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September 10, 2018

By Email and FedEx

Federal Election Commission
Office of General Counsel
1050 First Street, NE
Washington, DC 20463

Re: *Advisory Opinion Request on Behalf of OsiaNetwork LLC*

Dear Commissioners:

Enclosed please find a request from my client, OsiaNetwork LLC, a Delaware limited liability company, for an advisory opinion from the Federal Election Commission.

Very truly yours,



Jonathan S. Sack

Enclosure

Advisory Opinion Request on Behalf of OsiaNetwork LLC

Dear Commissioners,

Pursuant to 52 U.S.C. § 30108, we are submitting on behalf of OsiaNetwork LLC (“OsiaNetwork”), a Delaware limited liability company, a request for an advisory opinion confirming the permissibility of OsiaNetwork’s business plan under the Federal Election Campaign Act of 1971.

Background

OsiaNetwork intends to enable individuals to support federal political committees by volunteering the processing power of their internet enabled devices to mine cryptocurrencies. These activities will be conducted pursuant to 52 U.S.C. § 30101(B)(i) which provides, in relevant part, that the term “contribution” does not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee.

FEC History

In 2014, the Make Your Laws PAC, Inc. requested an advisory opinion from the Federal Election Commission regarding the contribution of Bitcoin (BTC) to a federal political committee. AO 2014-02 advised that federal political committees may accept Bitcoin and described proper methodology for doing that. In AOR 2014-02, Make Your Laws PAC described how Bitcoin works and how Bitcoin relies on miners in order for it to function. Excerpts from AOR 2014-02 relating to the role played by mining activities are as follows:

- “Bitcoins are not actually a thing or number that is ‘transferred’ from one computer to another; rather, Bitcoin uses a kind of universal account ledger. The Bitcoin system has

addresses (which identify a public key; anyone with access to the associated private key can control that address, much like a bank password); *transactions* (which authorize the transfer of Bitcoins to whoever can prove they control a given public key); and *blocks* (which form the public history of the Bitcoin network by authenticating the previous block, any other transactions its miner wants to, and one transaction of ‘new’ Bitcoins that the miner gets for creating the block).”¹

- “Bitcoins originate from a Bitcoin miner, in an amount and rate given by the Bitcoin protocol (currently 25BTC / block and 1 block every ~10 min). Bitcoin users sign transactions, and miners include those transactions in the public blockchain. all using public key cryptography. The *transactions* are transferred among the peer-to-peer network of Bitcoin users.”²
- “In order for any Bitcoin transaction to be effective (including, for example, a transfer of someone’s own Bitcoins to a Bitcoin exchange like MtGox for conversion to USD), it must be included by a Bitcoin miner in a new block. Miners are anonymous. As a *de facto* matter, miners refuse to do this unless they are paid a small amount of Bitcoin, called a ‘transaction fee’ — typically on the order of 0.0001 Bitcoins. This fee is nominally optional, but in practice it is not; the size of the fee determines the priority with which a transaction will be finalized, and zero-fee transactions won’t usually be processed.”³

¹ AOR 2014-02

² AOR 2014-02

³ AOR 2014-02

Cryptocurrency Mining

AOR 2014-02 references Bitcoin, but other cryptocurrencies follow a similar structure. Different cryptocurrencies have different approximate block times (approximate time it takes to mine a block); block reward (reward a miner gets for creating a block); and algorithm (the process that a computer follows to create a new block).

“Mining needs a computer and a special program, which helps miners compete with their peers in solving complicated mathematical problems. This would need huge computer resources. In regular intervals, miners would attempt to solve a block having the transaction data using cryptographic hash functions.”⁴

“[P]opular currencies such as Bitcoin and Litecoin can take centuries to generate a valid ‘block’ on your own and make money.”⁵ Because of this, miners often join forces in so called “pools” to work together and share the reward.

OsiaNetwork LLC

OsiaNetwork would allow volunteers to support federal political committees by “pooling” the processing power of their internet enabled devices to mine cryptocurrencies. OsiaNetwork believes that enabling individual volunteers to so “pool” the processing power of their internet enabled devices would allow individuals to support their preferred candidates, which they would not otherwise be able to do.

⁴ Rexaline, S. (2018). *Cryptocurrency Mining: What It Is, How It Works And Who’s Making Money Off It*. [online] Benzinga. Available at: <https://www.benzinga.com/general/education/17/08/9953629/cryptocurrency-mining-what-it-is-how-it-works-and-whos-making-money-> [Accessed 29 Jun. 2018].

