



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 25, 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2018-13

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Dear Messrs. Sack and Hunt:

We are responding to your advisory opinion request on behalf of OsiaNetwork LLC (“OsiaNetwork”) concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to OsiaNetwork’s proposal to provide services to political committees to enable individuals to use the processing power of their internet-enabled devices to mine cryptocurrencies to benefit the political committees. The Commission concludes that although the proposal is permissible under the Act and Commission regulations, it does not fall within the volunteer internet activities exception, and would result in contributions from the individuals to the participating political committees. OsiaNetwork, as a commercial vendor providing a service to the recipient political committees for a commercially reasonable fee, would not make any contribution to those political committees.

Background

The facts presented in this advisory opinion are based on your letter received on September 10, 2018, and your email received on September 20, 2018.

OsiaNetwork is a Delaware limited liability company.¹ Advisory Opinion Request at AOR001. OsiaNetwork proposes to provide services to political committees that would enable individuals to pool the processing power of their internet-enabled devices to mine cryptocurrencies, with the political committees receiving the mining rewards. AOR004.

¹ OsiaNetwork will not be treated as a corporation for tax purposes. AOR014.

The process of mining cryptocurrency involves using large amounts of computer processing power to solve complex calculations “using cryptographic hash functions.” AOR002.² The completion of these calculations results in the mining of a “block,” which allows transactions between users to be authenticated and generates a new cryptocurrency unit for the miner as a reward for creating the block. AOR003-04. In return for authenticating transactions, cryptocurrency miners are also paid a transaction fee, the size of which often determines the priority with which a transaction will be completed. AOR003. Solving the complicated mathematical problems to create blocks requires enormous amounts of computing power, and “can take centuries to generate a valid ‘block’” by a single miner. AOR004.³ Therefore, cryptocurrency “miners often join forces in so-called ‘pools’ to work together and share the reward.” *Id.*

Under OsiaNetwork’s proposal, “[i]f a federal political committee would like to allow their individual supporters to volunteer the processing power of their internet-enabled devices, OsiaNetwork will provide the tools necessary to create a webpage on that committee’s website that provides the methodology to pool the processing power of these volunteers’ internet-enabled devices.” AOR005. Once a political committee has set up such a webpage, an individual who wants to participate in a mining pool would visit the page and allow the political committee to use the processing power of the individual’s device by (1) accepting the terms of service, (2) designating the percentage of their device’s processing power they wish to use for the cryptocurrency mining pool, and (3) keeping that webpage open for as long as they would like to continue using their device’s processing power as part of the cryptocurrency mining pool. AOR005.

Individuals will be able to use their computer processing power for more than one political committee at a time, as long as each of the political committees is a client of OsiaNetwork. *Id.* OsiaNetwork’s platform will be used to pool the processing power from individuals supporting multiple political committees as well as non-political non-profit clients of OsiaNetwork. AOR006. OsiaNetwork will receive the mining rewards generated by the pooled processing power of all individuals’ devices; individuals who allow their devices’ processing power to be pooled will not have an ownership interest in or any rights to the mining rewards generated. *Id.* OsiaNetwork will maintain a separate account for each of its clients, tracking the amount of cryptocurrency rewards generated by individuals providing their computer processing power to that client. *Id.* OsiaNetwork will allocate the mining rewards it receives among its clients “proportionately to the number of hashes that each committee’s volunteers generate in order to solve the block that generates the mining reward.” *Id.* OsiaNetwork will then subtract

² A more detailed explanation of cryptocurrency mining can be found at Francois R. Velde, *Bitcoin: A Primer*, CHICAGO FED LETTER, No. 317, Dec. 2013, available at <https://www.chicagofed.org/publications/chicago-fed-letter/2013/december-317>.

³ Quoting Nat Drake, *The best mining pools of 2018 for cryptocurrency*, TechRadar, Aug. 23, 2018, available at <https://www.techradar.com/news/the-best-mining-pools-of-2018>.

its processing fee and transfer to each political committee funds in United States currency equivalent to the cryptocurrency value allocated to that committee. *Id.*

A political committee that participates in OsiaNetwork's proposal will contract with OsiaNetwork for the provision of the necessary infrastructure and the receipt of mining rewards, and may enter into a separate contract with the individuals who wish to allow their devices' processing power to be used for the benefit of that committee; the individuals will not have a direct contractual relationship with OsiaNetwork. AOR007. The political committee will enter into terms of service with OsiaNetwork pertaining to their business relationship,⁴ and OsiaNetwork will provide sample terms of service that the political committee may use on its webpage to govern the relationship between the committee and the individuals who participate in the mining pool to benefit the committee.⁵ *Id.*

