September 8, 2023

Summary of Digital Asset Broker Reporting Proposed Regulations

Background. On August 25, 2023, the Treasury Department and Internal Revenue Service ("IRS") released long-awaited proposed regulations on the digital asset broker reporting legislation that was enacted in the 2021 Bipartisan Infrastructure Investment and Jobs Act.[1] Comments on the proposed regulations are due by October 30, 2023, and a public hearing is scheduled for November 7, 2023 (with a second hearing tentatively scheduled if needed the following day).

The legislation made several notable changes to the broker reporting requirements to apply to digital assets:

- **Broker Definition. -** Amended the section 6045(c)(1) broker definition to include "any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person;"
- **Digital Assets Added to Specified Security Definition. -** Amended the section 6045(g) specified security definition to include digital assets. For this purpose, the term 'digital asset' generally means "any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary;"
- **Broker Transfers. –** Amended section 6045A to require brokers to report to the IRS any transaction (which is not part of a sale or exchange) in which they transfer digital assets on behalf of a customer to another broker. Also, section 6045A(a) was amended to clarify that broker-to-broker reporting applies to all transfers of covered securities, including digital assets.
- **Treatment as Cash.** –Treats digital assets as cash for purposes of section 6050I. The impact is that any person engaged in a trade or business must report any time there is a transaction (or related transactions) involving cash and/or digital assets of more than $10,000.

The digital asset broker reporting proposal raised over $27 billion by also requiring certain digital asset brokers to report basis of digital assets sold or disposed of to their customers.[2]

The legislation was initially scheduled to apply to digital assets acquired on or after January 1, 2023.[3] Given that much of the digital asset industry had not previously been subject to reporting rules, stakeholders were concerned with their ability to develop systems and

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[1] P.L. 117-58, November 15, 2021, Sec. 80603.
[2] JCX-33-21, August 2, 2021, https://www.jct.gov/publications/2021/jcx-33-21/.
[3] Any tax returns or statements required to be furnished after December 31, 2023 were required under statute to follow the new law.

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implement the reporting requirements by the January 1, 2023 effective date, which was just a little over a year after the proposal became law.[4] Early in 2022, stakeholders began conversations with the Treasury Department advocating for a delay in the effective date for at least a year after guidance is proposed and finalized. On December 23, 2022, Treasury issued guidance delaying the effective date of the section 6045 and 6045A broker reporting changes until after Treasury issues final regulations.[5]

Additionally, many stakeholders have raised concerns with the broad scope of the legislation, particularly as it relates to roles in the cryptocurrency industry that are essential to effectuating transactions but do not have readily available insight into the parties for whom they are conducting those transactions. Some examples include node operators, miners and stakers, and digital and hard wallet providers. Legislation has been introduced in both chambers seeking to narrow the definition of broker to clearly carve out such parties from the reporting requirements.[6] Members also sent letters to Treasury soon after the passage of the proposal, urging a more narrow reading of the scope of the digital asset regulations. These legislative efforts were somewhat answered when in early 2022 Treasury responded to a group of Senators saying that miners and stakers would not have reporting obligations.[7]

There are many other concerns that have been raised by stakeholders, such as whether the rules should apply to non-fungible tokens, stablecoins, or security tokens.

In August 2023, four Senators wrote Treasury Secretary Janet Yellen and IRS Commissioner Dan Werfel urging them to release the regulations and to answer questions relating to the implementation process due to the delay's impact on closing the digital asset tax gap, addressing tax evasion across the cryptocurrency ecosystem, and ensuring taxpayers have the tools to easily report digital asset income.[8]

Overview of Proposed Regulations. The proposed regulations provide an expansive framework for determining whether persons are brokers and whether the activity is subject to reporting. The regulations also provide definitions of digital assets and sourcing rules relating to the reporting obligation. Finally, the proposed regulations provide rules relating to the determination of amounts realized in a sale, exchange, or other disposition under section 1001 and the determination of basis under section 1012.

