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October 12, 2023

Internal Revenue Service
CC:PA:LPD:PR (REG- 122793-19)
Room 5203
P.O. Box 7604,
Ben Franklin Station, Washington, DC 20044

Submitted Electronically and Via Mail

Re: Gross Proceeds and Basis Reporting by Brokers for Digital Asset Transactions

Dear Sir or Madam,

Coinbase Global, Inc. and its affiliates ("Coinbase") welcome the opportunity to submit a response to the recently published proposed regulations (the "Proposed Regulations")[1] on gross proceeds and basis reporting for digital asset transactions in respect of the Infrastructure Investment and Jobs Act of 2021 (the "IIJA"). This letter is the first of two letters that Coinbase intends to submit on the Proposed Regulations and expresses our serious concerns about the nature and scope of the Proposed Regulations. In our second letter, we intend to provide more detailed observations and technical comments.

We have long advocated for a tax system that treats digital assets the same way it treats assets in traditional finance. However, the Proposed Regulations, as written, would impose an unprecedented, unchecked, and unlimited tracking on the daily lives of Americans. They would enable government surveillance of the choices Americans make about their most private health care decisions, or even when they purchase a cup of coffee. Moreover, these rules would establish an incomprehensible and unduly burdensome set of new reporting requirements that will degrade and displace the same taxpayer services the IRS is seeking to improve. The result will be services that are slower, costlier, and far less efficient in contravention of the agency's modernization commitment to making the tax system easier, faster, and simpler.

[1] Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, REG 122793-19, 88 Fed. Reg. 59576 (Aug. 29, 2023).

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Coinbase operates the largest and most trusted platform in the United States for customers to buy, sell, and manage digital assets. We are dedicated to working openly and constructively with tax authorities and regulators, both in the United States and globally, to promote compliance with applicable regulatory and tax laws, while protecting their legitimate privacy expectations.

Coinbase supports clear, transparent, and workable rules that govern tax reporting for U.S. taxpayers who trade digital assets on centralized platforms. We have long supported parity for how digital asset transactions are reported with how securities transactions are reported in traditional finance. For many years, and long before passage of the IIJA, we have asked for regulatory guidance around information reporting for digital assets.[2] Coinbase has made it clear to its customers that they are responsible for reporting and paying any applicable taxes arising from their transactions using Coinbase. Coinbase also has made it clear to its customers that Coinbase will report to the applicable governmental authorities information concerning its customers' use of Coinbase's services, and withhold applicable taxes, to the extent such actions are required by applicable law.[3]

Coinbase's goal is that the final regulations be successful, consistent with both the language and the legislative intent in the IIJA, in creating parity in the reporting of digital asset transactions with those in traditional finance. We believe this would promote comprehensive and efficient tax administration without imposing unnecessary burdens on digital asset reporting agents or violating privacy protections. These reporting requirements should not unduly discriminate between digital assets and traditional finance. Additionally, they should not create untenable new burdens on the IRS, digital asset reporting brokers, and everyday Americans.

Unfortunately, for the reasons we detail below and will elaborate on in subsequent comments, we do not believe that Proposed Regulations, if finalized as proposed, would be successful. Rather than being tailored to entities that actually effectuate transactions in digital assets (as required by the statute), the Proposed Regulations are overly broad in ways that are not warranted or implementable. Moreover, as we will note below, this overbreadth will counterproductively make it *harder* for the IRS to enforce the tax laws on cryptocurrency transactions involving U.S. persons.

In this light, we respectfully urge the Treasury and the IRS to revise the Proposed Regulations to limit compliance requirements to those parties that directly *effectuate* transactions in digital assets similar to those in traditional finance. Mandating reports that adhere to the language of the statute and its legislative intent, along with Treasury's long standing policy of neutrality with respect to emerging technologies, is critical to preserving U.S. global leadership in next generation economic activity. Moreover, both brokers and the IRS should have sufficient time to develop the extraordinarily complex systems necessary to ensure compliance and to adopt blockchain solutions to the complex tax reporting issues that the Proposed Regulations raise.

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[2] *See, e.g.*, Brian Armstrong, *Coinbase and the IRS,* Medium (Jan. 14, 2017), available at: https://barmstrong.medium.com/coinbase-and-the-irs-c4e2e386e0cf.