Under the contractual arrangement between OsiaNetwork and its political committee clients, OsiaNetwork will charge a processing fee for its service that will be a percentage of the mining rewards generated, a percentage that will remain the same regardless of how much cryptocurrency is mined. AOR008. The fee will cover the costs of the services provided by OsiaNetwork to the political committee as well as a reasonable profit. *Id.* The services provided by OsiaNetwork to a participating political committee will include the infrastructure necessary for the political committee to enable individuals to allow their devices' processing power to be used to mine cryptocurrency, running the servers necessary to administer the mining pool, and converting mined cryptocurrency into United States currency. *Id.* All transfers to political committees will be in the form of United States currency. AOR005. The infrastructure provided by OsiaNetwork will include computing resources, servers, webpage design, and connectivity of the various components required for the platform to function. AOR009. The infrastructure will be provided to the political committee only for the duration of its relationship with OsiaNetwork, and will not be of use to the political committee other than to facilitate its participation in OsiaNetwork's platform. *Id.*

OsiaNetwork also anticipates providing similar services to non-profit entities, whereby individuals will be able to pool their devices' processing power to mine cryptocurrency for the

⁴ Terms of service between OsiaNetwork and political committees will include the following provisions: (1) OsiaNetwork will be pooling the resources of such political committee's individual volunteers together with the individual volunteers of other OsiaNetwork clients; (2) OsiaNetwork will not be required to disclose to a political committee the names of its other clients; (3) OsiaNetwork will subtract its fee(s) before transferring funds; (4) OsiaNetwork will not guarantee the uptime of its services; (5) OsiaNetwork will not be not liable for any damages caused directly or indirectly to the committee's computing equipment or its individual volunteers' computing equipment as a result of using OsiaNetwork's services. AOR007. Note that the Commission does not consider participants in this service to be "volunteers" within the volunteer internet activities exception.

⁵ Sample terms of service that political committees may use include the following provisions: (1) A participant must be acting as an individual and not on behalf of a corporation; (2) A participant must not use this platform for any illegal purposes; (3) A participant must not attempt to "hack" or reverse engineer any programs contained on the webpage so designated by the political committee; (4) The political committee will not be responsible for any damage caused directly or indirectly to an individual's internet-enabled device as a result of engaging in this activity; (5) An individual will not receive any mining rewards in exchange for engaging in this activity. AOR008.

benefit of such organizations. *Id.* OsiaNetwork does not anticipate offering such services to for-profit entities. *Id.*

Questions Presented

1. *Is it permissible under the Act for individuals to volunteer the processing power of their internet-enabled devices, through services provided by OsiaNetwork in the manner described in this request, in order to mine cryptocurrencies in support of a federal political committee?*

2. *Under the Act, who may support a federal political committee by volunteering the processing power of their internet-enabled device through services provided by OsiaNetwork in the manner described in this request?*

3. *Does OsiaNetwork and/or a federal political committee contracting with OsiaNetwork, have any reporting requirements under the Act with respect to the funds raised as a result of supporters of federal political committees volunteering the processing power of internet-enabled devices?*

4. *Are there any restrictions on how OsiaNetwork may sell cryptocurrency mined through the “pooling” of processing power of federal political committees’ volunteers’ internet-enabled devices?*

5. *May OsiaNetwork transfer funds in United States currency equivalent to the value of the cryptocurrency mined through the “pooling” of the processing power of the federal political committees’ individual volunteers’ internet-enabled devices to such federal political committees without it being considered a contribution from OsiaNetwork and without it being subject to any contribution limits under the Act?*

Legal Analysis and Conclusions⁶

1. *Is it permissible under the Act for individuals to volunteer the processing power of their internet-enabled devices, through services provided by OsiaNetwork in the manner described in this request, in order to mine cryptocurrencies in support of a federal political committee?*

5. *May OsiaNetwork transfer funds in United States currency equivalent to the value of the cryptocurrency mined through the “pooling” of the processing power of the federal political committees’ individual volunteers’ internet-enabled devices to such federal political committees without it being considered a contribution from OsiaNetwork and without it being subject to any contribution limits under the Act?*

⁶ The Commission is addressing the questions in a different order than they were presented in the request, due to overlap in the analysis of questions 1 and 5.

The Commission concludes that although the proposed cryptocurrency mining pool as described in the request is itself permissible under the Act and Commission regulations, the activities of the individuals do not fall within the volunteer internet activities exception, and would therefore result in contributions from them to the participating political committees. OsiaNetwork, as a commercial vendor providing a service to the recipient political committees for a commercially reasonable fee, would not make any contribution to those political committees.