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[4] Note that the IIJA text and the regulations contain language saying that the broker reporting rules do not infer that before the effective date any person is a broker under section 6045(c)(1) or whether any digital asset is property which is a specified security under section 6045(g)(3)(B).
[5] Announcement 2023-2. https://www.irs.gov/pub/irs-drop/a-23-02.pdf.
[6] For example, see H.R. 1414, "Keep Innovation in America Act," Reps. Patrick McHenry (R-NC) and Ritchie Torres (D-NY); S. 2281, "Lummis-Gillibrand Responsible Financial Innovation Act," Sens. Cynthia Lummis (R-WY) and Kristen Gillibrand (D-NY).
[7] Bloomberg, Allyson Versprille, "Treasury Signals Crypto Miners Won't Face IRS Reporting Rule," February 11, 2022.
[8] See August 1, 2023 letter from Sens. Elizabeth Warren (D-MA), Bob Casey (D-PA), Richard Blumenthal (D-CT), and Bernie Sanders (I-VT). See also, June 5, 2023 letter from Reps. Brad Sherman (D-CA) and Stephen Lynch (D-MA).

Importantly, the proposed regulations provide delayed effective dates. The effective dates are:

- **Gross proceeds reporting** for sales effected on or after January 1, 2025.
- **Adjusted basis and character of gain or loss reporting** for sales on or after January 1, 2026, but only with respect to digital assets acquired on or after January 1, 2023.
- **Changes for reporting real estate transactions** for closings on or after January 1, 2025.
- **Backup withholding changes** only for sales of digital assets on or after January 1, 2025.

Given the December 2022 Announcement delaying implementation until after the final regulations are issued, it is clear that Treasury and the IRS intend to finalize these regulations before January 1, 2025.

Treasury and the IRS say they expect to make the changes to reporting for digital assets in several phases. These proposed regulations are the first phase and generally focus on changes to existing § 1.6045–1 to require brokers to report on digital asset sales. Later phases will cover the implementation of transfer statement reporting under section 6045A(a) and broker information reporting under section 6045A(d) for certain covered security transfers to non-brokers, or subject to reporting as sales.

Summary of Proposed Regulations

Brokers Required to Report.

Definition of broker. – The proposed regulations generally retain the current regulatory definition of a broker to mean any person, U.S. or foreign, that in the ordinary course of a trade or business stands ready *to effect* sales to be made by others. However, the proposed regulations modify the definition of "effect" to broaden the application of the term broker. As a result of the modification, any person that provides facilitative services that effectuate sales of digital assets by customers will be considered a broker, provided such person's service arrangements with customers ordinarily would cause him or her to know or be in a position to know the identity of the party that makes the sale and the nature of the transaction potentially giving rise to gross proceeds. For this purpose, the ability to modify the operation of a platform to obtain customer information is treated as being in a position to know the information. According to the preamble, Treasury and the IRS expect that "this will ultimately require operators of some platforms generally referred to as decentralized exchanges to collect customer information and report sales information about their customers, if those operators otherwise qualify as brokers." The proposed regulations clarify that a person who acts as a principal should be treated as "effecting" a sale for this purpose only to the extent such person is acting as a broker as well.

The proposed regulations also make a few specific additions to the current definition of broker. First, the regulations add a person acting as a "digital asset middleman" (in addition to acting as either a principal or an agent) to the list of brokers required to report with respect to sales of

digital assets. Second, a person that regularly offers to redeem digital assets that were created or issued by that person would be considered a broker. Third, the definition of a broker is expanded to include a real estate reporting person who would be required to report on real estate purchasers who use digital assets to acquire real estate in a reportable real estate transaction under proposed § 1.6045– 4(a), without regard to certain exceptions.

The proposed regulations provide examples of persons who are generally considered to be brokers under the above definition, including digital asset trading platforms that also provide custodial (hosted wallet) services, operators of non-custodial trading platforms, digital asset payment processors, and operators and owners of digital asset kiosks.

The following persons are not considered brokers under the proposed regulations:

1) Merchants who are not otherwise required to produce information returns under section 6045 and regularly sell goods or other property (other than digital assets) or services in exchange for digital assets;
2) Persons solely engaged in the business of validating distributed ledger transactions through proof of stake, proof of work or other consensus mechanism (e.g., miners and stakers) provided they do not provide other functions or services;
3) Persons solely engaged in the business of selling hardware or licensing software, the sole function of which is to permit a person to control the private keys which are used for accessing digital assets on a distributed ledger, without providing other functions or services; and
4) Artists who create and sell NFTs that represent interests in the artist's work, provided the artist is not otherwise a dealer in digital assets.