⁵ Drake, N. (2018). *The best mining pools of 2018 for cryptocurrency*. [online] TechRadar. Available at: <https://www.techradar.com/news/the-best-mining-pools-of-2018> [Accessed 29 Jun. 2018].

OsiaNetwork Process

If 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.

For an individual volunteer, this would entail:

1. Visiting the committee's designated webpage;
2. Allowing the committee to use the processing power of their internet enabled device by accepting the terms of service (including representation that the user is an individual and not a corporation and not utilizing any corporate resources);
3. Signing-up/Signing-in (Optional⁶);
4. Designating what percent of the processing power of his/her internet enabled device he/she would like to volunteer;
5. Keeping that webpage open for as long as he/she would like to continue volunteering the processing power of an internet enabled device.

Individuals will be able to volunteer the processing power of their internet enabled devices to multiple political committees at the same time, as long as each of those political committees is a client of OsiaNetwork. Individual volunteers' computing resources will be pooled on OsiaNetwork's platform. The computing resources for different individual volunteers,

⁶ Registration is optional unless the FEC rules that reporting is necessary for this type of volunteer activity.

different political committees, and individual volunteers for non-political clients (non-profit entities) of OsiaNetwork will all be pooled together.

Mining rewards will be allocated among OsiaNetwork's clients proportionately to the number of hashes that each committee's volunteers generate in order to solve the block that generates the mining reward. OsiaNetwork will maintain a separate account for each of its clients that reflects on an ongoing basis the number of hashes generated by the individual volunteers of that particular client. OsiaNetwork, not individual volunteers, will receive any mining rewards generated. Individual volunteers will only provide processing power of internet enabled devices, and individual volunteers will not have ownership interest in or any rights to the mining reward at any point.

For a committee, this would entail:

1. Contracting with OsiaNetwork to provide the services necessary to enable individuals to volunteer the processing power of their internet enabled devices in order to "pool" these resources;
2. Setting up a webpage on the committee's website to enable individual visitors to volunteer the processing power of their internet enabled device, as provided above;
3. Receive from OsiaNetwork US\$ funds equivalent to the value of the cryptocurrency mined through the "pooling" of the processing power of the individual volunteers' internet enabled devices (after OsiaNetwork subtracts its processing fee).

OsiaNetwork's proposal is contemplated by FEC guidance, which provides that "An uncompensated individual or group of uncompensated individuals may engage in certain voluntary Internet activities for the purpose of influencing a federal election without restriction."

Exempted internet activities “include, but are not limited to, sending or forwarding electronic mail, providing a hyperlink to a website, creating, maintaining or hosting a website and paying a nominal fee for the use of a website.” These examples are analogous to OsiaNetwork’s proposal, which involves individual volunteers providing the processing power of their internet enabled devices to raise funds for political committees.

Relationship Among Parties and Terms of Service

Individuals will only have a relationship with the political committees as their volunteers. Political committees will have a separate relationship with their individual volunteers and with OsiaNetwork, respectively. Accordingly, terms of service will be entered into between OsiaNetwork and the relevant political committee retaining OsiaNetwork’s services. In addition, OsiaNetwork will prepare sample terms of services for the political committees to include on the relevant webpage designated by such political committee relating to the relationship between such political committee and its individual volunteers.

Terms of service between OsiaNetwork and relevant political committees will contain the following operative provisions:

- OsiaNetwork will be pooling the resources of such political committee’s individual volunteers together with the individual volunteers of other OsiaNetwork clients
- OsiaNetwork is not required to disclose to a political committee the names of its other clients
- OsiaNetwork will subtract its fee(s) before transferring funds
- OsiaNetwork does not guarantee the uptime of its services⁷
- OsiaNetwork is 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

⁷ Downtime of OsiaNetwork’s services may be necessary for maintenance or other purposes.

