VIA EMAIL: responses@finance.senate.gov

September 8, 2023

The Honorable Ron Wyden
Chairman
Committee on Finance
U.S. Senate
Washington, DC 20510

The Honorable Mike Crapo
Ranking Member
Committee on Finance
U.S. Senate
Washington, DC 20510

RE: Request for Input to Address Uncertain Tax Treatment of Digital Assets

Dear Senate Finance Committee Chairman Wyden and Ranking Member Crapo:

The Crypto Council for Innovation (CCI) appreciates the opportunity to submit this letter in response to your request for policy input on the taxation of digital assets. By way of background, CCI is an alliance of crypto industry leaders with a mission to communicate the benefits of crypto and demonstrate its transformational promise. CCI members span the digital asset ecosystem and share the goal of encouraging the responsible global regulation of digital assets to unlock economic potential, improve lives, foster financial inclusion, protect national security, and disrupt illicit activity. CCI believes that achieving these goals requires informed, evidence-based policy decisions realized through collaborative engagement.

As an initial matter, CCI has reviewed the IRS and Treasury Department's recently released proposed regulations that include information reporting requirements for certain digital asset transactions. CCI is concerned that certain aspects of the proposed regulations do not adequately take into account the unique nature of digital assets and the digital asset industry, especially to the extent that they impose obligations on individuals, technologies, or entities that practically cannot comply with tax reporting obligations–not because they do not want to, but because they do not have the requisite information to do so. The overbroad proposed definitions of "broker" and "digital assets" would include certain decentralized finance (DeFi) protocols, self-hosted wallet products, nonfungible tokens, and also not differentiate between digital assets used as payments and digital assets used as investments. CCI plans to submit comments on these

and other issues within the 60 day comment period and respectfully requests that the Senate Finance Committee consider enacting legislation to clarify the scope of sections 6045 and 6050W to the extent final Treasury regulations are overly broad and inconsistent with Congressional intent.

With regards to the Senate Finance Committee's request for input, CCI and its constituent members support a fair and sensible income tax reporting framework and believe that greater clarity on the taxation of digital assets will help foster compliance, consumer use-cases, and ongoing industry development. We appreciate the Senate Finance Committee's efforts and leadership to address uncertainties surrounding the tax treatment of digital assets and your solicitation of input from stakeholders and digital asset taxation experts. We welcome the opportunity to share our members' knowledge and expertise and to that end, CCI makes the below recommendations.

Recommendations

Marking-to-Market for Traders and Dealers (Section 475)

As an initial matter, CCI recommends that digital assets[1] be added as a third category of assets that may be marked to market at the *election* of a dealer or trader in those assets, in line with the recent Biden Administration Greenbook proposal (the "Biden Greenbook Proposal").[2] Assets in this third category should be actively traded digital assets and derivatives on, or hedges of, those digital assets under rules similar to those that apply to actively traded commodities. For this purpose, the term "actively traded" should be defined by reference to section 1092(d)(1) (similar to the rule currently in place for commodities). We would also recommend that any future legislation implementing this recommendation make clear that it is not creating a negative inference with respect to taxpayers' positions regarding the application of section 475 to digital assets under current law (i.e., future legislation should provide that the proposed changes should not be interpreted as creating an implication that digital assets are not commodities (within the meaning of section 475(e)(2))).

[1] For purposes of our recommendations in this letter, we use the term "digital assets" to refer to fungible digital assets. In contrast, nonfungible tokens, or "NFTs," are identifiable data units within a data infrastructure environment (blockchain). Each NFT possesses a unique token ID linking to a URL that contains NFT metadata. Due to the unique characteristics of NFTs as opposed to fungible digital assets, NFTs are not the focus of this letter and may warrant disparate treatment in certain circumstances. In addition, the use of the term "digital asset" is not intended to cover tokens that are considered ownership in an underlying asset under general tax principles. These types of digital assets should generally be treated in a manner consistent with the underlying asset.

[2] General Explanations of the Administration's Fiscal Year 2024 Revenue Proposals, U.S. Department of the Treasury (March 2024), available at: https://home.treasury.gov/policy-issues/tax-policy/revenue-proposals.

This recommendation is grounded in several policy considerations, many of which were cited as reasons for the Biden Greenbook Proposal. Mark to market accounting generally provides a clear reflection of income with respect to assets that are actively traded. For market-valued assets, mark to market accounting imposes few burdens and offers few opportunities for manipulation. Exchange-traded assets typically have reliably determinable values if they are actively traded. For financial accounting purposes, taxpayers may already be required to mark inventory or trading positions to market. Therefore, allowing taxpayers to use their financial accounting valuations for tax purposes may reduce tax compliance costs.