Sale. – In addition to general rules relating to the definition of a sale, for purposes of digital assets, the term sale includes any disposition of a digital asset in exchange for cash or stored-value cards, in exchange for a different digital asset, or delivery of a digital asset pursuant to the settlement of a forward contract, option, regulated futures contract, any similar instrument, or any other executory contract which would be treated as a digital asset if the contract had not been executory. Sale also includes a disposition of digital assets for property (including securities and real property) of a type that is subject to reporting under section 6045, and for services of a broker. Whether a person is a broker for purposes of this rule, however, is determined without regard to whether that person regularly accepts digital assets in consideration for its services.

The term sale also includes the payment by a party of digital assets to a digital asset payment processor in return for the payment of cash or a different digital asset to a second party.

Digital asset. – The proposed regulations define digital asset as "any digital representation of value that is recorded on a cryptographically secured distributed ledger (or any other similar technology), without regard to whether each individual transaction involving that digital asset is actually recorded on that ledger, and that is not cash." This includes NFTs and stablecoins, but would not include assets that exist only in a closed system (e.g., video game tokens) or

uses of distributed ledger (blockchain) technology for ordinary commercial purposes that do not create new transferable assets.

Digital asset middleman. – As described above, the proposed regulations expand the scope of the broker reporting requirement by treating a digital asset middleman as a broker subject to the reporting requirements. The term digital asset middleman is not in the statute. For this purpose, a digital asset middleman means any person who provides a facilitative service with respect to a sale of digital assets wherein the nature of the service arrangement is such that the person ordinarily would know or be in a position to know the identity of the party that makes the sale and the nature of the transaction potentially giving rise to gross proceeds from the sale.

There are several examples in the regulations regarding how to determine whether a person is a digital asset middleman, including in the instance of a company selling unhosted wallets and providing a variety of services.

The regulations provide definitions for three terms in the digital asset middleman definition:

- "Position to know" – A person is in a position to know the identity of the party making a sale if that person maintains sufficient control or influence over the facilitative services provided to have the ability to set or change the terms under which its services are provided to request that the party making the sale provide that party's name, address, and TIN. A person with the ability to change the fees charged for facilitative services is deemed to be in a position to know the party's identity.

- "Nature of the transaction" – A person is in a position to know the nature of the transaction potentially giving rise to gross proceeds from a sale if that person maintains sufficient control or influence over the facilitative services provided to have the ability to determine whether and the extent to which the transfer of digital assets involved in a transaction gives rise to gross proceeds, including by reference to the consideration that the person receives or pursuant to the operations or modifications to an automatically executing contract or protocol to which the person provides access. A person with the ability to change the fees for the services is deemed to be in a position to know the nature of the transaction.

- "Facilitative service" – A facilitative service includes the provision of a service that directly or indirectly effectuates a sale of digital assets. Examples include providing a party in the sale with access to an automatically executing contract or protocol, providing access to digital asset trading platforms, providing an automated market maker system, providing order matching services, providing market making functions, providing services to discover the most competitive buy and sell prices, or providing escrow or escrow-like services to ensure both parties to an exchange act in accordance with their obligations.

Facilitative services do not include mining or staking, whether through proof-of-work or proof-of-stake, without providing other services if the person is "solely engaged in the business of providing such validating services." Facilitative services also do not include the selling of hardware or licensing of software for which the sole function is to permit persons to control private keys which are used for accessing digital assets on a distributed ledger if such person is solely engaged in such business.

Digital asset payment processor. –Digital asset payment processors are treated as effecting sales and thus may be subject to broker reporting requirements. This rule would require reporting when a person uses digital assets, such as bitcoin or a stablecoin, to purchase goods and services and may impact the likelihood of the technology to become a viable payment option due to the robust reporting requirements and tax liability. The term digital asset payment processor means a person who in the ordinary course of a trade or business stands ready to effect sales of digital assets by:

(1) regularly facilitating payments from one party to a second party by receiving digital assets from the first party and exchanging those digital assets into cash or different digital assets paid to the second party;
(2) acting as a third-party settlement organization (see section 6050W) that facilitates payments, either by making or submitting instructions to make payments, using one or more digital assets in settlement of a reportable payment transaction, without regard to whether the third-party settlement organization contracts with an agent to make, or submit instructions to make, such payments; or
(3) acting as a payment card issuer that facilitates payments, either by making or submitting the instruction to make payments, in one or more digital assets to a merchant acquiring entity (as defined under §1.6050W-1(b)(2)) in a transaction that is associated with a payment made by the merchant acquiring entity, or its agent, in settlement of a reportable payment transaction under §1.6050W-1(a)(2).