[3] Coinbase User Agreement, available at: https://www.coinbase.com/legal/user_agreement/united_states.

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Executive Summary

In these initial comments to the Proposed Regulations, we make six overarching observations:

1) *Lack of Parity with Financial Services.* The IIJA expanded the tax reporting architecture to digital asset brokers in a manner similar to the traditional financial services entities that serve as the benchmark for broker reporting. Congress carefully crafted the legislative language and it was not intended to cover any and all persons who facilitate and participate in the digital asset economy.

2) *Duplicative and Burdensome Reporting.* The Proposed Regulations will create duplication and unadministrable reporting. By expanding the universe of brokers and scope of digital assets to include any and all persons who facilitate the digital asset economy, the IRS and taxpayers will be bombarded with data, including data related to payment transactions and transactions without any gain or loss. We estimate that the IRS will receive billions of annual filings (with zero or negligible taxable income) if broker reporting is expanded to include stablecoins and other everyday transactions arising from the growing use cases for digital assets. This expansion of the digital asset reporting regime will detract from the ability of the IRS and taxpayers to focus on relevant and appropriate compliance where genuine tax liability is created.

3) *Invasion of Privacy.* The Proposed Regulations require the reporting of data related to everyday use cases for digital assets and to digital assets that are non-financial in character. This includes the use of digital assets for everyday uses, such as the purchase of a cup of coffee or everyday payments at the grocery store or visits to the doctor. This expansion of the broker reporting regime increases government oversight over taxpayer activity and intrudes unnecessarily into the private lives of ordinary Americans in ways that are largely unconnected to tax. The IRS should not police every digital asset transaction just because of the potential for taxable gain. The broker reporting regime should not be extended to digital asset transactions where there is no gain, such as payments, and where the assets are non-financial in character.

4) *Violation of Tech Neutrality.* The Proposed Regulations stifle growth of the digital asset ecosystem by imposing rules that directly challenge the use cases for digital assets. The regulations go beyond the scope of reporting taxpayer gains on financial assets and impose burdens that suggest the government is using tax reporting as a tool for deciding which technologies should succeed in today's economy. This is an inappropriate interpretation and application of the Tax Code.[4]

5) *Unrealistic Compliance Timeline.* The Proposed Regulations impose an unrealistic timeline for implementation. They require reporting entities to develop a new and

[4] Any and all references to the Tax Code or the Code shall be to the Internal Revenue Code of 1986, as amended.

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complex reporting regime from the ground up in a little over a year from the end of this comment period, and likely less than a year from the date regulations are finalized. This contrasts sharply with the more than five-year timeline afforded to financial institutions to comply with the 2008 tax basis reporting regulations, even though financial institutions were already reporting gross proceeds, had pre-existing infrastructure in place, and did not have to build new systems from the ground up.

6) *Missed Opportunity to Leverage Blockchain to Ensure Taxpayer Compliance*. Beyond just implementing tax rules in accordance with the language of the Code and intent of Congress, the rulemaking process should be an important opportunity to develop new ways to leverage blockchain technology to create a modernized and more efficient tax reporting regime. Blockchain technology has important potential to offer new and alternative tax reporting and compliance systems that will achieve the twin goals of transparency and efficiency. We would encourage the Treasury and the IRS to consider these tools in implementing the new broker reporting rules for digital assets.

Comments

1. The Proposed Regulations Far Exceed the Congressional Mandate and Impose Discriminatory Burdens on Digital Assets Compared with More Traditional Financial Assets.

The Tax Code has, for several decades, required traditional brokers to report information about sales and exchanges of financial assets that they effect. Traditional brokers, for example, are required to report to both taxpayers and the IRS certain information about sales of stock and securities they effect. Under the law prior to the IIJA, a centralized cryptocurrency platform like Coinbase did not fall under these rules.

The IIJA expands the definition of "broker" under section 6045 of the Code to include "any person who, for consideration, is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person."[5] The plain language of this provision speaks for itself: Congress wanted people who are regularly involved in "effectuating" transfers of digital assets on behalf of another person to make returns that facilitate the accurate reporting and collection of taxes in respect of such transfers.

The word "effectuate" as prescribed in the legislative text is defined as "to cause or bring about (something): to put (something) into effect or operation."[6] The Proposed Regulations use the term "effect," which for the purpose of our response we assume was intended to be synonymous with "effectuate." Critically, in the context of the legislative intent, the plain English meanings of

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[5] Code § 6045(c)(1)(D).

