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U.S. House of Representatives

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the Chairwoman*

Daniel J. Taylor
Counsel to the Ranking Member

1015 Longworth House Office Building
Washington, D.C. 20515-6328
Telephone: (202) 225-7103
Facsimile: (202) 225-7392

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MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics

Susan W. Brooks, Chairwoman
Theodore E. Deutch, Ranking Member

**SUBJECT: Cryptocurrencies: Financial Disclosure Requirements and Other Ethics
Ramifications**

As you may be aware, cryptocurrencies (*e.g.*, Bitcoin, Ethereum, Ripple, Litecoin, etc.) are changing and expanding traditional financial markets.¹ Bitcoin was first issued in 2009; today, there are more than 1,500 cryptocurrencies.² Relevant committees of jurisdiction in Congress have been reviewing cryptocurrencies, their role in financial markets, and the authorities and responsibilities of regulatory agencies.³ The Committee on Ethics (Committee) has also been reviewing cryptocurrencies to determine potential financial disclosure reporting ramifications for House filers, as well as the possible ramifications for other ethics rules or standards. The purpose of this memorandum is to provide guidance on these ethics issues based on our current understanding of cryptocurrencies. In particular, the Committee has determined that with respect to financial disclosure, cryptocurrencies will be treated as an “other forms of securities” and are therefore subject to reporting both on a financial disclosure filer’s annual Financial Disclosure Statement (FD Statements or Statements) and on Periodic Transaction Reports (PTRs) throughout the year. Due to the evolving nature of cryptocurrencies, the Committee recommends that anyone with questions about cryptocurrencies call the Committee for guidance.

¹ The terms “cryptocurrency” and “virtual currency” are sometimes used interchangeably. Because the term “virtual currency” “can also refer to a broader class of electronic money” than cryptocurrency, this memorandum uses the term “cryptocurrency.” Cong. Res. Serv., “Introduction to Financial Services: ‘Cryptocurrencies,’” Feb. 7, 2018.

² Cong. Res. Serv., “Bitcoin: Questions, Answers, and Analysis of Legal Issues,” at 1, Dec. 2, 2015; CoinMarketCap, “Cryptocurrency Market Capitalizations,” available at <https://coinmarketcap.com/> (last accessed Mar. 15, 2018).

³ *Examining the Cryptocurrencies and ICO Markets Before the Subcomm. on Capital Markets, Securities, and Investment of the H. Comm. on Financial Services*, 115th Cong., 2d Sess. (Mar. 14, 2018); *Virtual Currencies: The Oversight Role of the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Before the Sen. Comm. on Banking, Housing, and Urban Affairs*, 115th Cong., 2d Sess. (Feb. 6, 2018).

Cryptocurrencies and Other Regulatory Agencies

Generally speaking, a “cryptocurrency” “acts as money in an electronic payment system in which transactions are validated by a decentralized network of computers rather than a third-party intermediary, such as a bank.”⁴ A number of regulatory agencies have addressed aspects of cryptocurrencies that are within their jurisdiction, or indicated that they are continuing to review them. For example, the U.S. Commodity Futures Trading Commission (CFTC) has determined that it can regulate cryptocurrencies as commodities.⁵ The Securities and Exchange Commission (SEC) has indicated that for certain purposes, cryptocurrencies may be regulated as securities, and that it is continuing to review how existing securities laws and regulations apply to them.⁶ The Internal Revenue Service (IRS) has advised that for federal tax purposes, it will treat cryptocurrencies as property. The Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) has also pursued enforcement actions relating to cryptocurrencies.⁷ The Committee considered the approaches of these agencies as it reviewed the applicability of ethics laws and standards within its jurisdiction to cryptocurrencies.

Financial Disclosure

Title I of the Ethics in Government Act of 1978 (EIGA)⁸ requires Members, officers, certain employees⁹ to file FD Statements. The Committee on Ethics is the supervising ethics office for Members, officers, and employees of the House as well as certain other employees of the legislative branch who are required to file financial disclosure reports under the EIGA.¹⁰ As the supervising ethics office for House filers, the Committee may issue advisory opinions interpreting the EIGA within its jurisdiction.¹¹

⁴ Cong. Res. Serv., “Introduction to Financial Services: ‘Cryptocurrencies,’” Feb. 7, 2018.