Required Information Reporting. Brokers must report the following information with respect to digital asset sales:

- Name, address, and TIN of the customer;
- Name (or type) and number of units of the digital asset sold;
- Sale date and time (determined when the transactions are recorded on the ledger, if effected on a blockchain. Dates and times must be reported using Coordinated Universal Time, which uses a 12-hour clock.);
- Gross proceeds amount (after reduction for the allocable digital asset transaction costs);
- Transaction ID (if any) in connection with the sale;
- Digital asset address (if applicable) from which the digital assets was transferred in connection with the sale;
- Whether the sale was for cash, stored-value cards, services, other digital assets, or other property; and
- Any other information required by the Secretary.

Brokers must also report the specific digital asset sold. If the customer does not provide adequate and timely identification, the broker must report the earliest units purchased or transferred into the account. Adjusted basis must be reported for each sale on or after January 1, 2026.

If a digital asset is also a security, the broker must report information required under §1.6045-1(d)(2)(i)(A), such as CUSIP or other security identifier number designated, basis, character, proceeds, and sale date.

Treasury intends to issue a new form specifically for reporting digital asset transactions under section 6045.

Gross proceeds. – The amount realized from the sale of a digital asset is determined using the following formula:

U.S. dollars paid to the customer or credited to its account
\+ (FMV of any property or services received)
– digital asset transaction costs
Gross proceeds from the sale of a digital asset

The proposed regulations provide rules for determining and allocating digital asset transaction costs.

Fair market value is measured at the date and time the transaction was effected. Brokers generally must use reasonable valuation methods for determining FMV of property or services received. However, in determining the FMV of services giving rise to transaction costs, the broker must look to the FMV of the digital assets used to pay for such costs. The regulations provide rules for determining a reasonable valuation method and what to do in cases where the value is not readily ascertainable.

Basis of digital assets purchased. – Digital assets acquired for cash have a basis equal to cash paid plus transaction costs. In the case of digital assets acquired in exchange for property, the basis is the FMV of the property exchanged plus transaction costs. The basis of digital assets acquired in exchange for property other than digital assets is the cost of the acquired digital assets plus any allocable digital asset transaction costs. The basis of digital assets received in exchange for other digital assets differing materially in kind or in extent is the cost of the acquired digital assets, plus one-half of the total allocable digital asset transaction costs. When digital assets are received in exchange for the performance of services, taxpayers should follow the rules set forth in §§ 1.61–2(d)(2) and 1.83–4(b) for purposes of determining basis.

Transaction costs. – The regulations provide rules for allocating transaction costs between the sale and any acquisition of new digital assets. If the exchange is a sale of one digital asset and acquisition of a different digital asset, then the transaction cost is allocated one-half to the transferred asset and one-half to the acquired asset.

Coordination Rules. — The proposed regulations provide numerous coordination rules to prevent confusion and avoid duplication. For example, a sale of a digital asset that is also a security or commodity should be reported solely as a sale of a digital asset. By contrast, when a digital asset also constitutes reportable real estate, the sale of the asset should only be reported as real estate.

Financial Products. — The proposed rules provide rules for the reporting of certain financial products on digital assets, such as options, futures, and forward contracts. For disposition of options, whether the option itself is a digital asset option or a non-digital asset option will control whether the digital asset reporting rules apply or whether the option reporting rules under §1.6045-1(m)(1) apply, regardless of the nature of the underlying property. If the option is settled by delivery of the underlying property, then the nature of the underlying – digital asset or non-digital asset – determines which rules apply. Forward contracts have similar treatment as options. Disposition of section 1256 contracts, regardless whether the option is a digital asset option or whether the underlying property is a digital asset, are subject to the section 1256 reporting rules.[9] The character of the underlying property in the delivery under a section 1256 contract controls which rules apply. Regulated futures contracts are subject to reporting rules under the existing regulations.