[6] Effectuate, Merriam-Webster Online, https://www.merriam-webster.com/dictionary/effectuate

both "effect"[7] and "effectuate" contain a causal element: To effectuate a transaction, one must *cause* it to occur. Attenuated causation does not suffice. Effectuating a transaction requires *direct* rather than tangential involvement.[8]

This definitional point is essential to understand which persons the regulations were meant to cover. For example, a stock broker directly effectuates an exchange of cash for stock and vice versa. And in the case of a centralized trading platform like Coinbase, the services provided directly *effectuate* transactions in digital assets. But no ordinary speaker would say that other ancillary elements of the financial ecosystem – e.g. an internet browser, an internet service provider, or a smartphone manufacturer – "effectuates" a stock sale that occurs on a smartphone. The existing regulations recognize this distinction by excluding from the class of traditional brokers any a "person (such as a stock exchange) that merely provides facilities in which others effect sales."[9]

Based on this reasoning, the Proposed Regulations far exceed Congressional authorization. Treasury and the IRS have interpreted "broker" to cover industry participants that do not effectuate transactions in digital assets. The rules inappropriately assign broker status for reporting purposes to certain industry participants based on the theory that they *indirectly* "effectuate" transfers of digital assets.

This overbroad definition of a broker captures persons that may contribute or give rise to a transaction, even if they do not effectuate it. The Proposed Regulations say that to "effect" a transaction is to act as, among other things, (1) an agent for a party in the sale wherein the nature of the agency is such that the agent ordinarily would know the gross proceeds from the sale, (2) a dealer in such sale, or (3) a digital asset middleman for a party in a sale of digital assets.[10] A "digital asset middleman" is defined, in turn, as 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 *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.[11] The term "facilitative service" includes "the provision of a service that directly *or indirectly* effectuates a sale of digital assets."[12]

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7 Effect, Merriam-Webster Online, https://www.merriam-webster.com/dictionary/effect

8 *See, e.g.*, *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1984) (explaining that "effect" requires a "reasonably close causal relationship between a [cause] and the effect at issue").

9 Treas. Reg. § 1.6045-1(b), Ex.(2)(ii) (emphasis added)

10 Prop. Treas. Reg. § 1.6045-1(a)(10).

11 Prop. Treas. Reg. § 1.6045-1(a)(21)(i).

12 Prop. Treas. Reg. § 1.6045-1(a)(21)(iii) (emphasis added).

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There are many examples of activities that would trigger reporting beyond what was statutorily intended:

- Providing a party with access to a protocol
- Providing an automated market maker system
- Providing services to discover the most competitive buy and sell prices[13]
- Providing non-custodial wallets that allow users to access trading platforms[14]
- Providing services that allow access to the internet, including browsers and internet service providers.[15]

Including persons within these broad categories of activities stretches the meaning of the statute beyond the breaking point. None of these activities directly effectuates digital asset transactions. Take Coinbase's non-custodial Wallet software as an example. Wallet is just passive software – in the form of a mobile application or browser extension – that allows customers to store the private keys for their own digital assets on their own computers or mobile devices. Wallet provides a user interface and technical connection to third-party platforms, so that customers can use their assets on those platforms. But it does not itself "effectuate" those transactions – just as a person's physical wallet does not effectuate paper money transactions when used for cash purchases at a store, and just as a smartphone does not effectuate stock purchases made on a mobile app.

Reading the statute to cover the *indirect* effectuation of transactions also would give it potentially unbounded breadth. Taken to the extreme, there is no principled reason why the broker definition would not cover browsers and internet service providers that allow access to the internet, as a result of indirectly facilitating digital asset transactions.

This expansion of the reporting regime beyond the traditional definition of broker in financial services exceeds the Congressional authorization in 2021 to include rules for digital assets similar in scope to the existing regime applicable to traditional finance. This was confirmed in a colloquy on the Senate Floor from 2021 when the statutory change was made and further endorsed in a letter by Treasury in February 2022 to the Senators who joined the colloquy confirming that new rules would adhere to the principles of parity with traditional financial services—no better, but no worse.[16]

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13 Prop. Treas. Reg. § 1.6045-1(a)(21)(iii).

