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Submitted via Reginfo.gov

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Room 6526
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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 Form 1099-DA ("draft form"), titled "Digital Asset Proceeds from Broker Transactions" dated September 9, 2024, and draft of the instructions to filers of Form 1099-DA ("draft instructions") dated September 30, 2024 (ICR Reference Number: 202404-1545-010).

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.

CCI previously submitted two comment letters in response to 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")[1] and the prior version of the 1099-DA Draft Form for Digital Asset Proceeds From Broker Transactions.[2] CCI recognizes that the new draft form reflects the Final Regulations for custodial broker reporting and the transitional relief described in Notices 2024-56 and 2024-57, and Revenue Procedure 2024-28 (the "Final Regulations").

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[1] *See* Crypto Council for Innovation Comment Letter regarding Proposed Regulations Regarding Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, dated November 13, 2023 (available at https://media.cryptoforinnovation.org/2023/11/Crypto-Council-for-Innovation-CCI-Comment-Letter-Regarding-Proposed-Digital-Assets-Reporting-Regs-11.13.23.docx.pdf).

[2] *See* Crypto Council for Innovation Comment Letter regarding 1099-DA Draft Form for Digital Asset Proceeds From Broker Transactions, dated June 21, 2024 (available at https://media.cryptoforinnovation.org/2024/06/CCI-Comment-Letter-on-1099-DA.pdf).

CCI also submitted a comment letter to the Treasury and IRS regarding the Final Regulations on Specific Identification of Units Held in a Broker's Custody. CCI highlighted concerns that, while taxpayers are required to specify which digital asset units they intend to sell by the sale date starting January 1, 2025, many digital asset brokers lack the necessary systems to process these instructions. Given that brokers are not required to track customers' cost basis until January 1, 2026, taxpayers may be forced to use the first-in, first-out (FIFO) method, potentially leading to higher tax liabilities. To provide time for infrastructure readiness and compliance, CCI recommended delaying the specific identification requirement to align with brokers' cost basis tracking deadline of January 1, 2026. Alternatively, CCI suggested transitional relief allowing taxpayers to maintain their own records for calculating gains and losses in 2025 without needing to instruct brokers on specific unit identification.

As an initial matter, CCI appreciates the careful consideration that the IRS demonstrated in incorporating public comments into the new version of the draft form, many of which are pragmatic changes that represent significant steps forward. This approach not only fosters goodwill between industry stakeholders, taxpayers, and the IRS, but takes into account the practical realities of those who will be directly affected by the final form's implementation. Among other changes, CCI is appreciative of the elimination of certain fields in the draft form (*e.g.*, digital asset broker types, reporting of wallet addresses, transaction IDs for each transaction, date, time and number of units for transfers into a hosted wallet, explanation of missing TIN, etc.), which will significantly reduce the burden for digital asset brokers regarding complexity, cost, and accuracy. While CCI shares and supports the IRS's overarching objective of clarifying information reporting obligations, we believe that the new draft form and draft instructions could be further strengthened. CCI also recognizes the September 19, 2024 Government Accountability Office report on tax administration, which found:

> "Information returns require IRS resources for intake, processing, and storage, and IRS may face challenges in managing large volumes of information. As the number of information returns increases, so does the burden on IRS. For example, IRS estimates the implementation of Form 1099-DA reporting will increase information return intake by up to 160 percent—from approximately 5 billion to up to 13 billion information returns when reporting begins."[3]

[3] *See* Government Accountability Office report titled "IRS Needs to Take Additional Actions to Prepare for New Information Reporting Requirements" dated September 19, 2024 (available at: https://www.gao.gov/assets/gao-24-107028.pdf).

As such, we respectfully make several comments and recommendations to help ease this administrative burden for the IRS, brokers, and taxpayers alike. We again appreciate the IRS's consideration as we look ahead to a final version of the Form 1099-DA and instructions.

CCI Comments & Recommendations

A. Request for extension of time to file Form 1099-DA

First, CCI respectfully requests that the IRS extend the time to file the Form 1099-DA from tax year 2025 to tax year 2026. CCI represents a wide range of firms operating in the digital asset industry that would be affected in numerous – and significant – ways by the form. We are supportive of efforts to modernize tax treatment and consider appropriate reporting rules related to digital assets, but also respectfully underscore that the form's novelty and complexity require time for effective compliance.

We also note that, as of now, brokers will be required to report certain sale and exchange transactions of digital assets that take place beginning in calendar year 2025, which is less than 60 days from the expiration of the form's comment period. Indeed, CCI has previously highlighted that digital asset brokers will need and should be afforded adequate time (*e.g.*, at least eighteen months) to build and implement systems capable of accurately reporting the valuation information and other data points required by the form.