Sample terms of service between relevant political committees and their individual volunteer supporters will contain the following operative provisions:

- A volunteer must be acting as an individual and not on behalf of a corporation
- A volunteer must not use this platform for any illegal purposes
- A volunteer must not attempt to “hack” or reverse engineer any programs contained on the webpage so designated by the political committee
- The political committee is not responsible for any damage caused directly or indirectly to an individual’s internet enabled device as a result of engaging in this volunteer activity
- An individual will not receive any mining rewards in exchange for engaging in this volunteer activity

The political committee may terminate an individual’s account and/or block him/her from engaging in this volunteer activity for any reason

OsiaNetwork Fee(s)

OsiaNetwork will charge a processing fee for its services. The fee will be a percentage of the mining rewards generated, and the percentage will not change based on how much cryptocurrency is mined. This fee will include a reasonable profit.

The services that OsiaNetwork will provide will include the infrastructure necessary for a federal political committee to enable its individual supporters to volunteer processing power of their internet enabled devices, running the servers necessary to allow volunteers to mine cryptocurrencies, and converting mined cryptocurrency into US\$.⁸ OsiaNetwork plans to provide these services to non-political entities as well and will charge the same fee(s) for both types of entities.

⁸ According to AO 2014-02 federal political committees may invest and collect Bitcoin but cannot use it for disbursements.

OsiaNetwork will create, provide, and maintain for political committees only such infrastructure as is necessary to enable OsiaNetwork, on behalf of political committees to pool the processing power of their individual volunteers' internet enabled devices. This infrastructure will include computing resources, servers, webpage design, and connectivity of various components necessary for this platform to function. This infrastructure will not be of use to political committees other than for the purposes described in this AOR. Political committees will not retain access to this infrastructure after their relationship with OsiaNetwork ends.

OsiaNetwork's services to non-profit entities would be similar to those provided to political committees. Individuals will be able to similarly opt in to use the processing power of their internet enabled devices for the benefit of non-profit organizations. OsiaNetwork does not expect to offer its services to for-profit ventures. For an example of how this model would work for the benefit of a non-profit organization see: <https://www.thehopepage.org> (demonstrating a similar undertaking for the benefit of UNICEF Australia).

Questions Presented

1. Is it permissible under the Federal Election Campaign 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?

Proposed Conclusion:

Yes, individuals may support a federal political committee by volunteering the processing power of their internet enabled devices to mine cryptocurrencies. According to the FEC, "An uncompensated individual or group of uncompensated individuals may

engage in certain voluntary Internet activities for the purpose of influencing a federal election without restriction. These exempted Internet activities would not result in a contribution or an expenditure under the Act and would not trigger any registration or reporting requirements with the FEC. This exemption applies to individuals acting with or without the knowledge or consent of a campaign or a political party committee. Exempted internet activities include, but are not limited to, sending or forwarding electronic mail, providing a hyperlink to a website, creating, maintaining or hosting a website and paying a nominal fee for the use of a website.”⁹ Pursuant to this proposal, volunteers would be uncompensated individuals working with the consent of a federal political committee. According to the FEC, “When services are volunteered—not paid for by anyone—the activity is not considered a contribution”.¹⁰

Individuals volunteering the processing power of their internet enabled devices clearly fall under the above FEC definition. The FEC explains, “The final rules encompass all of the same activity covered by proposed 11 CFR 100.94 and 100.155, but also include the phrase ‘and any other form of communication distributed over the Internet.’ The Commission added the phrase ‘and any other form of communication distributed over the Internet’ to ensure that future advances in technology will be encompassed within the final rules. For example, the new rules not only cover such things as sending or forwarding electronic messages; providing a link or other direct access to any person’s Internet site; posting banner messages; and blogging, creating,

⁹ “Volunteer Activity.” *FEC.gov*, Federal Election Commission, www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/volunteer-activity/.

¹⁰ “Types of Contributions.” *FEC.gov*, Federal Election Commission, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/types-contributions/>.

maintaining, or hosting an Internet site; but also cover technology that has not yet been developed.”¹¹ Individuals volunteering the processing power of their internet enabled devices would allow federal political committees to utilize technology like the FEC foresaw in its Regulations.

Individuals may volunteer the power of their internet enabled devices without it being considered a contribution for the purposes of the statute. According to the FEC, “The proposed rules focused on exempting an individual’s use of ‘computer equipment and services’ for activities on the Internet and listed examples of the types of computer equipment and services covered by the proposed rules. Specifically, paragraphs (c) of both proposed 11 CFR 100.94 and 100.155 stated that ‘computer equipment and services’ includes, but is not limited to, computers, software, Internet domain names, and Internet Service Providers (ISP).”¹² Accordingly, the Commission has exempted individuals’ use of their internet enabled devices in support of a federal political committee from being a contribution, and has also exempted the use of “any other technology that is used to provide access to or use of the Internet.”¹³ Therefore, individuals volunteering the processing power of any internet enabled device to a federal political committee are not considered to be making a contribution.