To the extent that the wash sale or constructive sale rules are expanded to apply to digital assets (see discussion *infra*), allowing traders to elect into mark to market accounting would enable them to comply with these anti-abuse provisions without going through the onerous analysis that is often required for taxpayers that are not on a mark to market method of accounting.[3]

Notwithstanding the various reasons why mark to market accounting might be beneficial, CCI does not believe that mark to market accounting should be mandatory for digital assets. Currently, mark to market accounting under section 475 is only mandatory for dealers in securities. Traders in securities and dealers and traders in commodities may elect mark to market accounting, but are not required to do so. It is CCI's position that digital assets are not securities both as a general matter and within the meaning of section 475(c)(2). Thus, allowing elective mark to market accounting would position digital asset traders and dealers similarly to traders and dealers in commodities – the asset class to which digital assets either belong or most closely relate.

If a separate category is not created for digital assets under section 475, CCI recommends that future legislation expressly provide that digital assets qualify as commodities for this purpose (such that they would be eligible for mark to market treatment if they are actively traded).

Trading Safe Harbor (Section 864(b)(2))

Section 864(b)(2) encourages capital investment in the U.S. by providing a "safe harbor" under which traders in securities and certain commodities are not subject to U.S. net basis taxation. As a general matter, the digital assets markets, like the securities and tangible commodities markets, provide an important source of capital to the U.S. To qualify for the commodities trading harbor, the trading activities must generally involve "commodities of a kind

[3] Allowing taxpayers to elect into mark to market accounting would also allow them to better manage the straddle rules of section 1092, to the extent those rules apply to digital assets under current law.

dealt in on an organized commodity exchange and the transaction is of a kind customarily consummated at such place."[4] It is not entirely clear under current law whether digital asset trading qualifies for the commodities trading safe harbor, although such trading activities should, from a policy standpoint, be treated similarly to trading in other liquid and fungible asset classes (e.g., commodities).

Prior guidance from the IRS has often looked to the regulatory classification of an asset for purposes of determining whether the asset qualifies for the commodities trading safe harbor.[5] As previously mentioned, CCI believes that the majority of digital assets are not securities and therefore do not qualify for the securities trading safe harbor. Indeed, the CFTC has previously indicated that bitcoin and certain other digital assets are commodities,[6] such that there is significant support for treating digital asset trading activities as commodities under present law.[7] With that said, due to an ongoing lack of clarity, many foreign investors may be unwilling to make investments in the absence of a higher degree of certainty on the U.S. tax consequences of the investment.

To address this uncertainty, CCI recommends creating a trading safe harbor specific to digital assets. We believe that this is in line with the broader goals of providing greater tax certainty to taxpayers and attracting foreign investment into the U.S. CCI does not believe the additional requirements imposed under section 864(b)(2)(B)(iii) for commodities trading should apply in the case of this new safe harbor because digital asset transactions do not involve the provision of goods and merchandise in the ordinary channels of commerce (i.e., the types of transactions these restrictions were intended to exclude). If a separate safe harbor category is not created, then, in the alternative, we recommend future legislation clarify that digital asset trading qualifies for the commodities trading safe harbor.[8] Any amendment to the section 864(b)(2) safe

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[4] 26 U.S.C. § Section 864(b)(2).

[5] Commodities are regulated differently from securities in large part because they are not subject to the same information asymmetry inherent in security investments. In the case of securities, a specific management team holds critical information about the enterprise. In the case of commodities, there is not a specific management team with inside information. The notion that digital assets are not generally securities is supported by a recent judicial decision which held that digital assets were securities only in limited situations where the digital asset was part of an "investment contract." *See SEC v. Ripple Labs, Inc.*, No. 20 CIV. 10832 (AT), 2023 WL 3477552 (S.D.N.Y. May 16, 2023).

[6] *See, e.g.,* Complaint at 9, *CFTC v. Binance,* 1:23-cv-01887 (N.D. Ill. 2023), available at: https://www.cftc.gov/media/8351/%20enfbinancecomplaint032723/download.

[7] Although the definition of a security under the tax law varies and is not necessarily aligned with the definition of a security under regulatory law, treating digital assets as securities for purposes of the trading safe harbor could create confusion because previous guidance has often looked to the regulatory classification of an asset when determining whether it is a "security" or "commodity" that qualifies for the safe harbor. For example, classifying bitcoin as a security for purposes of section 864(b)(2) would be in direct conflict with the regulatory classification of bitcoin as a commodity (and not a security).