Sourcing Rules. Treasury provides a similar sourcing rule for digital assets as already exists under broker reporting for covered securities, except with respect to sales effected at an office outside the U.S. By contrast to securities brokers, U.S. digital asset brokers are generally required to treat all sales as effected at an office in the U.S and thus may not rely on documentary evidence for sales effected outside the U.S. They are not required to produce returns with respect to a customer who is considered to be an exempt recipient under existing regulations or an exempt foreign person. A U.S. broker may treat a customer as an exempt foreign person if before a payment is made to the customer, the broker has a beneficial owner withholding certificate that satisfies applicable documentation requirements. Additionally, a U.S. broker may treat a customer as an exempt foreign person under an applicable presumption rule relying on §1.1441-1(b)(3)(ii), with some modifications (see proposed reg. § 1.6045-1(g)(4)(vi)(A)(2)). Backup withholding requirements may also apply if the broker has failed to obtain a valid W-9 subject to certain exceptions.

Detailed rules are also provided with respect to reporting requirements applicable to CFC digital asset brokers and non-U.S. brokers. The general rule is that a CFC digital asset broker (not acting as a money services business ("MSB")) is required to report on all sales other than those effected for an exempt recipient or exempt foreign person. However, by contrast to a U.S. broker, such a CFC digital asset broker is considered to effect the sale at an office outside the U.S. Consequently, it may treat a customer as an exempt foreign person with either a beneficial owner withholding certificate or documentary evidence supporting the customer's

[9] In the preamble, Treasury notes that they are unaware of existing digital asset options that are also section 1256 contracts and seek comments on the application of the rules.

foreign status. Also, backup withholding would not apply unless the CFC broker has actual knowledge that the customer is a U.S. person and a valid W-9 is not provided.

Non-U.S. digital asset brokers (not conducting business as an MSB) are generally treated as effecting the sale at an office outside the U.S. and thus not subject to reporting, unless the broker has information (as part of its account information for the customer) indicating that the customer may be a U.S. person or has connections to the United States. Also, backup withholding would not apply unless the CFC broker has actual knowledge that the customer is a U.S. person.

OECD Crypto-Asset Reporting Framework (CARF). The preamble says that Treasury and the IRS are considering how the U.S. can implement the OECD CARF, which has been approved by the OECD and would require reporting and automatic information exchange on crypto-assets and allow the IRS to receive information on digital asset sales for U.S. taxpayers by non-U.S. brokers.[10] Treasury and the IRS anticipate that implementation of CARF may require the proposed regulations to be modified to ensure required information is collected and to exempt some non-U.S. brokers from reporting under the proposed regulations.

Specific Request for Comments. - Treasury provided the following list of questions in the preamble for which they would like to receive comments from stakeholders. In most instances, the preamble also provides a discussion of the issues and thought processes of Treasury when developing the proposed rules. Interested parties should review both the questions and discussion in the preamble. The cross-references are to sections of the preamble.

1. Does the proposed definition of digital asset accurately and appropriately define the type of assets to which these regulations should apply? See Part I.A.1 of this Explanation of Provisions.

2. Does the definition of digital asset or the reporting requirements with respect to digital assets inadvertently capture transactions involving non-digital asset securities that may use distributed ledger technology, shared ledger, or similar technology to process orders without effecting sales? Should any definitions or reporting rules be modified to address other transactions involving tokenized or digitized financial instruments that are used to facilitate back-office processing of the transaction? See Part I.A.2. of this Explanation of Provisions.

3. If an exception is necessary for transactions involving non-digital asset securities that may use distributed ledger technology or similar technology to process orders without effecting sales, how should it be drafted so that it does not sweep in other transactions (such as tokenized securities, or other digital assets that are securities) that should not be exempted from the reporting requirements? For example, should, and if so how should, reporting requirements distinguish between, and thus avoid double-counting of,

[10] For more information on CARF, see https://www.oecd.org/tax/international-standards-for-automatic-exchange-of-information-in-tax-matters-896d79d1-en.htm.

sales of digital assets from use of distributed ledger technology or similar technology for mere recordkeeping, clearing, or settlement of tokenized securities or other assets? See Part I.A.2. of this Explanation of Provisions.