14 Under the Proposed Regulations, such a wallet provider is a broker—this precise example is explicitly mentioned. Prop. Treas. Reg. §§ 1.6045-1(a)(21)(iii);-1(b)(22). In these cases, a non-custodial wallet does not perform any of the key functions that effect the digital asset transaction but is still treated as a "digital asset middleman."

15 Consider a U.S. internet service provider who allows its customers to access cryptocurrency platforms online. Under the Proposed Regulations, the internet service provider could be a broker – they are indirectly effectuating sales by "providing access" to a digital asset trading platform (indeed, to all digital asset trading platforms), and it would be possible for them to design systems that would require users to give them their tax information reporting before accessing websites. Even putting aside the enormous privacy concerns here, the end result is an absurd expansion of the word "broker."

16 See Letter of February 11, 2022 from Jonanthan C. Davidson, Assistant Secretary for Legislative Affairs, to Senators Portman, Warner, Crapo, Sinema, Toomey and Lummis (stating "[c]consideration of regulations in the notice of proposed rulemaking will be based on principles broadly similar to those applicable under current law for broker reporting on securities transactions.").

2. Burdensome and Duplicative Transaction Reporting.

The Proposed Regulations' breadth, if not corrected, will result in a host of unnecessary and counterproductive burdens on reporting entities and the IRS. This includes causing a cascade of duplicative reports to be filed and provided to taxpayers on the same transaction by different reporting entities. A transaction that Coinbase is required to report could also be required to be reported by multiple other entities. This raises the very real possibility that taxpayers and the IRS will receive multiple reports on overlapping transactions with information that will require unnecessary and burdensome reconciliation by taxpayers, reporting parties and the IRS.

Consider, for example, an individual *A* who uses a wallet service that links to Coinbase (and to other platforms), and who uses an internet service to track the buy/sell prices of tokens on different platforms that is integrated into his wallet software. During the tax year, individual *A* sells 10 units of Token *X*, 15 units of Token *Y*, and 20 units of Token Z, all on Coinbase's platform. Coinbase under the Proposed Regulation would report these three transactions. However, in addition to Coinbase's reporting, reporting could be required by the wallet service and even Individual *A*'s internet service provider. Further, if multiple parties provide different services for each of Individual *A*'s transactions, then each would be required to report to the IRS—with a copy to individual *A*—on components of the three transactions posited above.

The Proposed Regulations require reporting from all parties who are involved in directly or indirectly effecting the same digital asset transaction so that the IRS has certainty that it is being reported, even if it results in duplicative reporting. This is in direct contrast to existing regulations for traditional brokers, where there is a "multiple broker" rule limiting reporting of duplicative transactions to the broker that credits the gross proceeds (cash) to the customer's account.[17] Notably, this rule exempts from reporting even certain entities that directly effectuate transactions, such as executing brokers, evidencing clear legislative intent to avoid duplicative reporting of financial transactions. Digital asset brokers should not be subject to more onerous rules and, at a minimum, should also be allowed to rely on the "multiple broker" rule so the transaction is only reported once to the taxpayer and the IRS.

More generally, requiring multiple reports of overlapping transactions does not promote efficient tax administration. In addition to the significant confusion this will create for taxpayers in preparing and filing their returns, to reconcile a single transaction, the IRS will be required to spend valuable resources to coordinate and reconcile multiple reports associated with the same transaction, rather than administering and collecting taxes related to the transaction. To the extent reporting is duplicated across multiple brokers, it is likely to engender confusion among taxpayers and with the IRS, prompting incorrect and unreconciled tax returns and future audits, all for no valid reason.

The Proposed Regulations also introduce unnecessary reporting burdens through overly expansive transaction reporting requirements. Of particular note, the Proposed Regulations

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[17] Treas. Reg. § 1.6045-1(c)(iii).

expressly exclude U.S. dollar stablecoins from the exception to reporting for transactions in cash, thus creating a requirement to report all stablecoin transaction activities.[18] However, when a stablecoin is by design a payment instrument, with a one-to-one peg to reserve assets denominated U.S. dollars, the same stablecoin can be transferred from person to person without any gain or loss. As such, their use is as an electronic cash instrument.