The Act defines a “contribution” as “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.” 52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.52(a). For purposes of this definition, “anything of value” includes all in-kind contributions and, unless specifically excepted from the definition of contribution, “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution.” 11 C.F.R. § 100.52(d)(1). “Usual and normal charge” for any services means the charge for those services “at a commercially reasonable rate prevailing at the time the services were rendered.” 11 C.F.R. § 100.52(d)(2). In this instance, the individuals who participate in the cryptocurrency mining pool will be providing something of value to the political committees: the money transferred to the political committees through OsiaNetwork’s cryptocurrency mining pool platform.

Commission regulations except certain activities from the definition of a “contribution.” One such exception provides that, if an individual or a group of individuals engages in uncompensated internet activities for the purpose of influencing a federal election, neither the uncompensated personal services provided by the individual nor, generally speaking, the individual’s use of equipment or services for the uncompensated activity will be a “contribution” by that individual or group of individuals. 11 C.F.R. § 100.94; *see also* 52 U.S.C. § 30101(8)(B)(i) (excluding “the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee” from the definition of “contribution”); 11 C.F.R. § 100.74 (same).⁷ The regulation defines “internet activities” as including, but not limited to, “sending or forwarding electronic messages; providing a hyperlink or other direct access to another person’s Web site; blogging; creating, maintaining, or hosting a Web site; paying a nominal fee for the use of another person’s Web site; and any other form of communication distributed over the Internet.” 11 C.F.R. § 100.94(b). The regulation defines “equipment and services” as including, but not limited to, “computers, software, Internet domain names, Internet Service Providers (ISP), and any other technology that is used to provide access to or use of the Internet.” 11 C.F.R. § 100.94(c).

OsiaNetwork’s proposal is not one of the types of activities or services explicitly mentioned in either the regulation or the Commission’s explanation of the regulation upon its adoption. *See* Internet Communications, 71 Fed. Reg. 18,589, 18,603 (Apr. 12, 2006). Recognizing that it could not anticipate every means of using the internet that might

⁷ An analogous provision excepts volunteer internet activity from the definition of “expenditure.” 11 C.F.R. § 100.154.

appropriately be covered by the volunteer internet activities exception, the Commission adopted the exception with the intention that its definition of “internet activities” would “cover technology that has not yet been developed.” *Id.* at 18,605. However, the Commission did not intend the definition to be so broad as to encompass every activity that might make incidental use of the internet, and thus the definition of “internet activities” includes the enumerated forms of activity “and any other form of *communication* distributed over the Internet.” 11 C.F.R. § 100.94(b) (emphasis added). Each of the activities listed in the definition includes a communicative element, whether by directly expressing a message (*e.g.*, sending an email or blogging) or amplifying another person’s message (*e.g.*, forwarding an email, providing a hyperlink to another person’s website, or creating a website). *See also* Advisory Opinion 2011-14 (Utah Bankers Association) (concluding that sending or forwarding email solicitations qualifies for volunteer internet activities exception). Individuals’ participation in cryptocurrency mining pools as described in OsiaNetwork’s proposal would not involve any expressive activity or distribution of any other person’s communication, only the passive provision of processing power to generate funds for political committees, and would not constitute a “form of communication distributed over the Internet” as encompassed by the definition of “internet activities.”

The exception does provide that an individual’s “use of equipment and services for uncompensated Internet activities” is not a contribution, 11 C.F.R. § 100.94(a)(2), but this part of the exception extends only to the use of equipment “for . . . Internet activities.” Because participation in OsiaNetwork’s cryptocurrency mining pool does not constitute an “internet activity” as defined in the regulation due to the lack of a communicative element, the use of an individual’s computer and internet access to participate in the mining pool would not fall within the exception regardless of the fact that computers and means of internet access are included in the definition of “equipment and services.” Accordingly, the Commission concludes that the proposed cryptocurrency mining pool does not fall within the volunteer internet activities exception to the definition of a contribution.

Because no exception applies, the money received by a political committee from the cryptocurrency mining pool will be a contribution, equal to the value, in U.S. dollars, of the cryptocurrency that is mined by the pool for the committee’s benefit. It is the individuals participating in the mining pool that generate that value and choose to do so for the benefit of a particular political committee, so the contribution must be attributed to those individuals. OsiaNetwork must use a reasonable method of allocating the contribution proportionally among the individuals who participate in generating the funds.⁸ One such reasonable method would be to allocate the contribution to the individual contributors proportionately to the number of hashes that each individual generates in order to solve the block that yields the mining reward. The contributions will be subject to the amount limitations, source prohibitions, and reporting requirements of the Act.