[8] In making this clarification, we recommend that future legislation specifically address section 864(b)(2)(B)(iii) and clarify that common digital asset trading platforms are organized commodities exchanges; that digital assets, as a whole, are "of a kind"

harbors should be coupled with "no inference" language expressly stating that the changes are not intended to imply that digital asset trading did not previously qualify for the commodities trading safe harbor.

Treatment of Loans of Digital Assets (Section 1058)

Digital asset loans come in a variety of forms, but generally there are two types of loans: loans on decentralized exchanges and loans not involving decentralized exchanges.

In a decentralized exchange loan, the borrower is generally required to return digital assets identical to those borrowed, plus an interest-like return that is paid in kind (i.e., in additional units of the digital assets in which the loan is denominated). These loans can be fully secured by collateral posted by the borrower (in the form of another digital asset). In certain cases, decentralized exchange participants are borrowing one type of digital asset and lending another type of digital asset. However, decentralized exchange participants may have the option to simply lend, for example, if their primary goal is to generate a return on their digital assets. Deposits on decentralized exchanges can be immediately withdrawn provided the lender has sufficient other assets posted as collateral on any borrowings, thus creating an implicit loan of the withdrawn digital assets (even if not documented as such).

While there are varying forms of loans not undertaken through a decentralized exchange, in such a typical digital asset loan, the borrower receives digital assets at the outset of the loan and is obligated to return identical digital assets to the lender, along with an interest-like return (typically paid in the same type of digital asset that was borrowed). Digital asset loans are similar to other common lending arrangements, including stock and securities loans, and may be intermediated by an entity situated between the borrower and the lender.

Under current applicable law, stock and securities loans meeting certain requirements are afforded nonrecognition treatment under section 1058. Proposed regulations under section 1058 would require that securities loans agreements provide that the lender may terminate the loan upon notice of not more than five business days in order to qualify for nonrecognition treatment.[9] Section 1058 specifically applies only to stock and securities and consequently does not currently apply to digital assets (which are neither stock nor securities). Section 1058 was enacted as a "clarification" and many view it as a safe harbor provision rather than the sole

customarily dealt with on such exchanges; and that both on exchange and off-exchange trades are "of a kind" with trades consummated on such organized commodities exchanges.

[9] Prop. Reg. section 1.1058-1(b)(3).

means of achieving nonrecognition treatment.[10] Under this view, digital asset lending transactions may be nontaxable under the IRS guidance and judicial authorities predating the enactment of section 1058.

CCI would recommend that section 1058 be amended so that it applies to digital assets and further provide that fixed-term loans are generally afforded nonrecognition treatment (i.e., nonrecognition treatment should not be limited to demand loans).[11] We further suggest that any new guidance explicitly provides that no inference is intended as to the historic treatment of digital asset loans or fixed term loans.

These recommendations are in line with the recent Biden Greenbook Proposal and would place digital assets on equal footing with other financial assets. As noted in the Biden Greenbook Proposal, the current scope of section 1058 is narrow (it only applies to stock and securities as defined by section 1236(c)) and could be interpreted as excluding many commonplace transactions). Loans of traded assets are important to price discovery and creating liquidity. The lack of specific nonrecognition rules for digital assets and the potential inability of fixed-term loans to meet the requirements of section 1058 creates unnecessary tax-uncertainty and undue "friction" in the capital markets. Amending section 1058 to take into account developments in the financial markets since it was enacted would alleviate these issues.

These amendments should also take into account (i) the fact that digital assets generally do not pay interest or dividends and (ii) the technological and market impediments to making in lieu payments in certain situations. For example, in a hard fork, a single digital asset becomes two digital assets when the blockchain splits. A blockchain split can occur in situations where there is significant market support for the new currency or, alternatively, if a single person decides to create their own digital currency for other reasons with no expectation of market adoption or profit. In the former situation, the new digital asset is likely a valuable asset with ongoing relevance. In the latter situation, the new digital asset is likely to be economically meaningless. We suggest that future legislation require the borrower to pay the lender an amount equal to any digital assets that stem from the digital asset originally loaned if the newly created digital assets are "economically meaningful." We suggest that this compensating payment should

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[10] *See, e.g.*, ABA Committee Reports on Securities Lending Transactions, 91 TNT 107–133 (May 15, 1991) ("In general, Section 1058(a) provides that no gain or loss is recognized by the owner of securities when the owner transfers securities for the contractual obligation of the borrower to return identical securities. It constitutes a safe harbor from the recognition of gain or loss where a taxpayer exchanges securities pursuant to an agreement that meets the statutory requirements."); NYSBA Tax Section Report Addresses Treatment of Securities Loans, 2011 TNT 112–122 (June 10, 2011) ("There is nothing in the language of [section 1058] itself or the history of the statute to suggest that it was intended to be more than a safe harbor. … In our view, section 1058 should operate as a safe harbor.").