The IRS should exercise its authority to exempt stablecoin transactions and stablecoin issuers from these reporting requirements.[19] Failure to exclude payment stablecoins from reporting requirements will lead to a vastly overburdensome, ineffective, and inefficient reporting regime. Given the immense volume of data that must be reported under the Proposed Regulations, even absent stablecoins, the reporting of transactions where no gain or loss is recognized does not promote efficient tax administration. To put this in context, traditional financial brokers file between 60-90 million reports to the IRS each year. Under the broker reporting regime as proposed, the IRS can expect to receive over one billion transaction reports each year *from Coinbase alone*, an enormous increase in volume. Tax reporting when there is no gain or loss (including stablecoins or transactions that could be addressed with a simple de minimis reporting rule) will result in expansive, but low value reporting, and should be excluded from the reporting regime.

The Proposed Regulations could also subject persons who process payments made with digital assets (such as stablecoins) to reporting obligations that are not required of traditional payment processors. The Proposed Regulations rightly exclude a "merchant who is not otherwise required to make a return of information under section 6045 of the Code and who regularly sells goods or other property (other than digital assets) in return for digital assets."[20] But the Proposed Regulations inexplicably do not extend that exclusion to the payment processors themselves. Thus, for example, your local coffee shop or grocery store would not be subject to reporting if it accepted digital assets, but under the Proposed Regulations, the payment processors that these outlets use would need to collect W-9s or W-8s from their customers and turn over to the IRS details of these small transactions. This is the case even if the transactions occur in a fiat-backed stablecoin pegged to the U.S. dollar, notwithstanding that there would be either no or de minimis gain or loss on the user's disposition of these assets.

The practical impact of the payment processor reporting requirement cannot be overstated: it will stamp out the nascent blockchain-based payments ecosystem without any legislative mandate or sound policy basis. Cash and other credit card transactions are not subject to this type of onerous tax reporting; this would mark a significant departure from what is presently required under Sections 6045 and 6050W. The practical difficulties of collecting Forms W-9 and W-8 and reporting regular purchases of goods and services are self-evident. We strongly encourage the Treasury and the IRS to reconsider this onerous and invasive requirement.

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18 Prop. Treas. Reg. § 1.6045-1(a)(12).

19 Code § 6045(a) ("brokers" obligated to file reports only "when required by the Secretary").

20 Prop. Treas. Reg. § 1.6045-1(b)(3)(viii).

3. Tax Reporting on Stablecoins, Wallet Information and NFTs Results in the Invasion of Taxpayer Privacy and Inappropriately Expands the Scope of Reporting to Non-Financial Assets.

The reporting of payment and stablecoin transactions also creates a serious challenge to the privacy of ordinary taxpayers. Apart from the volume and low value of this reporting, taxpayers typically do not expect the IRS to monitor, analyze and review their daily transactions, including the use of stablecoins or digital assets for payments. For all practical purposes, the reporting of digital assets used for payments is the equivalent of a 24-hour surveillance of taxpayers – just because of their adoption of digital assets for this use case.

Further, the Proposed Regulations' requirement for reporting not just account numbers, but also underlying wallet addresses, is far more than is required of traditional stock brokers or payment processors. Because blockchain records are both permanent and public, this requirement would be tantamount to mandatory reporting of the financial and spending habits of Americans across their entire lives. And once wallet addresses are linked to individuals, this leaves open the real possibility that a successful cyber attack of either a government system or reporting broker (for which there is precedent) could reveal a taxpayer's entire on-chain transaction activity.

The IRS already has enormously powerful tools at its disposal to audit taxpayers and collect information. But, the Proposed Regulations would subject owners of digital wallets to unprecedented invasions of privacy from reporting brokers.

Moreover, the Proposed Regulations demand that wallet providers, including those who write the code for self-custody wallets, capture personal data and information simply because the wallet can be used to participate in the broader digital asset ecosystem.[21] We do not believe that this is an appropriate use of the broker reporting regime since it raises important privacy concerns that are unrelated to the objective of ensuring that taxpayer gains are reported correctly on tax returns. There is a serious imbalance associated with the use of the Tax Code for this purpose.

