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VIA Email to pra.comments@irs.gov

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Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington, DC 20224

RE: 1099-DA Draft Form for Digital Asset Proceeds From Broker Transactions

The Crypto Council for Innovation ("CCI"), a global alliance of industry leaders focusing on digital assets, appreciates the opportunity to provide feedback to the Internal Revenue Service ("IRS") draft of Form 1099-DA ("draft form"), titled "Digital Asset Proceeds from Broker Transactions."

CCI members span the digital asset ecosystem and include some of the leading global companies and investors operating in the industry. CCI members share the goal of encouraging the responsible global regulation of crypto to unlock economic potential, improve lives, foster financial inclusion, protect security, and disrupt illicit activity. CCI believes that achieving these goals requires informed, evidence-based policy decisions realized through collaborative engagement between regulators and industry. It also requires recognition of the transformative potential of crypto in improving and empowering the lives of global consumers.

As a general matter, CCI would respectfully encourage the IRS, in its draft form, to consider the unique nature of digital assets and the digital asset industry, especially to the extent that any obligations are imposed on individuals, technologies, or entities that practically cannot comply with tax reporting obligations. CCI agrees and supports the IRS' overarching goal of providing clarity as to information reporting obligations, but we respectfully submit that the draft form, as currently written, does not achieve that goal. CCI also appreciates that the draft form may change depending on the IRS completing its review of comments received in connection with the Notice of Proposed Rulemaking on gross proceeds and basis reporting by brokers and determination of amount realized and basis for digital asset transactions (REG-122793-19) (the "Proposed Regulations"). CCI separately submitted its response to the Proposed Regulations ("CCI's Response to the Proposed Regulations"). As further detailed below, much of our review and recommendations in connection with the draft form reflect our previous comments in CCI's Response to the Proposed Regulations.

As an initial matter, CCI appreciates that the draft form includes one page of instructions for taxpayers and tax preparers to use in interpreting the form when they receive it from a "broker." While certain of these instructions provides much needed clarity on what digital asset brokers are expected to do, CCI submits that it is incomplete. While appreciating that the IRS is still reviewing responses to the Proposed Regulations and has provided the draft form for public comment, we would encourage the IRS to publish separate instructions on preparing the form, which can further serve as a guide for brokers.

To that end, CCI provides its suggested comments and recommendations to the following specific areas that the IRS has requested feedback on in connection with the draft form:

A. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, and ways to enhance the quality, utility, and clarity of the information to be collected;
B. The accuracy of the agency's estimate for the burden of the collection of information; and
C. Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

CCI Comments & Recommendations

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility? In what ways can the IRS enhance the quality, utility, and clarity of the information to be collected?

As an initial matter, CCI believes that the proposed collection of information is too broad and would thus fail to provide the IRS with practical utility. The draft form appears to go significantly beyond the information that traditional finance ("TradFi") brokers provide on Form 1099-B. CCI would encourage the IRS to ensure more of a parity with TradFi in terms of the amount and complexity of the data required to be reported. For example, the draft form requires the reasoning behind why a digital asset would be classified as a noncovered security. This requirement is overly burdensome for brokers, as it necessitates extensive tracking, storage, and reporting of the specific reasons behind each classification without commensurate benefit to the IRS. More specifically, the complexity and volume of data involved in maintaining such detailed records would significantly increase administrative costs and operational challenges for brokers. Further,

any marginal benefit of this additional information to the IRS does not justify the substantial burden it places on reporting entities. Simplifying these types of requirements would alleviate the excessive strain on brokers while still providing the IRS with sufficient data to ensure compliance.

As further detailed below and in CCI's Response to the Proposed Regulations, it is important to consider the various definitions of digital assets, brokers, and digital payment processors which are required to provide reporting in the draft form. In the following sections, we provide more specific views regarding each of these categories.

1. Definition of Digital Assets Subject to Reporting

The draft form requires taxpayers to input the code for the digital asset with which they have transacted, suggesting that the IRS will eventually provide a comprehensive list of digital assets to choose from. If the asset is not associated with a specified code, then taxpayers will input the code for "other." We respectfully highlight that the Proposed Regulations indicated that the IRS would require the "name" of the digital asset sold, while the draft form requires the code. It is unclear whether the code will reflect the names of specific tokens or broader categories of digital assets. If it is the former and each type of digital asset has its own unique code, then there will likely be thousands of codes (potentially more), which will need to be updated periodically. This could prove particularly problematic and/or burdensome for both the IRS as well as taxpayers to decipher.

As CCI recommended in its Response to the Proposed Regulations, it is important for the IRS to first delineate exactly what types of digital assets are reportable before drafting the final form 1099-DA. For example, there are outstanding questions with respect to the reporting of non-fungible tokens (NFTs), and specifically, whether the definition proposed in IRS Notice 2023-27 would apply. Providing such clarity will be critical when it comes to the draft form as well. For instance, it is currently unclear whether unique, non-fungible assets, such as NFTs are to be included in the final list of reportable digital assets and how the potential various "codes" will apply to this asset class. Specifically, we recommend establishing a de minimis threshold for the reporting of NFTs under $600, similar to the reporting threshold applicable to the Form 1099-MISC. Most NFTs purchased below this threshold typically reflect consumer purchases of everyday items and collectibles, such as digital art or trading cards. Exempting these low-value NFTs would alleviate unnecessary taxpayer and IRS burdens, streamlining the reporting process and focusing regulatory efforts on more significant transactions.

Further, only NFTs representing financial instruments or those actively used for payment should be covered by the Proposed Regulations and Form 1099-DA. By focusing on NFTs with financial

applications, the IRS can ensure more effective monitoring and compliance without overwhelming taxpayers with minor transactions unrelated to financial transactions. This distinction would allow the IRS to concentrate resources on transactions with higher risk and financial impact, while ordinary consumer purchases of NFTs remain simple and accessible, fostering growth and innovation in the digital asset market without imposing undue regulatory burdens.

In the same vein, CCI would recommend excluding stablecoins from the definition of digital assets subject to reporting, as including stablecoins in the definition would offer minimal reporting value compared with the taxpayer burden from complying with such rules.

Moreover, because the draft form seems to encompass all types of digital assets—as it gives no indication to the contrary—certain transactions may be reportable under multiple regimes. For example, there may already be sufficient publicly available data to determine whether a particular digital asset is a tokenized security or commodity, including tax disclosures and other materials. Broker dealers in the securities industry have already built platforms for tax information reporting purposes that currently help achieve material tax compliance.

As a general matter, where a transaction with respect to a digital asset may be reportable under more than one information reporting regime, the existing rules applicable to such reporting ought to control the reporting on the transaction. Doing so will provide clarity to market participants and promote efficiency in reporting activities.

2. Definition of Brokers Required to Report

The draft form asks the taxpayer to check a box that describes the type of broker they qualify as: kiosk operator, digital asset payment processor, hosted wallet provider, unhosted wallet provider, or "other." Presumably, these categories reflect the expansion of the definition of "broker" in the Proposed Regulations to include any entity that provides a "facilitative service." As discussed in CCI's Response to the Proposed Regulations, expanding the definition of broker to parties that do not, in fact, effectuate sales—but merely make it easier for others to do so—is not appropriate and would dramatically expand beyond accepted notions and definitions of broker activity.

Additionally, many of the processes or activities identified by the IRS may not be ones in which the party is in the position to know, such as the customer's identity and the nature of the transaction. The presence of a relationship between the broker and the customer is a hallmark of existing section 6045 and is a critical component of the definition of broker under section 6045(g) to avoid overly burdensome and duplicative reporting. This relationship requirement

must be maintained to avoid unlevel, arbitrary, and disparate treatment of the digital asset space as compared to traditional financial service models.

The final form should reflect the above and ensure that validators, certain providers of hardware and software (e.g., wallets), and persons and entities that do not directly effectuate transactions—including node operators, DeFi protocols, self-hosted wallets, and price discovery services—are not meant to be captured.

3. Digital Asset Payment Processors Required to Report

The draft form includes payment processors as an example of a broker subject to the rule. As discussed above (see “Definition of Brokers Required to Report”), this inclusion poses a number of challenges and concerns, including the fact that payment processors may lack sufficiently close relationships with their customers and therefore do not have access to the data elements that a Form 1099-DA would require. Therefore, certain payment processors may be unable to accurately report transactions—not because they do not want to, but because they lack access to the required information.

CCI’s concerns about the inclusion of “payment processors” as an example of a broker on the draft form stems from the Proposed Regulations, which provide that the digital asset payment processor has two reporting responsibilities in the sale of a non-digital asset good or service for a digital asset as payment: (1) section 6045 reporting on the sale of the buyer’s digital asset to make the purchase and (2) section 6050W reporting for the merchant’s sales transaction. However, we believe that when a digital asset is used as payment (rather than held for investment purposes), transactional reporting under section 6050W—instead of gross proceeds reporting under section 6045—better reflects the actual relationship of the payment processor and its customer (as the customer is the merchant, not the buyer). This is because the digital asset payment processor may have no relationship with the buyer. Conversely, the broker with a closer customer relationship with the buyer (such as a digital asset platform on which the buyer holds its digital assets) has the responsibility to report on the buyer’s disposition. Dividing this responsibility for reporting also helps eliminate duplicative and unnecessary reporting on the same transaction.

Accordingly, the final form should reflect the above and permit digital asset payment processors that are also payment settlement entities to report ***only to the merchant*** under existing section 6050W when a digital asset is used to settle a reportable payment transaction.

4. Reporting Gains and Losses

Box 5 permits a broker to indicate that a loss is non-deductible due to a "reportable change in control or capital structure" and references Form 8949 and Schedule D Instructions. However, neither of those instructions provide any guidance on what kind of digital asset-related events could apply in these circumstances. Rather, they defer to the broker to merely use their discretion. The final form should provide additional information as to what constitutes a "reportable change in control or capital structure."

B. Has the IRS accurately estimated the burden of the collection of information?

1. Exceptions to Reporting

The draft form does not include exceptions for taxpayer brokers that either (i) transact at the direction of another broker or (ii) transact under a certain threshold amount. Without these exceptions, reporting will prove unduly burdensome for taxpayers. Existing regulations under section 6045 prevent duplicative reporting on the same transaction through the so-called "multiple broker" rule. This rule exempts brokers from reporting where they transact at the direction of another broker. Under such a rule, only the broker that is closest to the customer has the reporting requirement. Neglecting to extend the multiple broker rule to digital assets creates adverse results for taxpayers, brokers, and the IRS since duplicative reporting on the same transactions means that information could be both confusing and conflicting. Moreover, duplicative reporting increases taxpayer burden through increased paperwork as well as time and effort verifying, reconciling, and remediating information. The proliferation of multiple brokers also generates significant data security risks that are unique to the digital age.

Relatedly, the current draft form does not include a de minimis reporting exception. Requiring reporting for transactions of less than a certain amount unnecessarily increases the taxpayer burden for minimal added value.

The final form should exempt digital asset brokers that do not possess a direct customer relationship. The final form should also include a de minimis exception for amounts less than $600 of gross proceeds, similar to the reporting threshold applicable to the Form 1099-MISC.

2. Reporting for Non-U.S. Persons and Sales Effected Outside of the U.S.

The draft form should reflect the need to exempt certain non-U.S. persons from filing, in alignment with the traditional section 6045 information reporting principles. As discussed in CCI's Response to the Proposed Regulations, significant departures from traditional section 6045

information reporting principles as they relate to non-U.S. persons and persons that effectuate sales outside of the U.S. will prove unnecessarily burdensome. CCI would encourage the IRS to consider providing explicit instructions in the draft form to exempt certain non-U.S. persons.

Under the Proposed Regulations, broker reporting is required for U.S. digital asset brokers and controlled foreign corporation ("CFC") digital asset brokers. The Proposed Regulations require the reporting unless the broker can treat the customer as an exempt foreign person or another exception applies.

Recognizing that blockchain technology makes digital assets sales and exchanges less tethered to specific geographic locations or markets, the final form should provide clear instructions on exemptions from U.S. status. Those instructions should not consider the following to be indicia of U.S. status (and therefore not mandate the same filing procedures as those with U.S. status): (1) IP address; (2) cash paid by a customer from a U.S. bank; and (3) U.S. criteria related to transferring from or through a U.S. digital asset broker.

Where appropriate, CFC digital asset brokers should be allowed to accept "substitute forms" similar to those described in IRS Notice 2011-71 with respect to payments made outside the U.S. Specifically, we recommend that final regulations should adopt an approach similar to that of Section 6050W, where non-U.S. customers can submit a simple, prescribed written statement certifying their non-U.S. status under penalty of perjury, in lieu of a Form W-8 or other documentary evidence.

3. Contents of Reporting

Under the current draft form, the information required to be collected raises significant privacy and administrability concerns, particularly with respect to (i) wallet addresses and transaction ID reporting, (ii) time and time zone conventions, (iii) potentially duplicative reporting, (iv) reporting data elements not required for taxpayers to file gains/losses on tax returns, and (v) requiring recipient copies to be mailed to the last known address on file.

Wallet Addresses and Transaction ID Reporting: The current draft form requires that the wallet addresses and transaction ID be reported for each transaction under Boxes 11a, 11b, 12a, and 12b. Privacy of wallet address information is a huge concern for both customers and the taxpayers trusted with this information. Transmission of wallet address information raises significant risk of interception of such information by parties other than the government and the customer. In many cases, taxpayers required to report may have legal obligations regarding the protection and safekeeping of customer data that may be difficult to square with the proposed

reporting obligations. Information relating to a wallet address may not be available or appropriate when sales occur through an omnibus account or wallets.

Due to these significant privacy concerns and consistent with CCI's Response to the Proposed Regulations, we recommend that the final form should not include wallet addresses and transaction IDs as reporting requirements.[1]

Time and Time Zone Conventions: The current draft form requires the original date and time the assets were acquired in Coordinated Universal Time (UTC) under Box 1d. The date and time shown in Box 1d may be different from the date and time of the acquisition in the taxpayer's time zone. This box may be blank if Box 10a is checked or if the digital assets sold, exchanged, or otherwise disposed of were acquired on a variety of dates and times or if the date and time were unknown to the taxpayer. Similarly, Box 1e requires the sale or disposition date and time in UTC. The date and time shown in Box 1e may be different from the date and time of the sale, exchange, or disposition in the taxpayer's time zone.

Including time information down to the second for each transaction increases the burden for the IRS by causing reconciliation differences. This is the result because a higher number of taxpayers will report gross proceeds on their tax returns that differ from the gross proceeds reported on an information return due to time zone and timestamp differences.

As such, the final form should not require that the transaction time be reported.

Aggregate Reporting: The draft form appears to require the reporting of each and every digital asset sale effected for the customer. The volume of such data is massive, and likely greater than the estimates for the analyses under the Paperwork Reduction Act and the Regulatory Flexibility Act (required to estimate the impact of these regulations on small businesses). Reporting on individual transactions does little to enhance the IRS's ability to audit taxpayers on their transactions.

Consistent with the Crypto-Asset Reporting Framework (CARF), the final form should permit the aggregation of certain sales to permit simplified reporting for affected customers. Specifically, sales of a single asset type should be aggregated into one 1099 form (e.g., one Form 1099 for all bitcoin sales during the course of a taxable year). To further streamline the process and ensure

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[1] If, however, such requirements remain in the final form (which we would respectfully advise against due to privacy concerns), then we recommend, at a minimum, that brokers be allowed to truncate wallet address information on recipient copies of the form. This approach echoes the IRS Instructions for Forms 1099-MISC and 1099-NEC, which permit filers to truncate a recipient's taxpayer identification numbers (TINs) on payee statements. The inclusion of truncated wallet addresses on the final form should be a measure of last resort, used only when a broker is required to report but cannot obtain the recipient's name, TIN, or physical address.

accuracy, it would be beneficial to aggregate reporting on the final form by categorizing transactions into short-term versus long-term gains and covered versus noncovered securities. This approach would align broker reporting with taxpayer requirements, thereby reducing potential errors and enhancing the overall efficiency of compliance.

Burden of reporting data elements not required for taxpayer to file gains/losses on tax returns:

Type of Broker: This level of detail is unprecedented and it is also unclear what brokers should do when multiple categories could apply. Building systems to track the role in a transaction would be unduly burdensome.

Explanation if No Recipient TIN: We recommend removing the free form text box requiring an explanation if there is no recipient TIN. It is the only tax return form to ask for this information. Tax reporting systems are not designed to track this information, and free form text boxes are ineffective and inefficient. For example, certain non-U.S. residents who do not have TINs might receive a Form 1099-DA, even if they have no ongoing nexus or significant presence in the U.S., simply for a one-time IP address ping in the U.S. connected to a digital asset transaction. Brokers and taxpayers are subject to penalties for missing TINs and backup withholding is applied as necessary, rendering the need for an explanation to be moot.

Reason for Missing Cost Basis: Requiring brokers to track and report the reason for missing basis in addition to whether a digital asset is covered or noncovered significantly increases compliance costs for little benefit.

Type of Non-Cash Proceeds and Explanation if Box 8 is Coded "OTH": Having to track the type of non-cash proceeds in addition to the fact there are non-tax proceeds increases the burden on the broker without meaningfully altering taxpayer compliance.

Burden of requiring recipient copies of 1099-DA to be mailed to the last known address on file: The Proposed Regulations do not contain instructions for brokers on how to deliver the 1099-DA to the recipient. By comparison, the 1099-B is required to be mailed to the last known address on file unless the recipient opts into receiving the form electronically. This may make sense for a business model that allows trades to be placed in person or through other non-electronic means. Digital asset brokers interact with their users exclusively through electronic means. As such, digital asset brokers should be allowed to send recipient statements electronically without requiring the affirmative consent of the taxpayer. Given the high volume of forms that are projected to be issued, paper mail would place an undue economic and environmental impact on the digital asset industry.

C. In what ways can the agency minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology?

As we outlined in Section B and in our Response to the Proposed Regulations, we have identified several ways that the IRS can minimize the burden of the collection of information on respondents. To briefly summarize, our recommendations include: applying the multiple broker rule, adding a de minimis transaction exception, reducing indicia of U.S. status, allowing for "substitute forms" for non-U.S. customers, excluding wallet addresses and transaction IDs from reporting requirements, streamlining time requirements and time zone conventions, allowing for aggregate reporting, delaying effective dates, and sending recipient statements electronically.

We also recommend that the IRS provide an additional window of time for brokers to collect tax certifications for existing accounts. This extension would allow brokers to systematically and thoroughly gather the necessary documentation, ensuring compliance without imposing undue burdens. Additionally, we propose that the IRS consider exempting existing accounts under a specific threshold (e.g., $600 reporting threshold applicable to the Form 1099-MISC) from the tax certification requirement altogether. Implementing these measures would ease the transition for brokers and account holders alike, preventing potential disruptions and facilitating more effective compliance with the Proposed Regulations. These adjustments would also help focus resources on accounts with more significant tax implications, thereby enhancing overall efficiency and effectiveness.

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CCI again appreciates the opportunity to provide these comments and your consideration of our recommendations relating to the draft form. We would be pleased to further engage on the comments detailed in this letter or digital asset tax issues generally.

Respectfully submitted,

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