⁵ *In re Coinflip, Inc.*, Dkt. No. 15-29 (C.F.T.C. Sept. 17, 2015); *see also C.F.T.C. v. McDonnell*, 1:18-cv-00361mem. op. at 24 (E.D.N.Y., Mar. 6, 2018) (“Virtual currencies can be regulated by CFTC as a commodity.”).

⁶ *See, e.g., SEC*, “SEC Issues Investigative Report Concluding DAO Tokens, a Digital Asset, Were Securities,” July 25, 2017, *available at* <https://www.sec.gov/news/press-release/2017-131>.

⁷ Cong. Res. Serv., “For First Time, FinCEN Imposes Penalty on Foreign-Based Virtual Currency Exchange for Violations of Anti-Money Laundering Laws,” Aug. 17, 2017.

⁸ 5 U.S.C. app. §§ 101-111.

⁹ House staff may be subject to financial disclosure filing requirements for a number of reasons, including (1) they are paid at or above the annual senior staff rate (\$126,148 for 2018, subject to change in 2019 and beyond) for 60 days or more during the calendar year, even if on a temporary basis; (2) they are designated as a “principal assistant” for financial disclosure filing purposes by their employing Member; and (3) they are a shared employee of three or more offices, regardless of their rate of pay.

¹⁰ 5 U.S.C. app. § 109(18)(B).

¹¹ 5 U.S.C. app. § 106(b)(7).

The EIGA requires all financial disclosure filers to file an FD Statement at least once a year to disclose, among other things: (1) assets (real and personal property) held for investment or the production of income valued at more than \$1,000 at the close of the reporting period; (2) unearned income that exceeds \$200 during the reporting period for themselves, spouses, or dependent child; and (3) earned income from a single source that exceeds \$200 in the aggregate in the reporting period.

In addition, the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) and related subsequent laws amended the EIGA to require Members, officers, and senior staff¹² to report certain transactions twice – once on the filer’s annual FD Statement, as before, and once closer in time to the transaction.¹³ The types of transactions subject to the STOCK Act requirement are any purchase, sale, or exchange by a filer, their spouse, or dependent child of “stocks, bonds, commodities futures, and other forms of securities” if the amount of the transaction exceeds \$1,000. These STOCK Act filings are known as Periodic Transaction Reports and must be filed within 30 days of notice of the transaction, but in no case later than 45 days after the transaction. (Unlike an annual FD Statement, a filer is only required to file a PTR when they have a reportable transaction to disclose; a filer does not need to file a PTR to report no transaction activity.) The test for whether a transaction is subject to PTR reporting in addition to being reported on a filer’s FD Statement is not whether the filer made a profit (or loss) on the transaction, but whether the asset is a stock, bond, commodity future, or other form of security.

After careful review of this issue, the Committee recently determined that it is appropriate to consider cryptocurrencies “other forms of securities” for purposes of the EIGA and financial disclosure with respect to individuals who are subject to financial disclosure requirements and who file their reports with the Clerk of the House.¹⁴ Accordingly, all financial disclosure filers must disclose ownership interests of virtual currency valued at more than \$1,000 on Schedule A (“Assets and Unearned Income”) and purchases, sales, or exchanges valued at more than \$1,000 on Schedule B (“Transactions”) of their annual FD Statement.¹⁵ In addition, Members, officers, and senior staff who are subject to PTR filing must report purchases, sales, or exchanges of cryptocurrencies over \$1,000 on PTRs.¹⁶

Initial Coin Offerings

In addition to creating the periodic reporting requirement discussed above, the STOCK Act prohibited Members, officers, and employees who are subject to financial disclosure reporting requirements from participating in Initial Public Offerings (IPOs) in a manner “other than is

¹² See FN 9, above. Employees who file FD Statements because they are principal assistants or shared employees as defined by the Committee on House Administration **are not** required to file PTRs.

¹³ STOCK Act (Pub. L. 112-105, as amended by Pub. L. 112-173, Pub. L. 112-178 & Pub. L. 113-7).

¹⁴ See Comm. on Ethics, *Instruction Guide for Completing Calendar Year 2017 Financial Disclosure Statements and Periodic Transaction Reports* (Apr. 11, 2018).