Digital assets subject to reporting similarly should be limited to the same trade or investment assets that are reported in the financial sector. The inclusion of all non-fungible tokens ("NFTs") as reportable digital assets is an example of overreach and the absence of parity. NFTs can include digital works of art or tokenization of real world assets, such as real estate, Broadway tickets, hotel room reservations and other similar forms of property that are not reported today in traditional finance. The IRS adopted a "look through" approach to NFTs in Notice 2023-27 in treating certain NFTs as collectibles for purposes of Section 408(m) of the Code.[22] If the underlying asset itself is not subject to reporting under Section 6045, there is no principled reason why the tokenization of the asset as an NFT should transform such asset into a reportable asset for broker reporting purposes.

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[21] Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, REG 122793-19, 88 Fed. Reg. at 59585-86 (Aug. 29, 2023).

[22] See Notice 2023-27, released March 21, 2023.

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4. The Proposed Regulations are not Tech-Neutral and Hinder the Growth of the Digital Asset Economy.

Secretary Yellen has indicated that wherever possible, digital asset regulation should be tech-neutral, including as it relates to tax enforcement.[23] Many foreign jurisdictions also embrace tech neutrality[24], which means that the Proposed Regulations are not only contrary to the stated tech neutrality goals of the U.S. Congress and the Biden Administration, but would also put U.S. firms at a disadvantage relative to their global competitors.

The Proposed Regulations do not follow a principle of tech-neutrality. To put the Proposed Regulations in perspective, if similarly broad rules had been applied to stock market transactions in the mid-twentieth century, they would have captured not only Wall Street brokerage firms, but also financial advisors, the companies that printed stock certificates, and even the companies that shipped the stock certificates to the stockholders. And if rules similar to the Proposed Regulations applied to the buying and selling of stock today, it is hard to see how online websites, databases or software that list the price of stocks would not fall under the scope of these rules. Each of these entities could be captured as "digital asset middlemen" as defined by the Proposed Regulations.

Coinbase strongly urges the Treasury and the IRS to adhere to its policy of technological neutrality in the Proposed Regulations and balance the need for transparency with the need for taxpayer privacy, including by: (1) limiting reporting obligations to persons who directly carry out digital asset transactions; (2) limiting the information required to be reported by digital asset brokers to the same kinds of information required of traditional brokers; and (3) eliminating reporting obligations for stablecoins and processors of digital-asset payments for merchants. Much of the proposed reporting is redundant, invasive, and of little value, not to mention a tremendous and unwarranted burden on the industry.

We do not believe it is appropriate for the government to impose unreasonable burdens on the digital asset economy through the imposition of overly expansive broker reporting rules. Tax regulations that do not adhere to either the letter or the spirit of the law are not the appropriate tool for the government to decide which participant in the economy should succeed or fail. By overreaching and burdening the digital asset ecosystem with unnecessary and low value

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23 "Remarks from Secretary of the Treasury Janet L. Yellen on Digital Assets" April 7, 2022. https://home.treasury.gov/news/press-releases/jy0706

24 Common Assessment Method for Standards and Specifications, Technology Neutrality, EUROPEAN LIBRARY OF ARCHITECTURE PRINCIPLES (webpage last accessed Sept. 9, 2023), https://joinup.ec.europa.eu/collection/common-assessment-method-standards-and-specifications-camss/solution/elap/about. See also European Interoperability Framework Section 2.6, "Underlying principle 5: technological neutrality and data portability" (Mar. 23, 2017), available at https://eur-lex.europa.eu/resource.html?uri=cellar:2c2f2554-0faf-11e7-8a35-01aa75ed71a1.0017.02/DOC_3&format=PDF.

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reporting, the government is doing just that—it is making a choice to cripple the digital asset market through tax reporting.

5. The Proposed Regulations Require Reporting Entities to Take on a Massive Compliance Burden on an Unrealistic Timeline.

The Proposed Regulations impose an entirely new and complicated reporting regime on a broad array of "brokers" throughout the digital asset economy. Even if the scope of the Proposed Regulations is properly limited to parties that actually effectuate transactions in digital assets, the timeline for compliance with the Proposed Regulations imposes an unduly burdensome task.