4. How common are digital asset options that are also section 1256 contracts? Are there less burdensome alternatives for reporting these digital asset option transactions? For example, would it be less burdensome to allow brokers to report transactions involving section 1256 contracts that are also digital assets or the delivery of non-digital assets that underlie a digital asset option as a sale under proposed §1.6045-1(a)(9)(ii)? See Part I.A.3 of this Explanation of Provisions.

5. Is there is anything factually unique in the way short sales of digital assets, options on digital assets, and other financial product transactions involving digital assets are undertaken compared to similar transactions involving non-digital assets, and do these transactions raise any additional reporting issues that have not been addressed in these proposed regulations? See Part I.A.3 of this Explanation of Provisions.

6. Are there alternative information reporting approaches that could be used by digital asset trading platforms that collect and retain no information or collect and retain limited information about the identity of their customers that would satisfy tax compliance objectives while reducing privacy concerns? See Part I.B of this Explanation of Provisions.

7. Are there any technological or other technical issues that might affect the ability of a non-custodial digital asset trading platform that is a person who qualifies as a broker to obtain and transmit the information required under these proposed regulations, and how might these issues be overcome? See Part I.B of this Explanation of Provisions.

8. In light of the fact that digital asset trading platforms operate with varying degrees of centralization and effective control by founders or others, does the application of reporting rules only to "persons" (as described in Part I.B of this Explanation of Provisions) adequately limit the scope of reporting obligations to platforms that have one or more individuals or entities that can update, amend, or otherwise cause the platform to carry out the diligence and reporting rules of these proposed regulations? See Part I.B of this Explanation of Provisions.

9. Should the provision of connection software by a wallet provider to a trading platform (that customers of the trading platform can then use to access their wallets from the trading platform) be considered a facilitative service resulting in the wallet provider being treated as a broker? See Part I.B of this Explanation of Provisions.

10. What additional functions potentially provided by wallet software should be considered sufficient to treat the wallet provider as providing facilitative services? See Part I.B of this Explanation of Provisions.

11. What other factors should be considered relevant to determining whether a person maintains sufficient control or influence over provided facilitative services to be considered being in a position to know either the identity of the party that makes a sale or the nature of the transaction potentially giving rise to gross proceeds from a sale? See Part I.B of this Explanation of Provisions.

12. Under what circumstances should an operator of a digital asset trading platform be considered to maintain or not to maintain sufficient control or influence over the facilitative services offered by that platform? Should, and if so how should, the ability of users of the platform, shareholders or holders of governance tokens to vote on aspects of the platform's operation be considered? How are these decentralized organizational and governance structures similar to or different from other existing organizational or governance structures (e.g., shareholder votes, mutual organizations)? Should this conclusion be impacted by the existence of full or even partial-access administration keys or the ability of the operator to replace the existing protocol with a new or modified protocol if that replacement does not require holding a vote of governance token holders or complying with these voting restrictions? See Part I.B of this Explanation of Provisions.

13. To what extent should holders of governance tokens be treated as operating a digital asset trading platform business as an unincorporated group or organization? Please provide examples of fact patterns involving governance tokens and explain any differences in those fact patterns relevant to assessing the degree of control or influence exercisable by holders of those tokens. See Part I.B.1 of this Explanation of Provisions.

14. Are there alternative information reporting approaches that could be used by digital asset payment processors effecting payments to merchants on behalf of customers in transactions where the payment processor is an agent of a merchant that would satisfy tax compliance objectives while reducing privacy concerns? See Part I.B.3 of this Explanation of Provisions.

15. What is the frequency with which creators or issuers of digital assets redeem digital assets? See Part I.B.4 of this Explanation of Provisions.

16. Should the broker reporting regulations apply to initial coin offerings, simple agreements for future tokens, and similar contracts? See Part I.B.4 of this Explanation of Provisions.

17. Are the types of consideration for which digital assets may be exchanged in a sale transaction sufficiently broad to capture current and anticipated transactions in which taxpayers regularly dispose of digital assets for consideration? See Part I.C of this Explanation of Provisions.

18. Are there any logistical concerns about the reporting on contracts involving the delivery of digital assets created by these proposed regulations? See Part I.C of this Explanation of Provisions.