¹⁵ *Id.* at 20.

¹⁶ *Id.* at 42.

available to members of the public generally.”¹⁷ This prohibition took effect immediately upon enactment of the STOCK Act on April 4, 2012. The Committee previously provided public guidance to the House community about this prohibition.¹⁸ However, the STOCK Act implemented this prohibition by amending the Securities Exchange Act of 1934, which is under the primary jurisdiction of the SEC.¹⁹

Cryptocurrencies introduced the concept of Initial Coin Offerings (ICOs) to financial markets.²⁰ At this time, the SEC indicated that it is continuing to review ICOs and to assess how existing securities laws and regulations apply to them. The SEC has halted an ICO that it concluded failed to comply with those laws and regulations.²¹ Also, a company recently filed a securities registration for an upcoming ICO.²² At this time, it is unclear which ICOs, if any, may be considered to be “the subject of an initial public offering” for purposes of the IPO prohibition.

Accordingly, any House Member, officer, or employee who is considering participating in an ICO is strongly encouraged to contact the Committee for guidance before doing so.

Insider Trading and Other Rules Regarding Personal Financial Transactions

Following passage of the STOCK Act, the Committee issued public guidance regarding the Act’s provisions regarding insider trading.²³ The Committee noted that the STOCK Act “explicitly affirms that Members and **all** employees are subject to the insider trading prohibitions arising under the securities laws.”²⁴ In general, as with any criminal statutes or Executive Branch regulations, the Committee cannot provide binding interpretations of securities law.²⁵ The SEC

¹⁷ 15 U.S.C. § 78u-1(i).

¹⁸ See, e.g. Comm. on Ethics, “New Ethics Requirements Resulting from the STOCK Act,” Apr. 4, 2012; Comm. on Ethics, “Reminder about the Limitation on Participating in Initial Public Offerings,” Nov. 5, 2013. All advisory memoranda referenced in this memorandum are available on the Committee’s website, at <https://ethics.house.gov>.

¹⁹ 15 U.S.C. § 78u-1(i).

²⁰ Initial Coin Offerings (ICOs) offer opportunities for individual investors to exchange currency such as U.S. dollars or virtual currencies in return for a digital asset labeled as a coin or token. See Statement on Cryptocurrencies and Initial Coin Offerings (Dec. 11, 2017), available at <https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11>.

²¹ SEC, “Company Halts ICO After SEC Raises Registration Concerns,” Dec. 11, 2017, available at <https://www.sec.gov/news/press-release/2017-227>.

²² The Praetorian Group, Registration Statement Under the Securities Exchange Act of 1934 (Form S-1) (Mar. 6, 2018), available at https://www.sec.gov/Archives/edgar/data/1721980/000137647418000045/pr_sl.htm.

²³ Comm. on Ethics, “New Ethics Requirements Resulting from the STOCK Act,” Apr. 4, 2012.

²⁴ *Id.* at 6. (emphasis original).

²⁵ *Id.* at 7.

indicated that it is continuing to review the applicability of insider trading prohibitions to cryptocurrencies.²⁶

However, it is important to note that other standards of conduct within the Committee's jurisdiction could apply to personal financial transactions involving cryptocurrencies, regardless of how the SEC interprets and applies existing or future insider trading prohibitions. The Committee previously stated that, "Whether or not the traditional statutes and regulations governing insider trading apply, Members and employees who engage in trading with the benefit of material nonpublic information gained in congressional service may be investigated for, and may be found in violation of, clause 1 [of the Code of Official Conduct]."²⁷ In addition, House Members, officers, and employees may not receive compensation "by virtue of influence improperly exerted" from a congressional position.²⁸ In general, rules and standards regarding personal financial transactions, including the use of nonpublic information obtained in the course of official duties and conflicts of interest, would apply to cryptocurrencies just as any other type of financial holding.

Cryptocurrency Mining and Outside Earned Income

One way an individual can obtain cryptocurrency is to "mine" it. In this process, users of a cryptocurrency network "known as miners ... gather together blocks of new transactions and compete to verify that the transactions are valid."²⁹ Individuals who use their computers for this service "are rewarded by the network's controlling computer algorithm" by being issued units of the cryptocurrency.³⁰ This practice may implicate the limit on outside earned income.