Further, the draft form introduces notable differences from the Form 1099-B, requiring brokers to make significant technical adjustments to accommodate these changes. Unlike the Form 1099-B, which has been tailored over time to meet the reporting needs for traditional securities, the Form 1099-DA introduces new fields, such as Boxes 10 ("Digital asset is a noncovered security because"), 12a ("Number of units transferred in"), and 12b ("If transferred in, provide transfer-in date") – specifically designed for digital assets. These new reporting fields, however, may exceed the scope of the Final Regulations while adding unnecessary complexity to both brokers' reporting systems and taxpayers' understanding of the form without a commensurate benefit to the IRS.

For example, Boxes 10, 12a, and 12b could lead to redundant data entries that do not provide additional clarity for the IRS or taxpayers. This extra information could complicate the reporting process without clear benefit, requiring brokers to dedicate additional resources to reconfigure systems and ensure accurate reporting. If these boxes remain on the final form, brokers will need adequate time to modify their systems to manage these additional requirements effectively. Without such an implementation period, brokers may face challenges in meeting compliance deadlines, potentially leading to delays or errors in reporting, which could affect taxpayers' ability to accurately report gains and losses on digital assets. For these reasons, we recommend

removing these boxes or, alternatively, granting a more extended implementation period to allow brokers adequate time to develop and test the necessary system adjustments.

The current condensed time frame for compliance presents significant operational challenges to building and implementing the requisite systems after the draft form is finalized. It is accordingly necessary to extend the time to file by at least one year, in order to allow for a thoughtful and comprehensive review of, and response to, the form.

B. Name of digital asset

The prior draft form required a broker to report a digital asset code, but only required the name of the digital asset if the digital asset code was "999999." The new draft form requires a broker, in all scenarios, to report both the code, using the Digital Token Identification Foundation (DTIF) registry, and the name of the digital asset. If each digital asset has its own unique code, then the DTIF registry would need to not only issue thousands of codes (or more), but also make frequent updates to keep pace with the rapidly evolving digital asset marketplace.

Where a digital asset is not registered with the DTIF, the broker will enter "999999999". Many constantly evolving digital assets – such as non-fungible tokens (NFTs) – likely will not be registered and may require use of this alternative coding, thus providing limited value to the IRS. Further, depending on the frequency of updates to the DTIF registry, brokers may have to download this list on a regular basis to provide accurate reporting information. This could prove particularly problematic and/or burdensome for the IRS, brokers, and taxpayers to decipher on an ongoing basis.

As noted in our previous comment letter to the draft form, CCI respectfully encourages the IRS to ensure more of a parity with traditional finance ("TradFi") brokers when it comes to information reporting, or at least put digital assets in no worse position compared to TradFi. For example, TradFi brokers have long provided a description of property – not a continually evolving code from a registry – on Form 1099-B. Unlike Committee on Uniform Securities Identification Procedures (CUSIP) numbers, which are routinely displayed to taxpayers on trade confirmations, the proposed codes on the Form 1099-DA will be unfamiliar to digital asset customers and may lead to confusion. The codes are alphanumeric and bear no resemblance to the short-form trading symbols typically associated with digital assets.

Further, requiring brokers to access a third-party database that forces users to register before gaining access is both impractical and inappropriate. Such a requirement introduces unnecessary friction into the reporting process, adding administrative burdens for brokers who must create and maintain accounts. Moreover, the database's current setup includes multiple codes for certain digital assets with identical names, but without guidance on navigating these duplications, brokers are left with no clear method to determine the correct code. This ambiguity risks inconsistent reporting and could lead to taxpayer confusion or errors, undermining the

accuracy and reliability of digital asset reporting overall. For effective compliance, brokers need a straightforward, accessible system with clear guidance.

To maintain consistency across reporting regimes and reduce complexity for taxpayers, CCI recommends removing Box 1a ("Code for digital asset") and requiring only the name of the digital asset.

C. Number of units

CCI also highlights that Box 1c ("Number of units") allows for only up to 10 decimal places. For small amounts of digital asset units, this limited decimal reporting may skew the per-unit value due to truncated decimals. This limitation in Box 1c, which restricts the quantity of digital assets to 10 decimal places, could create significant issues for taxpayers, particularly when small amounts of digital assets are involved. Since digital assets are often divisible beyond 10 decimal places, truncating the quantity to fit within this limit may distort the actual per-unit value. For taxpayers, this can lead to inaccuracies in calculating gains or losses, potentially resulting in inflated or deflated taxable amounts. Such discrepancies could complicate tax filing, possibly triggering audits or compliance questions, and may even lead to inadvertent overpayment or underpayment of taxes. For taxpayers aiming to maintain precise records, this reporting constraint could prove both burdensome and costly, as they may need additional documentation to support their reported figures.