⁸ *See* response to Question 3, below, regarding contributor information that OsiaNetwork must provide to the political committees.

The request also asks whether the proposed activity will result in contributions from OsiaNetwork to the political committees. The Commission concludes that it would not because, similar to other advisory opinions considered by the Commission, OsiaNetwork, assuming it satisfies all criteria described below, would be acting as a commercial vendor in providing its services to the political committees. The Commission has previously determined that the provision of contribution-processing services to a political committee by a commercial vendor does not constitute a contribution to the political committee. *See, e.g.*, Advisory Opinion 2018-05 (CaringCent) at 4-5; Advisory Opinion 2016-08 (eBundler.com) at 6-7; Advisory Opinion 2007-04 (Atlatl) at 3-4. In these advisory opinions, the Commission recognized three qualities characteristic of commercial vendors: (1) they rendered services in the ordinary course of business and at the usual and normal charge; (2) they forwarded contributions through a segregated account to candidates and political committees; and (3) they employed adequate screening procedures to ensure that they were not forwarding illegal or excessive contributions. *See, e.g.*, Advisory Opinion 2018-05 (CaringCent) at 4-5; Advisory Opinion 2016-08 (eBundler.com) at 6-7; Advisory Opinion 2007-04 (Atlatl) at 3-4. The first two criteria arise from the definition of an in-kind contribution, 11 C.F.R. § 100.52(d), and the contribution forwarding requirements. 52 U.S.C. § 30102(b); 11 C.F.R. § 102.8. The third criterion does not relate to a statutory or regulatory provision that applies directly to the vendors, but enables political committees to fulfill their obligations concerning illegal and excessive contributions. *See* 11 C.F.R. § 103.3(b).

Here, OsiaNetwork satisfies the first two criteria. First, OsiaNetwork will be providing its services in the ordinary course of its business as a for-profit limited liability company that offers tools for cryptocurrency mining pools to political committees and non-profit entities. In providing its services, OsiaNetwork will charge a commercially reasonable fee at the “ordinary and usual charge” for its services that will cover its costs and generate a reasonable profit. Second, so long as OsiaNetwork transfers contributions from an account segregated from its own treasury funds within ten days of receipt, it will satisfy the contribution forwarding requirement. *See* 52 U.S.C. § 30102(b); 11 C.F.R. § 102.8.

Regarding the third criterion, OsiaNetwork has not indicated whether it would screen contributions to ensure that they are not excessive and that they are not from prohibited sources. OsiaNetwork argued that its proposed activity would not result in a contribution, which would render the screening of contributions irrelevant. The Commission, however, has not adopted this argument, concluding instead that the proposed activity would be a contribution to a political committee. As the Commission previously explained, to provide contribution-processing services to political committees as a commercial vendor, the entity must satisfy all of the above three criteria, including the requirement to provide adequate screening. *See, e.g.*, AO 2012-09 (Points for Politics) at 5 (concluding that the requestor “must satisfy [the three] criteria”). Thus, to act as a commercial vendor under this proposal, OsiaNetwork must also adequately screen contributions to ensure that they do not exceed the applicable contribution limits and that they are not from prohibited sources. *See, e.g.*, Advisory Opinion 2018-05 (CaringCent) at 5 (contributors were required to affirm their eligibility under federal law to make contributions, and vendor would not allow contributors to exceed contribution limits through its platform); Advisory Opinion 2016-08 (eBundler.com) at 7 (same); Advisory Opinion 2012-09 (Points for

Politics) at 6 (same). Assuming OsiaNetwork does so, OsiaNetwork will satisfy all three criteria for a commercial vendor.

Accordingly, because the proposed cryptocurrency mining pool does not fall within the volunteer internet activities exception and, assuming it provides adequate screening of contributions, OsiaNetwork will be acting as a commercial vendor, the entire amount of any funds transferred to a recipient political committee will constitute a contribution from the individuals who participated in generating those funds, and OsiaNetwork's provision of contribution-processing services to its political committee clients will not result in contributions to them from OsiaNetwork.

2. *Under the Act, who may support a federal political committee by volunteering the processing power of their internet-enabled device through services provided by OsiaNetwork in the manner described in this request?*

Any individual who may make contributions to political committees may participate in OsiaNetwork's proposed cryptocurrency mining pool to support a political committee.

As discussed above, an individual's participation in the proposed cryptocurrency mining pool would result in a contribution to the political committee. Certain categories of persons are prohibited from making contributions to political committees generally or to some types of committees, or may do so only if certain conditions are met, and therefore individuals must satisfy these requirements in order to participate in the proposed cryptocurrency mining pool.

