[J]ust as the Commission has implicitly allowed a committee to receive and hold some in-kind contributions outside campaign depositories . . . the Commission has implicitly allowed the disbursement of those assets from outside campaign depositories."³³

A long line of Commission precedent says that in-kind contributions can be made by contributing items like commodities, public stock, private stock, and even equipment, and that such contributions do not have to be held in campaign depositories.³⁴ This precedent also shows that in-kind contributions can also be expended in the form they

²⁸ FinCEN Guidance, FIN-2019-G001 (May 9, 2019), at 7, available at <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>.

²⁹ *IRS Virtual Currency Guidance: Virtual Currency Is Treated as Property for U.S. Federal Tax Purposes; General Rules for Property Transactions Apply* (Mar. 25, 2014), available at <https://www.irs.gov/uac/newsroom/irs-virtual-currency-guidance>.

³⁰ FEC Advisory Op. 2014-02 at 8; *see also* Draft Agenda Document No. 14-24, FEC Advisory Op. 2014-02 (Make Your Laws PAC) (April 16, 2014).

³¹ Draft Agenda Document No. 14-24, FEC Advisory Op. 2014-02 at 5.

³² *Id.* at 8.

³³ *Id.* at 12.

³⁴ See, e.g., Advisory Opinion 1980-125 (Cogswell) (commodities); Advisory Opinion 2000-30 (pac.com) (stock); Advisory Opinion 1996-29 (Cannon) (computer equipment).



are received; in Advisory Opinion 1980-125 (Cogswell for Senate), the Commission allowed a candidate campaign committee to accept \$100 in silver dollars and to either sell the silver dollars or exchange them for goods and services, but only if the silver dollars were valued as a commodity (as opposed to treating them as \$100 in currency).³⁵ Thus, the Commission permitted the expenditure of an in-kind contribution in its original form, without depositing the contribution into a depository institution.

Crypto also has all of the characteristics that allow it to be exchanged without entering a campaign depository account. Crypto can be easily transferred for goods and services, accurately valued at the precise time of that transfer so that the expenditure can be properly reported, and can be traced on the blockchain so that expenditures are properly accounted for. It is, in other words, an ideal store of value for political committees to receive as an in-kind contribution, up to the contribution limits established in Section 30116, and then disbursed in its original form for goods or services.

Conclusion - Regulation Should Be Mindful of the Future:

Web 3.0 - which is powered by crypto – ultimately represents a paradigm shift in how we interact with the internet. That shift will unleash unprecedented innovation and economic freedom, but in order to release that freedom, regulators must acknowledge that Web 3.0 cannot fit entirely into pre-existing boxes. The first iteration of the internet, or Web 1.0, was static content (e.g. a website describing a company's goods and services). In the era of Web 2.0, social media and mobile companies enabled users to interact with internet content in a dynamic way. Web 3.0 is the next evolution, driven by crypto and blockchain technology. It allows users to actively control a piece of the internet.

Crypto combines content, payments, and identity on decentralized platforms that are controlled by individual consumers. This decentralized, individually controlled technology furthers a number of different use cases, which are currently being used to advance free speech and participate in the political process. Crypto is not limited to the realm of finance. It is being used today as a major part of social media, content creation, organization governance, and across a variety of different industries and platforms.

The Commission has the important job of encouraging free participation in the political process while also preventing corruption. That job will be best accomplished by acknowledging this important technology, understanding it, and allowing it to thrive in a way that promotes all of the Commission's directives. The rules proposed by Coinbase will allow the Commission to regulate the source and amount of all crypto contributions and will ensure a transparency in transactions and reporting that allows voters to see how political committees are raising and spending funds. For these reasons, the Commission

³⁵ FEC Advisory Op. 1980-125 (Cogswell) (Nov. 21, 1980).

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should embrace crypto contributions, remove the current regulatory uncertainty, and allow for this technology to be used by citizens who wish to utilize it as part of their political expression.