To that end, should the final Form 1099-DA allow for only up to 10 decimal places, CCI would respectfully request clear instructions on how to truncate numbers that exceed this limit (e.g., rounding of the eleventh decimal place or truncating at the tenth decimal place). Providing clear instructions on truncating longer numbers is essential to ensure consistent and accurate reporting.

D. Broker reliance on customer-provided acquisition information

The new draft form requires a broker to check Box 8 ("Check if broker relied on customer-provided acquisition information") if the broker relied on "customer-provided acquisition information." The draft instructions direct brokers to check this box if they relied on customer-provided acquisition information to identify which digital assets were sold, exchanged, or otherwise disposed of.

This introduces an additional compliance burden, requiring brokers to meticulously track and verify instances where they have used customer-provided information, adding complexity to the reporting process. This could be particularly challenging for brokers managing large volumes of transactions or those dealing with customers who provide incomplete or inconsistent information.

Further, the provision could also lead to ambiguity regarding what qualifies as "customer-provided acquisition information" and how brokers should determine whether they relied on it. This could lead to inconsistent reporting practices across the digital asset industry, making it difficult for the IRS to effectively analyze and practically use the reported data.

CCI also respectfully suggests that this requirement offers unclear practical value for information reporting and appears to be aimed more towards enforcement purposes. Imposing this requirement on brokers primarily for its enforcement potential, rather than to fulfill information reporting needs, could place unnecessary burdens on brokers, consuming resources and complicating compliance.

E. Covered and noncovered securities

The new draft form keeps the requirement that a broker identify if the digital asset is a covered or noncovered security and, if applicable, to provide the reasoning for identifying a digital asset as a noncovered security. CCI notes that while the previous draft form indicated that a digital asset could be classified as noncovered if the broker did not offer "hosted wallet services" for the digital asset, the new draft form revises the language to specify that the broker did not provide "custodial services" for the digital asset. This requirement will increase the number of forms issued per transaction when there are multiple reasons why lots are classified as non-covered on the form.

Additionally, this requirement will lead to a substantial increase in the number of forms issued for the sale of covered transactions if the digital assets sold were transferred to the broker. According to the draft instructions, brokers must report the number of units transferred and the transfer-in date in Boxes 12a and 12b of Form 1099-DA whenever digital assets sold or disposed of as part of the transaction were transferred to the custodial broker. Unlike Box 1d, which allows brokers to leave the acquisition date blank when digital assets were acquired on various dates, Boxes 12a and 12b do not offer similar flexibility. This requirement appears to mandate a separate Form 1099-DA for each lot of a sale transferred to the broker on a specific date. Notably, TradFi brokers do not face this requirement for traditional securities.

As noted in our comment letter to the prior version of the draft form, requiring brokers to track and report the reason why a digital asset is a noncovered security significantly increases compliance costs without commensurate benefit. As mentioned in the context of Box 8, this requirement also appears directed towards potential enforcement purposes, which is outside the scope of information reporting. This information is not typically captured by a broker, and coding systems to reflect and report this information could be administratively complicated and costly to implement. Further, CCI notes that, in the TradFi context, Form 1099-B does not require this type of detailed explanation when reporting gross proceeds from the sale of a noncovered security.

F. Qualifying stablecoins and non-fungible tokens

CCI notes the Final Regulations include an optional reporting method on an aggregate basis for qualifying stablecoins and specified non-fungible tokens (NFTs), and the new draft form adds Boxes 11a ("Check if gross proceeds reported in 1f is an aggregate amount for"), 11b ("Number of transactions"), and 11c ("For aggregate reporting of specified NFTs, aggregate gross proceeds reported in 1f that are attributable to first sales by creator or minter") to allow brokers to use this optional reporting method. CCI appreciates that the Final Regulations adopt a $10,000 annual *de minimis* reporting threshold for qualifying stablecoin sales, and a $600 annual *de minimis* reporting threshold for NFT sales, with the option for aggregate reporting above these thresholds. However, the draft form and its instructions, in their current state, lack sufficient guidance for how to fill out the form if the optional reporting method is being followed.