[11] Similarly, we believe that fixed-term stock and securities loans should also be allowed under section 1058.

be able to be made in kind or in cash and that any measure of what constitutes an "economically meaningful" digital asset be consistent with prevailing market practices.[12]

Wash Sales and Constructive Sales (Section 1091 and Section 1259)

The wash sale rules currently apply only to stock and securities transactions, and the constructive sale rules apply only to transactions involving stock, debt, and partnership interests. As digital assets do not fit into any of these categories of assets, they are currently not subject to either provision.

CCI acknowledges that the current state of the law creates a potential for digital asset market participants to engage in tax loss harvesting and constructive sale transactions in a manner that may not be consistent with the policy objectives of these rules. However, as noted previously, CCI believes that digital assets are generally commodities, and commodities transactions are not currently subject to either of these provisions despite presenting similar opportunities for tax planning transactions. If Congress believes that commodity transactions should become subject to the wash sale or constructive sale rules, then digital assets, as commodities, should also be subject to those provisions. However, in the absence of such a change, CCI does not believe that there should be legislative action to apply the wash sale or constructive sale provisions specifically to digital assets (while leaving commodities outside their scope) as this would result in disparate treatment of the same or similar categories of assets.

If digital assets become subject to these provisions in the future, however, CCI believes that it is even more critical that the availability of elective section 475 mark to market method of accounting be clarified. In addition, a "business needs" exception should be added to the wash sale rules to ensure that tax impediments to ordinary course business transactions are not created.[13]

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[12] Measures used to determine whether a new digital asset is economically meaningful include: (i) the average hash power mining the new token; (ii) the market capitalization of the new token; (iii) the trading volume of the new token; and (iv) the wallet compatibility of the new token.

[13] In the most recent Biden Greenbook Proposal to expand the wash sale rules, the drafters indicated that the expanded wash sale rules "are not intended to apply to ordinary course business transactions." CCI agrees with this approach, which would be similar to the treatment of dealers under current law (stock and securities dealers' ordinary business transactions not subject to the wash sale rules).

Timing and Source of Income Earned from Staking and Mining

Background on Consensus Mechanisms

The process by which transactions on a blockchain are validated and recorded is referred to as a "consensus mechanism." Generally speaking, there are two types of consensus mechanisms: proof of work ("PoW") and proof of stake ("PoS").[14]

Under a PoW system, "miners" compete to solve a cryptographic puzzle. The "winning" miner is given the right to validate transactions and add a new "block" to the "chain" of transactions and is given a reward in the form of newly created digital assets. The cryptographic puzzle ties blockchain validation to real world resources and protects the network by making various types of attacks prohibitively expensive. The difficulty of the cryptographic puzzle is adjusted periodically to maintain a consistent transaction cycle time (i.e., if more computing power is attempting to solve the puzzle, the difficulty will increase; if the amount of computing power decreases, so too will the difficulty of the puzzle). The Bitcoin blockchain is the most significant blockchain that employs a PoW model.

Under a PoS system, the real-world costs imposed by mining are eliminated. Instead, the blockchain requires that validators post or "stake" digital assets in exchange for a chance at being selected to validate the next block and be rewarded with new digital assets (the chances of being selected increase with the size of the stake). PoS blockchains are secured by a "slashing" mechanism whereby stakers may lose their staked assets if they behave in a manner detrimental to the network.

General Tax Considerations

The tax consequences of mining and staking rewards are currently uncertain in a number of respects.[15] One issue is that it is often difficult to determine the source of staking rewards because there is no clear "payor" (in many situations the "blockchain" is the payor). CCI believes that future legislation should clarify that staking reward income is sourced to the residence of the taxpayer. This treatment would be similar to sourcing rules that currently apply

[14] The actual mechanics of these two systems varies by blockchain. The discussion in this section is intended to be general in nature, but CCI would welcome the opportunity to further explain the mechanics of various blockchains to the Senate Finance Committee, if helpful.