The FEC has also exempted costs incurred and covered by volunteers (like internet use and electricity) from constituting a contribution. In AO 1999-17 the Commission concluded that as long as the campaign had given “some level” of

¹¹ Federal Register / Vol. 71, No. 70 / Wednesday, April 12, 2006 / Rules and Regulations 18605

¹² Federal Register / Vol. 71, No. 70 / Wednesday, April 12, 2006 / Rules and Regulations 18605

¹³ Federal Register / Vol. 71, No. 70 / Wednesday, April 12, 2006 / Rules and Regulations 18605

permission to the volunteer, any expenses incurred by supporters volunteering are exempt from being contributions.¹⁴

2. Under the Federal Election Campaign 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?

Proposed Conclusion:

Any uncompensated individual may support a federal political committee by volunteering the processing power of such individual's internet enabled devices. Volunteers must use the processing power of their individual internet enabled devices. Aside from "incidental use," volunteers may not use internet enabled devices of their corporate or labor facilities to support their chosen federal political committee.¹⁵

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

¹⁴ AO 1999-17; See also Federal Register / Vol. 71, No. 70 / Wednesday, April 12, 2006 / Rules and Regulations 18604 fn 46

¹⁵ "Volunteer Activity." *FEC.gov*, Federal Election Commission, www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/volunteer-activity/.

Proposed Conclusion:

According to the FEC, “An individual may volunteer personal services to a campaign without making a contribution as long as the individual is not compensated by anyone for the services. Volunteer activity is not reportable.”¹⁶ Since volunteering the processing power of an internet enabled device is a volunteer activity, it is “not reportable.”

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?

Proposed Conclusion:

No, OsiaNetwork may sell any cryptocurrency mined through the “pooling” of processing power of federal political committees’ volunteers’ internet enabled devices. Such sales may be made to individuals, through an exchange, or in any other way. Although the FEC stated, “If the committee sells the bitcoins directly to a purchaser, and therefore knows the identity of that purchaser, the purchase is itself considered to be a contribution” and “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,”¹⁷ both of these instances involved a committee selling assets. Except in certain cases, the buyer of committee assets makes a contribution

¹⁶ “Volunteer Activity.” *FEC.gov*, Federal Election Commission, www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/volunteer-activity/.

¹⁷ AO 2014-02

to the committee for the full amount of the sale.¹⁸ OsiaNetwork is not a committee and therefore those types of restrictions do not apply to its activities.

5. May OsiaNetwork transfer US\$ funds 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 committee without it being considered a contribution from OsiaNetwork and without it being subject to any contribution limits under the Federal Election Campaign Act?

Proposed Conclusion:

Yes, OsiaNetwork may transfer funds to a federal political committee without making a contribution as long as it meets three requirements applicable to any vendor of a federal political committee: (i) OsiaNetwork charges the same fee that it would charge any other organization, (ii) OsiaNetwork transfers funds to the federal political committees through a segregated account, (iii) OsiaNetwork uses “Best Practices” to screen for illegal contributions.¹⁹

Request

For the reasons outlined above, we are submitting this request on behalf of OsiaNetwork for an advisory opinion from the Commission that OsiaNetwork is allowed to operate under the Federal Election Campaign Act subject to terms to be outlined in the FEC advisory opinion.

¹⁸ “Sale of campaign assets.” FEC.gov, <https://fec.gov/help-candidates-and-committees/winding-down-candidate-campaign/sale-campaign-assets/>.

¹⁹ These are similar to the requirements outlined in AO 2012-09.

Joanna Waldstreicher

From: Sack, Jonathan S. <JSack@maglaw.com>
Sent: Thursday, September 20, 2018 4:09 PM
To: Joanna Waldstreicher
Cc: Hunt, Brian
Subject: OsiaNetwork LLC - Advisory Opinion Request

Ms. Waldstreicher,

Per your discussion with my colleague Brian Hunt, I can confirm that OsiaNetwork LLC will not be treated as a corporation for tax purposes. We hope this provides your office with all the information it needs to deem OsiaNetwork's advisory opinion request complete, and we would appreciate the request being promptly posted to the FEC's website.

Thank you,

Jonathan

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