19. What is the frequency with which forward contracts involving digital assets are traded in practice? Are there any additional issues that should be considered to enable brokers to report on these transactions? See Part I.C of this Explanation of Provisions.

20. Should the definition of sale or other parts of these proposed regulations be revised to address transactions not addressed in these proposed regulations, such as the transfer of digital assets to and from a liquidity pool by a liquidity pool provider, or the wrapping and unwrapping of digital assets? See Part I.C of this Explanation of Provisions.

21. Are there other less burdensome alternatives to reporting transaction ID information and digital asset addresses with respect to digital asset sales and certain digital asset transfer-in transactions that would still ensure the IRS receives the information necessary to determine taxpayers' gains and losses? See Part I.D of this Explanation of Provisions.

22. Should an annual digital asset sale threshold, above which the broker would report transaction ID information and digital asset addresses, be used? If so, what should that threshold be? See Part I.D of this Explanation of Provisions.

23. Should the time reported using UTC time be reported using a 12-hour clock (designating a.m. or p.m. as appropriate) or a 24-hour clock? To what extent should all brokers be required to use the same 12-hour or 24-hour clock for these purposes? See Part I.D of this Explanation of Provisions.

24. Is a uniform time standard overly burdensome, and are there circumstances under which more flexibility should be provided? See Part I.D of this Explanation of Provisions.

25. Are there alternatives to basing the transaction date on the UTC for customers who are present in different time zones known to the broker at the time of the transaction? See Part I.D of this Explanation of Provisions.

26. Should the fair market value of services giving rise to digital asset transaction costs (including the services of any broker or validator involved in executing or validating the transfer) be determined by looking to the fair market value of the digital assets used to pay for the transaction costs? Are there circumstances under which an alternative valuation rule would be more appropriate? See Part I.E.2 of this Explanation of Provisions.

27. Are there any suggestions that could work to avoid duplicative multiple broker reporting for sale transactions involving digital asset brokers without sacrificing the

certainty that at least one of the multiple brokers will report? See Part I.H of this Explanation of Provisions.

28. Is there an alternative approach that could be objectively applied to differentiate between a U.S. digital asset broker's U.S. business and non-U.S. business for purposes of allowing different documentation to be used for the broker's non-U.S. business, and how could this alternative approach avoid being readily subject to manipulation? See Part I.I.1 of this Explanation of Provisions.

29. Are the U.S. indicia listed in proposed §1.6045-1(g)(4)(iv)(B)(1) through (5) appropriate and sufficient? See Part I.I.3 of this Explanation of Provisions.

30. Should the regulations define when a broker has reason to know that a digital asset broker is organized within the United States, and are there suggestions for objective indicators that a digital asset broker is organized in the United States? See Part I.I.3 of this Explanation of Provisions.

31. Are there administrable rules that would allow CFC and non-U.S. digital asset brokers conducting activities as MSBs to apply different rules to their U.S. and nonU.S. business activities while still ensuring that they are reporting on transactions of their U.S. customers? See Part I.I.4 of this Explanation of Provisions.

32. Should different diligence and documentation rules apply to CFC and non-U.S. digital asset brokers conducting activities as MSBs with respect to the non-U.S. part of their business, and if so, on what basis should a determination be made as to when these different diligence and documentation rules would apply? See Part I.I.4 of this Explanation of Provisions.

33. What U.S. regulatory schemes applicable to a CFC digital asset broker or a nonU.S. digital asset broker other than registration with FinCEN should be sufficient to cause such a digital asset broker to be subject to the same diligence, documentation and reporting rules as a digital asset broker conducting activities as an MSB? How can such digital asset brokers be identified by the IRS? Please also address questions 31 and 32 relating to digital asset brokers conducting activities as an MSB.

34. Would a rule requiring brokers to obtain documentation on account holders or partners, beneficiaries, or owners (as applicable) of customers that are foreign intermediaries or foreign flow-through entities increase transparency sufficiently to justify the increased burden on brokers? Is that trade-off different for digital assetonly brokers, securities-only brokers, or brokers that effect sales or exchanges in both categories? How frequently and in what circumstances do securities brokers rely on the existing section 6045 regulations to not document account holders or partners, beneficiaries, or owners (as applicable) of customers that are foreign intermediaries or foreign flow-through entities? See Part I.I.5.g of this Explanation of Provisions.