[15] *See Treasury-IRS 2022-2023 Priority Guidance Plan*, U.S. Department of the Treasury (Aug. 21, 2023), available at: https://www.irs.gov/pub/irs-utl/2022-2023-pgp-4th-quarter-update.pdf (it includes: "guidance concerning validation of digital asset transactions, including staking"). *See also* Kristen Parillo, Treasury Official Gives Glimpse of Future Staking Guidance, 178 Tax Notes Federal 422 (Jan. 16, 2023) ("Asked what the future staking guidance might cover, Nijenhuis said she thinks 'it might be considered logical to think about timing, character, and source — in that order.' Those are some of the key questions that Treasury and the IRS have been asked to address, she added.").

for a number of financial instruments (e.g., swaps, forwards, options) and would encourage digital asset operations to be located in the U.S.

Digital Asset Mining Energy Excise Tax

Under the Biden Greenbook Proposal, digital asset mining would be subject to a 30% percent excise tax on the cost of electricity used. The proposal states that the tax is intended to address negative externalities associated with mining.

If environmental concerns underpin the excise tax, the tax should be industry-neutral and apply broadly to all industrial energy use.[16] With that said, it is not clear that digital asset mining produces the negative externalities that are created by similarly energy-intensive industries. Digital asset mining uses a greater percentage of renewable energy than other industries.[17] In fact, some commentators have noted that mining could play a key role in renewable energy development.[18] Unlike most other energy-intensive industries, digital asset mining has the advantage of being able to easily toggle operations off and on. As a result, mining operations have served as an important "flex" user, that has allowed energy grids to match the demand for renewable energy production to supply (renewable energy sources, such as solar, generally produce the most energy during the day when the aggregate demand for energy is at its lowest). We therefore suggest that rather than impose a punitive digital asset excise tax, policymakers should encourage digital assets miners to appropriately maximize ESG-positive outcomes.

Furthermore, the excise tax could lead to a dangerous precedent, introducing a first-of-its-kind tax based on what the energy is being used for. Such a tax would also provide no incentives for industries with large carbon footprints to support renewable energy.

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[16] As noted, we believe that industry-neutral policy is desirable. We also note that Bitcoin's carbon footprint is negligible compared to virtually every other major industry worldwide. For instance, air conditioners and electric fans emit over 2,300% more carbon than the entire Bitcoin network. The gold and banking industries, two systems that Bitcoin attempts to disrupt, each emits 200% more carbon than the Bitcoin network. *See* Ashton Cohen, *Debunking The Bitcoin Energy Consumption Narrative*, GenBiz (Aug. 19, 2022), available at: https://genbiz.com/debunking-bitcoin-energy-consumption-myth.

[17] According to a 2022 report issued by the Bitcoin Mining Council, the percentage of energy consumed by the bitcoin mining community derived from sustainable sources increased to 63.8%. *Q4 2022 Bitcoin Mining Council Survey Confirms Year on Year Improvements in Sustainable Power and Technological Efficiency* (2022), available at: https://bitcoinminingcouncil.com/bitcoin-mining-council-survey-confirms-year-on-year-improvements-in-sustainable-power-mix-and-technological-efficiency-in-q4-2022/.

[18] *See, e.g.*, *Crypto mining can retire fossil fuels for good. Here's how*, World Economic Forum (Aug. 10, 2022), available at: https://www.weforum.org/agenda/2022/08/cleaning-up-cryptocurrency-mining/; *Bitcoin's role in the ESG imperative*, KPMG, available at: https://advisory.kpmg.us/content/dam/advisory/en/pdfs/2023/bitcoins-role-esg-imperative.pdf.

The excise tax, as currently drafted, may be counterproductive. It is not clear that the excise tax would affect the aggregate amount of energy spent on mining activities.[19] However, a U.S. excise tax could result in mining operations relocating away from the U.S. (where they rely on comparatively clean forms of energy production)[20] to foreign jurisdictions (which generally rely on more environmentally destructive forms of energy production).[21] Thus, it is likely that the excise tax would increase, rather than decrease, the environmental costs of digital asset mining.

Additionally, an excise tax will likely prove unworkable in certain contexts. More specifically, there is currently no excise tax exception for personal mining activities. Individuals may find it very difficult to separate their personal energy consumption from their mining-related energy consumption. Likewise, the IRS may also have difficulty identifying individual miners and administering the excise tax to individuals in a cost-effective manner.