The EIGA and House Rules subject Members, as well as officers and employees who are paid at the senior staff rate for more than 90 days in a calendar year, to limitations on the types of outside employment they may engage in and an overall limit on the amount of outside earned income they may receive in a year.³¹ For 2018, the outside earned income limit is \$28,050.³²

House Rule 25, clause 4(d)(1), defines "outside earned income" to include "wages, salaries, fees, and other amounts received ... as compensation for personal services." The *Ethics Manual* explains that the limitation "applies only to compensation for personal services (termed 'earned income'), but not to moneys received from ownership or other investments of equity (so-called

²⁶ SEC Chairman Jay Clayton, Remarks at the PLI 49th Annual Institute on Securities Regulation – New York, N.Y. (Nov. 8, 2017), available at <https://www.sec.gov/news/speech/speech-clayton-2017-11-08>.

²⁷ Comm. on Ethics, "Rules Regarding Personal Financial Transactions," at 2-3, Nov. 29, 2011.

²⁸ *Id.* at 2.

²⁹ Cong. Res. Serv., "Bitcoin: Questions, Answers, and Analysis of Legal Issues," at 1-2, Dec. 2, 2015.

³⁰ *Id.*

³¹ Comm. on Ethics, "The 2018 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees," Jan. 5, 2018.

³² *Id.*

'unearned income')."³³ In determining whether a payment is a "distribution" (return on equity) or compensation for personal services, "the 'real facts' of a particular case would control as to whether moneys received would be deemed earned income."³⁴ Thus, the "label or characterization placed on a ... payment by the parties may be disregarded for purposes of the Rule," and the payment will be considered earned income if it is "in fact attributable to any significant extent to services rendered by the Member."³⁵ The Committee also made clear that the outside earned income limit "applies to outside earned income realized in a medium other than money, for example, in property or services or through a bargain purchase or forbearance in consideration of personal services rendered."³⁶

In general, then, if a Member or employee who is subject to the outside earned income limit receives compensation in the form of cryptocurrency in exchange for their personal services "mining" the cryptocurrency, that compensation would be subject to both the outside earned income limit and disclosure on the individual's annual FD Statement. Any Member or employee who contemplates engaging in this activity should consult with the Committee beforehand.

Frequently Asked Questions

- 1. I am a Congresswoman and I purchased cryptocurrency years ago for \$1. It is now worth \$10,000. Do I have to report it on my FD Statement now? Did I have to file a PTR at the time of purchase?**

A. Yes, you do have to report your ownership interest in the cryptocurrency on Schedule A ("Assets & Unearned Income") on every FD Statement where the balance of your interest exceeds \$1,000 at the end of the reporting period. You were not required to file a PTR at the time of the transaction because your purchase amount was less than \$1,000.

- 2. I am paid above the senior staff rate and I am a financial disclosure filer. My spouse purchased \$8,000 worth of a cryptocurrency. Do I have to report it? If so, how?**

A. Yes, you must report the transaction. First, you must report the purchase transaction on a PTR no later than 45 days from the date of the transaction. Then, you have to report your spouse's ownership interest in the cryptocurrency Schedule A ("Assets & Unearned Income") on every FD Statement where the balance of your spouse's interest exceeds \$1,000 at the end of the reporting period. You must also report the purchase transaction on Schedule B ("Transactions") on the FD Statement covering the calendar year when the purchase took place.

³³ 2008 House Ethics Manual [hereinafter *Ethics Manual*], at 231.

³⁴ *Id.*

³⁵ Comm. on Ethics, *Advisory Op. No. 13* (reprinted in *Ethics Manual*, at 365).

³⁶ *Id.*

Available Assistance

Any Member, officer, or employee who has questions regarding cryptocurrencies and any applicable ethics standard is encouraged to contact the Committee at (202) 225-7103. Any financial disclosure filer who has questions concerning the financial disclosure reporting requirements related to cryptocurrencies or how to complete a FD Statement or PTR is also encouraged to call the Committee. Committee staff is available to review your FD Statement or PTR before filing (pre-screen). To have your FD Statement or PTR pre-screened, please e-mail it to financial.disclosure@mail.house.gov.