35. Would a coordination provision for brokers that effect transactions involving both non-digital asset securities and digital assets be helpful to brokers, and if so, which proposed rules applicable to digital asset brokers should apply to non-digital asset securities brokers? See Part I.I.6 of this Explanation of Provisions.

36. Are there additional broker-facilitated transactions involving digital assets that would still be subject to reporting under the barter exchange rules after the applicability date of these proposed regulations? For example, are there broker-mediated transactions that are not reportable payment transactions under §1.6050W-1(a)(1) with respect to the client that receives the digital assets as payment? See Part I.J of this Explanation of Provisions.

37. Is it appropriate to treat stablecoins, or a subset of stablecoins, as digital assets for purposes of these regulations? What characteristics should be considered when assessing whether stablecoins, or a subset of stablecoins, should be treated as digital assets under these regulations? See Part I.K of this Explanation of Provisions.

38. Should the regulations exclude reporting on transactions involving the disposition of U.S. dollar related stablecoins that give rise to no gain or loss, and if so, how should those stablecoin transactions be identified? See Part I.K of this Explanation of Provisions.

39. Should any other changes be made to the regulations or other rules to ensure adequate reporting of transactions involving the receipt or disposition of stablecoins? See Part I.K of this Explanation of Provisions.

40. In the case of cascading digital asset transaction costs (that is, a digital asset transaction cost paid with respect to the use of a digital asset to pay for a digital asset transaction cost), should all such costs be treated as digital asset transaction costs associated with the original transaction? See Part II.A of this Explanation of Provisions.

41. Is the allocation of one-half of total digital asset transaction costs paid to the disposition of digital assets for purposes of determining the amount realized and the allocation of the other half to the acquisition of the received digital assets for purposes of determining basis administrable? See Part II.A of this Explanation of Provisions.

42. Would a 100 percent allocation of digital asset transaction costs to the disposed-of digital asset in an exchange of one digital asset for a different digital asset be less burdensome? See Part II.A of this Explanation of Provisions.

43. Are there methods or functionalities that unhosted wallets can provide to assist taxpayers with the tracking of purchase dates, times, and/or basis of specific units of a digital asset upon the transfer of some or all of those units between custodial brokers and unhosted wallets? See Part II.C of this Explanation of Provisions.

44. Should the ordering rules for unhosted wallets be applied on a wallet-by-wallet basis as proposed, or should these rules be applied on a digital asset address-by-digital asset address basis or some other basis? See Part II.C of this Explanation of Provisions.

45. Are there any alternatives to requiring that the ordering rules for digital assets left in the custody of a broker be followed on an account-by-account basis; for example, if brokers have systems that can otherwise account for their customers' transactions? See Part II.C of this Explanation of Provisions.

46. Should exceptions be made to the ordering rule for digital assets left in the custody of a broker to allow brokers to take into account reasonably reliable purchase date information received from outside sources? If so, what types of purchase date information should be considered reasonably reliable? See Part II.C of this Explanation of Provisions.

47. Should the current rules under section 6045A applicable to transfers of securities from one broker to another remain applicable for securities that are also digital assets prior to the implementation of a later phase of the information reporting guidance? See Part IV of this Explanation of Provisions.

48. Who would be the responsible party required to provide the reporting if section 6045B is made applicable to securities that are also digital assets prior to the implementation of this later phase of information reporting guidance? See Part IV of this Explanation of Provisions.

49. Should any changes be made to the backup withholding rules under existing §31.3406(b)(3)-2(b)(3) or (4) to address digital assets that may also be treated as securities for Federal income tax purposes or to address short sales of digital assets? Are any additional rules needed to address how backup withholding should apply to transactions involving digital assets? See Part VI of this Explanation of Provisions.

B. Additional questions. Comments are also requested on any other aspect of these proposed regulations not specifically discussed in these proposed regulations, including the following:

1. Are there any suggestions for what the IRS should consider in planning for the receipt, storage, retrieval, and usage of the information required to be reported under these proposed regulations?

2. These proposed regulations anticipate that reporting brokers may voluntarily engage with acquiring brokers to obtain basis information with respect to transactions in which the reporting broker does not already have adjusted basis information. What would encourage reporting brokers to voluntarily obtain and provide this information?