Namely, foreign nationals may not make contributions in connection with any federal, state, or local election, nor may they make contributions to any political party committee. 52 U.S.C. § 30121(a); 11 C.F.R. § 110.20(b)-(c). Federal contractors may not make contributions to any political party, political committee, or candidate for federal office, or to any person for any political purpose or use. 52 U.S.C. § 30119(a); 11 C.F.R. § 115.2. Corporations and labor organizations are prohibited from making contributions, 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2, except that they "may make contributions to nonconnected political committees that make only independent expenditures, or to separate accounts maintained by nonconnected political committees for making only independent expenditures." Note to 11 C.F.R. § 114.2(b). Minors may make contributions to candidates or political committees only if certain conditions are met. 11 C.F.R. § 110.19.

Therefore, the Commission concludes that any individual who is not a foreign national or federal contractor, and who is not using corporate or labor organization resources if the recipient political committee is not an independent expenditure-only political committee (*see* 11 C.F.R. §§ 114.2(f), 114.9(d)), may participate in the proposed cryptocurrency mining pool subject to the applicable contribution limits, and minors may participate if they meet the conditions set forth in section 110.19.

3. *Does OsiaNetwork and/or a federal political committee contracting with OsiaNetwork, have any reporting requirements under the Act with respect to the funds raised as*

a result of supporters of federal political committees volunteering the processing power of internet-enabled devices?

No, OsiaNetwork will not have any reporting obligations with respect to its proposed activities, although participating political committees must report each contribution received.

The Act requires political committees to file reports of all receipts and disbursements. 52 U.S.C. § 30104(a), (b); *see also* 11 C.F.R. §§ 104.1, 104.3(a). Specifically, political committees must report the identities of contributors and the amounts and dates of contributions. *See* 11 C.F.R. § 104.3. Any person or entity who receives and forwards contributions to political committees must also collect and forward certain information about the contribution and the contributor, depending on the amount of the contribution and the type of political committee. 11 C.F.R. § 102.8.

As discussed above, OsiaNetwork's proposed activities will result in contributions from the individuals to the participating political committees, and therefore the political committees will be required to report the contributions received from each individual. OsiaNetwork, as a vendor forwarding contributions to political committees, must collect and report to the committees the information required under 11 C.F.R. § 102.8. In addition, because contributors will not know the actual amount transmitted to the political committees, OsiaNetwork is advised, but not required, to provide information to the individual contributors allowing them to track their contributions to a given political committee for purposes of complying with the contribution limits.

The Act and Commission regulations also require intermediaries or conduits of earmarked contributions to report the original source of such a contribution and the recipient candidate or authorized committee. 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(c)(1). Commission regulations clarify, however, that "a commercial fundraising firm retained by the candidate or the candidate's authorized committee to assist in fundraising" is not a "conduit or intermediary." 11 C.F.R. § 110.6(b)(2)(i)(D). Because the requestor will act as a commercial vendor when it provides its services to its political committee clients, the requestor will also qualify as a "commercial fundraising firm" for purposes of that regulation. *See* Advisory Opinion 2016-08 (eBundler.com) at 8 (concluding that limited liability company providing contribution-forwarding services to political committees would be acting as commercial fundraising firm rather than conduit). As a commercial fundraising firm, the requestor will not be subject to the reporting requirements applicable to conduits and intermediaries for its proposed activities.

4. *Are there any restrictions on how OsiaNetwork may sell cryptocurrency mined through the "pooling" of processing power of federal political committees' volunteers' internet-enabled devices?*

No, neither the Act nor Commission regulations restrict OsiaNetwork from selling at fair market value cryptocurrency mined as described in the request to individuals, through an exchange, or in any other way.

The Commission has established several limitations on cryptocurrency transactions by political committees in order to ensure compliance with the Act and Commission regulations. *See* Advisory Opinion 2014-02 (Make Your Laws PAC). However, these limitations were considered in the context of political committees — which are subject to contribution amount limitations and source restrictions, reporting requirements, and restrictions on investment activities —transacting in cryptocurrency. These limitations do not apply to OsiaNetwork’s proposed cryptocurrency mining pool, which would result in contributions being made in United States currency, not in cryptocurrency. Accordingly, OsiaNetwork may sell mined cryptocurrency without adhering to the specific guidelines on cryptocurrency transactions and valuation set forth in Advisory Opinion 2014-02 (Make Your Laws PAC).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission’s website.

On behalf of the Commission,



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Chair