By way of comparison, in 2008, Congress made changes to the existing broker reporting rules by introducing new cost basis reporting rules for certain securities, option and debt transactions under section 6045, and, yet, the effective dates for these rules were phased in over a period of more than five years.[25] The brokers subject to those rules already had, under prior law, systems in place to capture taxpayer information and report transaction proceeds. Still they were provided with a multi-year implementation period just to implement basis reporting. In stark contrast, the Treasury and the IRS now expect the digital asset industry, including entities that don't have basic reporting infrastructures in place (and never expected to need them), to comply with a sweeping new reporting regime in record time. Under the timeline suggested by the Proposed Regulations, they will need to do this in just *months* after the promulgation of final regulations since the Proposed Regulations are made effective for transactions beginning on January 1, 2025. Again, Coinbase highlights the need for technological neutrality. The digital asset industry should not be treated less favorably than more traditional financial businesses, which had years to comply with new basis reporting rules.

Even a platform like Coinbase that has invested significant resources in tax compliance would need a significant amount of time to develop the necessary resources to comply with final regulations and the proposed new digital asset form (Form 1099-DA). The Proposed Regulations require brokers to report "other information required by the [digital asset] form," but the IRS has not yet released a draft of the form.[26] That makes it impossible for regulated parties to prepare for compliance with these new reporting rules. Coinbase, for its part, expects that, under the Proposed Regulations, it would need to report well over one *billion* transactions annually– many multiples more than traditional platforms are required to report today. The number of reportable digital asset transactions can only be expected to increase in coming years.

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[25] See T.D. 9616, 78 FR 23116, promulgating final regulations under § 6045(g) requiring brokers to include customers' adjusted basis in certain securities on their information return. The Energy Improvement and Extension Act, Pub. L. 110-343 was enacted in 2008 and required additional information reporting under § 6045(g); brokers dealing in debt instruments and options did not have to comply with the heightened reporting obligation until early 2014, more than five years later.

[26] Prop. Treas. Reg. § 1.6045–1(d)(2)(i)(B).

And to the extent Treasury and the IRS do not limit these rules to centralized platforms, the problem is only further compounded. For example, mere software providers that never contemplated the idea that they could be reporters, and were assured by the Treasury that they would be excluded from reporting regime, now will be required to redesign their entire products within an unprecedentedly short span of time to obtain the data to comply, or otherwise leave the U.S. market entirely.

Large, digital asset brokers, including Coinbase, would need a minimum of 24-36 months after the finalization of the regulations and release of the proposed digital asset form (Form 1099-DA) to build systems capable of accurately reporting proceeds and cost basis reporting. We recommend a period of at least 36 months to enable all regulated parties to comply with this regime. Even on this timeline, it will be a Herculean task for a well-equipped platform like Coinbase to become compliant with these expansive and complicated regulations.

That task will prove impossible for many smaller entities.[27] Most "brokers" subject to the Proposed Regulation are small businesses, as the Treasury and the IRS acknowledge. Yet the agencies do not adequately grapple with the crushing burden the high initial fixed costs of compliance – estimated by the Proposed Regulations at nearly a billion dollars – will impose on smaller brokers. Nor do they reckon with the second-order impact these rules will have on smaller brokers and their ability to compete in the broader digital asset ecosystem.

Traditional Brokers may be required to "backup withhold" taxes on the sale of securities for cash. The Proposed Regulations for digital assets take this a step further and impose backup withholding taxes on transactions where a customer receives digital assets for digital assets, such as trading Bitcoin for Ethereum or paying network or gas fees in crypto. Digital asset brokers would need to "backup withhold" a percentage of an asset based on its market value at the time of the sale even though the IRS is not equipped to receive backup withholding taxes in the form of digital assets. Additional time is required to offer operational solutions in these situations and to ensure that digital asset brokers do not bear losses if they are required to sell digital assets for fiat to remit backup withholding taxes to the IRS.

Requiring brokers to report cost basis information retroactively relating to tax year 2023 is unprecedented in the information reporting space and is not practical or realistic. Brokers do not currently monitor or track such required information in their systems.[28] Brokers need time to build adequate systems to capture and report the required information. Requiring basis reporting back to 2023, even though systems are not yet in place, will lead to the reporting of inaccurate information to the IRS, as taxpayers may have already disposed of digital asset lots in a previous tax year. The imposition of retroactive cost basis reporting is inconsistent with the cost basis reporting requirements imposed on traditional brokers in 2010 when such rules were implemented (with a five-year phase in) prospectively.

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27 See 5 U.S.C. § 603(a) (requiring consideration of the Proposed Regulations' impact on small entities).