Nonfunctional Currency (Section 988(e))

Many digital assets, most notably bitcoin, were developed to function as a medium of exchange. However, the use of digital assets to pay for goods and services is currently treated as a taxable disposition. A de minimis exception similar to that currently in place for foreign currencies would allow U.S. taxpayers to benefit from blockchain technology without imposing undue tax administration burdens, provide benefits to merchants (for example, the avoidance of costly interchange fees and faster settlement times), and position the U.S. as a leader in digital asset technologies. An appropriately tailored exception would assist in unlocking the benefits of blockchain technology, while ensuring that significant gains are still reported. CCI believes that a yearly exemption for the personal use of digital assets worth less than $10,000 at the time of the transaction is an appropriate threshold.[22] This exemption is necessary to ensure that tax

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[19] The difficulty (and energy intensiveness) of digital asset mining is driven largely by the price of bitcoin. That is, as the price increases, more parties begin mining, and the difficulty of solving the PoW "puzzle" (and the energy costs associated with mining) increases. Bitcoin prices are relatively uniform across the global market and generally driven by factors other than the marginal cost of mining bitcoin in a particular jurisdiction. Thus, increases in the marginal cost of mining in the U.S. will not necessarily translate into a fall in the price of bitcoin or a reduction in the overall environmental cost of securing the Bitcoin blockchain.

[20] *See supra* footnote 16 (explaining that the percentage of energy consumed by the bitcoin mining community derived from sustainable sources increased to 63.8%).

[21] Mining operations have proven to be remarkably mobile. For example, Kazakhstan and Russia are two popular contenders for relocating miners' operations because power is more cost efficient in these countries. In addition, these countries have less green energy production than the U.S. and are generally expected to absorb any drop in U.S. mining capacity. *See How the U.S. benefits when China turns its back on Bitcoin*, NPR (Feb. 24, 2022), available at: https://www.npr.org/2022/02/24/1081252187/bitcoin-cryptocurrency-china-us.

[22] For foreign currency transactions, taxpayers are allowed to exclude $200 of gain on a per transaction basis. CCI's recommendation uses a digital asset value cap, rather than a per transaction gain exclusion, because this would allow taxpayers to forgo determining gain on a transaction-by-transaction basis, while also ensuring that significant gains are not eliminated by making large purchases using digital assets. The actual benefit of this exclusion could be greater than or less than the benefit provided by the similar section 988(e) rules, depending on a taxpayer's basis in the digital assets acquired and the size of the

administration does not impede the free flow of commerce and the adoption of blockchain technologies, but does not allow for a significant potential loss of tax revenue.

Valuation and Substantiation (Section 170)

Charitable contributions of property are generally subject to a requirement that the donor obtain a valuation of the property from a qualified appraiser. This requirement is intended to ensure that the deduction claimed is commensurate with the value of the donation. There is an exception from the appraisal requirement for certain types of assets that are readily valued, such as stock and securities that trade on exchanges.

Similar to stocks and securities, digital assets are exchange traded assets for which value is readily determinable from trading prices on the date of the donation. However, digital assets are not statutorily exempt from the appraisal requirement and the IRS has indicated that it believes an appraisal is required.[23] It may be difficult to comply with the requirement to obtain an appraisal from a "qualified appraiser" because that designation is subject to technical rules that may be difficult to satisfy in the context of digital assets.[24] More fundamentally, professional digital asset valuations are likely to be based on trading values—the same information that taxpayers would use to determine value—and therefore creates an administrative burden on taxpayers (and the IRS) that is unnecessary and contrary to the policy underlying the exception for readily valued property.

We recommend adding actively traded digital assets to the list of "readily valued property" set forth in section 170(f)(11)(A)(ii)(I). We recommend that assets traded on exchanges which are subject to anti-fraud and anti-manipulation requirements qualify for this exception.

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transactions. However, because many everyday transactions are for less than $200—including a $10,000 cap on digital asset personal use—transactions could in some ways serve as a more stringent requirement than that in place for foreign currencies.

[23] CCA 202302012 (Jan. 10, 2023).

[24] The Treasury Regulations define a qualified appraiser as "an individual with verifiable education and experience in valuing the type of property for which the appraisal is being performed …" Treas. Reg. section 1.170A-17(b)(1). The education of most valuation experts practicing today did not include the valuation of digital assets.

CCI appreciates the opportunity to provide these comments and recommendations for your consideration. We would be pleased to further engage on the issues detailed in this letter. Thank you for your leadership regarding taxation of digital assets.

Respectfully submitted,

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