We respectfully urge the IRS to consider creating two dedicated sections within the draft form for the operational reporting method: one for specified NFTs and one for qualifying stablecoins. If creating two dedicated sections is not acceptable, however, we would alternatively recommend that the instructions articulate, for each box, how a broker selecting the optional reporting method should fill it out. Otherwise, the lack of clarity will force brokers to make assumptions or guesses about how to complete the form, leading to inconsistent reporting. For example:

- Boxes 1a ("Code for digital asset"), 1b ("Name of digital asset"), 1d ("Date acquired"), 1e ("Date sold or disposed"), 1g ("Cost basis"), 1h ("Accrued market discount"), and 1i ("Wash sales loss disallowed"): The instructions should specify how brokers selecting the optional reporting method should fill this out (*e.g.*, leave blank, or write "*various*" or "*optional aggregate reporting of specified NFTs*," etc.)
- Box 1c ("Number of units"): It is unclear how this box relates to Box 11b if the optional reporting method is being used. If they are requesting the same information, then CCI recommends that the IRS delete Box 11b.
- Box 1f ("Proceeds"): The instructions should specify how brokers selecting the optional reporting method should fill this out (*e.g.*, that this should be the sum of all the proceeds from all transactions conducted throughout the year).
- Boxes 2 ("Check if basis reported to IRS"), 3a ("Reported to IRS"), 3b ("Check if proceeds from"), 5 ("Check if loss is not allowed base on amount in 1f"), and 6 ("Gain or loss"): The instructions should specify that brokers selecting the optional reporting method should leave all boxes unchecked.
- Box 10 ("Digital asset is a noncovered security because"): The instructions should specify how brokers selecting the optional reporting method should fill this out. We recommend adding a fourth box here along the lines of "Broker selected the optional reporting method." Conceivably, a broker *could* have provided custodial services and be using the

optional reporting method because the sales related to specified NFTs, for example, and in that case, none of the current three boxes would be an adequate way to describe *why* the digital asset is a noncovered security.

- Box 11c: The instructions should specify how exactly this is calculated if a broker is selecting the optional reporting method, and how this calculation relates back to Box 1f ("Proceeds"). For example, it is not clear whether the sum of Boxes 11c and 1f should amount to the total amount of proceeds, or whether Box 1f should be the total amount of proceeds and Box 11c only represents the subset of proceeds that relate to first sales.
- Boxes 12a ("Number of units transferred in") and 12b ("If transferred in, provide transfer-in date"): It is unclear how this would be filled out for non-custodial brokers, if any, were to be covered by the requirement. Regardless, the instructions should specify how brokers selecting the optional reporting method should fill these out.

Moreover, many of the data elements requested in the draft form introduce a significant additional compliance burden on filers without a clear commensurate benefit for the IRS of obtaining such information. For example, in relation to Box 11c, it would be labor-intensive and burdensome for filers to track whether the proceeds belonged to a "first sale by a creator or minter" (to adopt the draft form's language) or to a secondary sale of a specified NFT. This distinction between primary (minting) and secondary sales of NFTs is not made anywhere in the Final Regulations. The utility of this information to the IRS is unclear since it would not allow the IRS to identify non-compliance from creators/minters. We recommend deleting Box 11c for this reason.

As another example, with respect to the information requested in Boxes 12a and 12b, it is not clear what benefit this information has for the IRS, and it adds a significant degree of complexity for brokers to track. Customers may transfer digital assets in or out of an account, but such transfers should not change the tax treatment of the disposition of such digital assets. We recommend deleting these two boxes.

Brokers will face certain challenges when implementing system updates to calculate applicable de minimis amounts per customer, and to aggregate applicable transactions. Delayed implementation of this reporting requirement is especially relevant given the administrative challenges associated with alternative reporting regimes. For example, if no brokers utilize the stablecoin alternative reporting method, the IRS could face a significantly higher volume of Form 1099-DAs than anticipated due to the high volume of stablecoin transactions. This increase would provide minimal tax reporting benefit, as the vast majority of stablecoin transactions do not result in material gains or losses.

G. Burden of requiring recipient copies of 1099-DA to be mailed to the last known address on file

The Final Regulations do not appear to contain instructions for brokers on how to deliver the Form 1099-DA to the recipient. As noted in our comment letter to the prior version of the draft form, the Form 1099-B is required to be mailed to the last known address on file unless the recipient opts into receiving the form electronically. This requirement – even in the context of Form 1099-B – is outdated and would benefit from modernization. Digital asset brokers, meanwhile, interact with their users *exclusively* through electronic means. As such, CCI recommends allowing digital asset brokers to send recipient statements electronically without requiring the affirmative consent of the taxpayer. Updating this requirement to allow for digital delivery by default would reduce administrative burdens and provide recipients with more timely and efficient access to their tax documents. 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.

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CCI again appreciates the opportunity to provide these comments and for your consideration of our recommendations 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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