28 The introduction of retroactive regulations in the case of information reporting is highly unusual, if not unprecedented, apart from being unadministrable.

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We would suggest a phased implementation of reporting whereby the basics of the tax reporting regime, such as the reporting required of Coinbase's centralized trading platform, be implemented first. We suggest aligning the definition of broker with the definition in place for existing financial services, as required by the statute. We further suggest that more expansive rules, such as expanding the scope of broker to wallet providers and other middlemen who have no traditional customer relationship to the taxpayer, be withdrawn or at least be deferred to a later date following a review whether these rules are practical, efficient, and administratively feasible to enforce.[29]

6. The IRS Should Consider Superior Alternatives, Including Utilizing Blockchain Technology.

We strongly urge the Treasury and the IRS to adopt rules accommodating blockchain-related *solutions* to the very important reporting issues that the Proposed Regulations attempt to address. As we have described above, the breadth and scope of the Proposed Regulations, in addition to exceeding the plain language and intent of the statute, will make it prohibitively difficult and costly, if not impossible, for many enterprises within its scope to comply. For example, in DeFi and peer-to-peer platforms, the blockchain protocol itself facilitates direct peer-to-peer transactions on a public decentralized blockchain network without an intermediary, and no current systems exist to allow for tax form collection or similar tax-related attestations.

The response to the emergence of a new technology should *not* be to force participants in the new technology to fundamentally change their business practices for reasons never contemplated by Congress, thereby making it effectively impossible for U.S. persons to use such technology.

We therefore believe that the most efficient solution to address these very complex reporting issues lies in blockchain technology itself. The nature of digital asset transactions, and the structure of the blockchains used to document those transactions, could be used affirmatively and constructively to provide a twenty-first century tax compliance solution and a marked improvement to the tax attestation process. We recommend allowing for the use of an optional tax attestation token that could support tax-related attestations. It would facilitate tax compliance by allowing crypto users to securely verify their identity while engaging in DeFi transactions. The token itself would be issued by a trusted third party to the user's digital wallet as it would contain private tax-related information such as a user's Social Security Number. Such a token could incorporate tax attestations such as:

- IRS Form W-9 or Form W-8;
- Common Reporting Standard (CRS) self-certification form;
- Crypto Asset Reporting Framework (CARF) self-certification form; and
- Supporting documentary evidence such as a passport.

[29] Compare to the implementation of information reporting and backup withholding under FATCA where a delay was first considered pending a determination of noncompliance in the program, followed by abandonment.

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A tax attestation token would allow for better verification, accuracy and data privacy than traditional paper versions of tax identifying forms, such as an IRS Form W-8 or a CRS self-certification form which can be confusingly lengthy, unavailable electronically or mistakenly interpreted through human error.

The token itself would remain securely in the user's wallet and stored "off-chain," meaning that any sensitive personal information would not be publicly available on the blockchain. A separate, "on-chain" tax attestation token could then be created and linked to each transaction. Users could choose to easily facilitate income tax reporting by allowing the trusted third party to associate the on-chain and off-chain tokens and submit necessary information to the appropriate tax agency on their behalf. We are excited about the possibility of using blockchain technology to create a more efficient and simplified form of tax compliance and collection and would be delighted to participate in this development.

Despite their obligation to investigate "alternatives to the proposed rule which accomplish the stated objective," the Treasury and the IRS do not appear to have given serious consideration to rules accommodating blockchain technology.[30] Coinbase is standing by and would be happy to work with the Treasury and the IRS to develop and implement technological solutions that incorporate blockchain technology. In our view, this presents the opportunity for an easier, more cost-efficient, and more enduring tax reporting framework, ultimately with higher fidelity reporting to the IRS. Embracing blockchain technology in this way is preferable to applying an unworkable and antiquated regime to a problem that could be efficiently and elegantly addressed using modern technology. It would provide both taxpayers and the IRS with the information they need in an effective manner.

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We greatly appreciate your consideration of our comments, and we would be happy to discuss these and other tax policy issues or technological questions with you at your convenience. We view our mission to include proactive engagement on tax policy initiatives around the world and look forward to hearing back from you and helping you develop constructive tax rules for the digital asset ecosystem.

Very truly yours,

Lawrence Zlatkin
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30 5 U.S.C. § 603(c); see also Executive Order 13563(a) (mandating that agencies "identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends").