



January 2, 2025

CC:PA:01:PR (REG-112129-23)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Comments on Notice of Proposed Rulemaking, *Corporate Alternative Minimum Tax Applicable After 2022*, REG-112129-23, 89 Fed. Reg. 75,062 (Sept. 13, 2024)

Dear Sir or Madam:

Coinbase, Inc. (“Coinbase”) and MicroStrategy Incorporated (“MicroStrategy”) welcome the opportunity to comment on proposed regulations, 89 Fed. Reg. 75,062,¹ concerning the corporate alternative minimum tax (“CAMT”) provided for under sections 55, 56A, and 59 of the Internal Revenue Code,² which were published in the *Federal Register* on September 13, 2024 (the “Proposed CAMT Regulations”).

Coinbase operates the largest and most trusted platform in the United States for customers to buy, sell, and manage digital assets. Its mission is to increase economic freedom in the world. Coinbase builds and offers safe, trusted, easy-to-use technology and infrastructure products and services that enable any person or business with an internet connection to discover, transact, and engage with digital assets and decentralized applications. It works with tax authorities and regulators, both in the United States and globally, to strengthen the ability of its products to provide access to the digital-asset economy, to serve as a critical infrastructure layer to Web3, to protect users’ privacy and security, and to promote compliance with applicable regulatory and tax laws.

MicroStrategy was founded in 1989 and today is the world’s first and largest Bitcoin Treasury Company. MicroStrategy is a publicly traded company that has adopted Bitcoin as its primary treasury reserve asset. By using proceeds from equity and debt financings, as well as cash flows from its operations, MicroStrategy strategically accumulates Bitcoin and advocates

¹ See also Notice of Proposed Rulemaking; Extension of Comment Period, Corporate Alternative Minimum Tax Applicable After 2022 (REG-112129-23), 89 Fed. Reg. 96,143 (Dec. 4, 2024) (extension of comment period to Jan. 16, 2025).

² Unless otherwise indicated, all references to a “section” are to a section of the Internal Revenue Code of 1986, as amended (the “Code”), and all “Treas. Reg. §” and “Prop. Reg. §” references are to the Treasury Regulations promulgated under the Code, all as in effect (or, in the case of proposed regulations that remain outstanding, as proposed) as of the date of these comments.

for its role as digital capital. MicroStrategy's treasury strategy is designed to provide investors varying degrees of economic exposure to Bitcoin by offering a range of securities, including equity and fixed income instruments. In addition, MicroStrategy provides industry-leading AI-powered enterprise analytics software, advancing MicroStrategy's vision of Intelligence Everywhere. MicroStrategy leverages its development capabilities to explore innovation in Bitcoin applications, integrating analytics expertise with its commitment to digital asset growth. MicroStrategy believes its combination of operational excellence, strategic Bitcoin reserve, and focus on technological innovation positions MicroStrategy as a leader in both the digital-asset and enterprise-analytics sectors, offering a unique opportunity for long-term value creation.

Coinbase and MicroStrategy respectfully request that the U.S. Department of the Treasury and the Internal Revenue Service (collectively, "Treasury") avoid serious unintended consequences to U.S. corporations holding substantial cryptocurrency ("crypto") and other assets by adjusting the final rule to exclude from "adjusted financial statement income" ("AFSI") unrealized gains and losses **on investments of an applicable corporation that for book purposes are measured at fair value with changes reflected in net income.** We also respectfully request that interim guidance be issued to the same effect, to assure prompt relief.

I. EXECUTIVE SUMMARY

The unforeseen combination of CAMT and a newly promulgated accounting standard are creating unjust and unintended tax consequences that Treasury should promptly address. CAMT imposes a 15% minimum tax on the AFSI of any corporation whose AFSI averages at least \$1 billion in the prior three-year period. A corporation's AFSI is the book income reported on its financial statements, commonly included with Form 10-K filed with the U.S. Securities and Exchange Commission ("SEC"). Those financial statements are calculated based on either the Generally Accepted Accounting Principles ("GAAP") issued by the Financial Accounting Standards Board ("FASB")—a private organization that the SEC relies upon to establish accounting standards—or international financial reporting standards ("IFRS") promulgated by the IFRS Foundation and International Accounting Standards Board.

Years after CAMT was enacted, FASB issued an accounting standard update that requires reporting entities to use a fair value or mark-to-market method of accounting for holdings of certain crypto assets.³ The accounting standard update is not problematic in and of itself. But because the standard affects a corporation's AFSI, corporations that own enough appreciated crypto (or have enough other book income) to be subject to CAMT must now pay tax on *unrealized* gains in the value of that cryptocurrency.⁴ And the standard correspondingly

³ See FASB, Accounting Standards Update No. 2023-08, *Intangibles-Goodwill and Other Crypto Assets* (Subtopic 350-60) (Dec. 2023) ("ASU 2023-08").

⁴ Commentators have noted that FASB may not have been aware of or focused on CAMT when it published the rule change. Nathan Richman, *Financial Crypto Accounting Proposal Could Have a Tax Effect*, 180 Tax Notes Federal 450, 450 (July 17, 2023).

reduces the income taxed under CAMT for corporations with unrealized crypto *losses*. Neither Congress nor FASB planned this outcome—it is the unintended result of basing tax liability on decisions by a private organization that is focused on financial statement accounting standards, not principles of taxation.

We respectfully request that Treasury exercise its authority under sections 56A(c)(15) and (e) by adjusting the definition of AFSI to exclude unrealized gains and losses on an applicable corporation’s holdings.⁵ There are three alternative ways to accomplish this.

- First, Treasury could include a provision in its final rule that excludes unrealized gains and losses from AFSI on all investments that are marked to market for book purposes but not for tax purposes.
- Second, Treasury’s final rule could provide that “any accounting standards updates that post-date CAMT’s enactment will not be taken into consideration for CAMT purposes unless and until Treasury and the IRS affirmatively incorporate them into the CAMT tax base through published guidance,” thereby ensuring that none of FASB’s other accounting standards updates provide relief from or create income tax liability until Treasury considers the issue.
- Third, and at minimum, Treasury’s final rule should provide that “‘Adjusted Financial Statement Income’ shall be adjusted to exclude the amount of any unrealized gains or losses in the fair value of a corporation’s assets required by ASU-2023-08, which shall be disregarded for purposes of calculating AFSI.”

Additionally, because of the urgency of this problem—the accounting standard update takes effect on January 1, 2025, and some companies have already begun voluntarily adopting the standards early—**Treasury should immediately issue interim guidance providing this relief by publishing a Notice in the Internal Revenue Bulletin** setting forth one or more of these exemptions.

Treasury has the authority to take this step. Indeed, in the proposed rule and earlier issued interim notices, Treasury has used that authority to exclude no fewer than *six* types of unrealized gains and losses from AFSI. By doing so, the proposed rule grants relief to

⁵ Although the focus on this comment letter is on the need to exclude unrealized gains from AFSI, it is important to note that the exclusion from AFSI should apply consistently to both unrealized gains and unrealized losses. The exclusion of unrealized losses from AFSI should be of particular importance to Treasury given the market volatility of crypto assets and the resulting potential for significant unrealized losses which could impact whether a taxpayer is subject to the CAMT (*i.e.*, impact its status as an “applicable corporation” under section 59(k)(1)(A)), as well as the potential to significantly reduce or eliminate a taxpayer’s AFSI and resulting CAMT liability.

corporations that invest in the stock of other domestic corporations, to insurance companies, to corporations with other comprehensive income, to partnership interests, to corporations emerging from bankruptcy, and to corporations that engage in hedging transactions.

Treasury should exercise this authority to grant the same relief to corporations that invest in crypto. Doing so is good policy: Taxing unrealized gains in crypto might require corporations to sell assets just to pay the tax, and it would disincentivize entities from maintaining large holdings of crypto assets. Moreover, because *foreign* corporations' AFSI is determined based on different accounting standards that do not require using mark-to-market accounting for crypto assets, adjusting AFSI to exclude unrealized gains and losses in crypto is necessary to maintain tax parity between foreign and domestic corporations. And, in light of the similar adjustments to AFSI that Treasury has made in other contexts, this adjustment is necessary to avoid arbitrary adverse treatment of crypto.

The adjustment would also avoid substantial constitutional problems that would otherwise arise. Without an adjustment, CAMT—in conjunction with the FASB standard—would be imposing an income tax on unrealized gains; that is controversial and inconsistent with the Sixteenth Amendment, as several Justices recently observed. This concern is compounded by the fact that this constitutionally problematic tax would result from the decision of a private organization, thus presenting additional constitutional issues under the private non-delegation doctrine.

For all these reasons, we respectfully request that Treasury exercise its authority under sections 56A(c)(15) and (e) to include in the final regulations a provision that removes unrealized gains and losses from AFSI, and to promptly issue interim guidance providing the same.

II. BACKGROUND

CAMT was added to the Code by section 10101 of Public Law 117-169, 136 Stat, 1818, 1818-1828, commonly known as the Inflation Reduction Act of 2022 (“IRA”). Generally, CAMT imposes a 15% minimum tax on the AFSI of any corporation whose AFSI averages at least \$1 billion in the prior three-year period.⁶

CAMT is not the first corporate alternative minimum tax. The Tax Reform Act of 1986 included a business untaxed reported profits (“BURP”) adjustment as a form of corporate alternative minimum tax, also linked to book income.⁷ As an experimental provision intended to

⁶ I.R.C. §§ 55, 56A, 59.

⁷ Pub. L. No. 99-514.

“increase both the real and the perceived fairness of the tax system,”⁸ BURP was in effect for only three years, was roundly criticized,⁹ and was allowed to expire by its terms.

More recently, until it was repealed in 2017 as part of a broader congressional effort to simplify and lower corporate taxes, domestic corporations were subject to an alternative minimum tax that used as its starting point the corporation’s federal taxable income, modified to take into account certain preference items and adjustments.¹⁰ Unlike CAMT, however, this former corporate alternative minimum tax was still rooted in federal taxable income as determined by laws enacted by Congress. CAMT’s base, by contrast, is a corporation’s “adjusted financial statement income”¹¹ as determined by FASB or IFRS. As explained by the Joint Committee on Taxation, AFSI is book income “with adjustments intended to reflect certain policy choices and to eliminate certain book-tax differences.”¹² For domestic corporations, AFSI is generally derived from financial statements prepared in accordance with GAAP and commonly included in a Form 10-K or other statement filed with the SEC.¹³ GAAP standards are established by FASB, a private entity that the SEC generally relies upon for the promulgation of “generally accepted” accounting principles.¹⁴ When FASB adopts new standards, neither the SEC nor any other federal entity publishes them in the *Federal Register* or subjects them to notice and comment under the Administrative Procedure Act (“APA”), nor are those standards ultimately published in the Code of Federal Regulations. Rather, FASB simply adopts the standards it thinks best, after following its own rules for securing input.

Under CAMT, the standards adopted by FASB now have the force of federal law. Previously, the effect of FASB’s GAAP standards was limited to reporting requirements in the

⁸ S. Rep. 99-313, at 520 (1986).

⁹ See, e.g., Mindy Herzfeld, *Taxing Book Profits: New Proposals and 40 Years of Critiques*, 73(4) Nat’l Tax J. 1025 (2020) (summarizing criticisms of the BURP); Alex Muresianu, Erica York, *It Would Be a Mistake to Resurrect Corporate Alternative Minimum Tax*, Tax Foundation (Aug. 4, 2022), <https://taxfoundation.org/blog/corporate-alternative-minimum-tax/>.

¹⁰ See Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 117th Congress*, JCS-1-23, at 164 (Dec. 2023).

¹¹ *Id.* at 165.

¹² *Id.*

¹³ See I.R.C. § 56A(a) (AFSI is the taxpayer’s net income or loss set forth on the “applicable financial statement for such taxable year, adjusted as provided in this section”); *id.* § 56A(b) (“applicable financial statement” is defined with reference to section 451(b)(3)); *id.* § 451(b)(3)(A) (defining “applicable financial statement” as “a financial statement which is certified as being prepared in accordance with generally accepted accounting principles,” commonly a Form 10-K or annual statement to shareholders).

¹⁴ See SEC, *Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter*, 68 Fed. Reg. 23,333 (May 1, 2003) (delegation to FASB); 15 U.S.C. § 77s(b) (delegation to the SEC).

accounting context, which the Supreme Court has recognized has “vastly different objectives” than tax.¹⁵ Now, however, under the IRA’s CAMT regime, FASB standards have material tax consequences and can trigger civil and criminal penalties under the tax laws.

Not all taxpayers’ CAMT liability is governed by FASB. In the case of taxpayers that file financial statements with a foreign exchange, or that qualify as foreign private issuers under SEC rules, AFSI is based on a financial statement prepared in accordance with different privately issued accounting standards—the “international financial reporting standards” (“IFRS”).¹⁶ Currently, more than five hundred foreign SEC registrants use IFRS in their U.S. filings.¹⁷

The result is that, when the GAAP and IFRS accounting standards differ, similarly situated corporations could end up with substantially different tax burdens under CAMT, depending on whether the corporations follow foreign or domestic accounting standards.

Absent Treasury’s intervention, exactly such a disparate outcome will arise from a new GAAP accounting rule regarding crypto asset reporting. Corporations using IFRS standards will *not* include unrealized gains or losses in crypto assets in AFSI because, under IFRS standards, entities that do not trade crypto as part of their normal business operations report crypto assets in their financial statements with International Accounting Standard 38, under which any increase in the fair value of the asset beyond its historical cost counts as other comprehensive income (“OCI”).¹⁸ (The Proposed CAMT Regulations exclude OCI from AFSI.¹⁹)

¹⁵ *Thor Power Tool Co. v. Commissioner*, 439 U.S. 522, 542 (1979).

¹⁶ I.R.C. § 451(b)(3)(B). The Internal Revenue Code also provides a catch-all provision to derive AFSI from any other financial statement filed with a regulatory or governmental body specified by Treasury if no GAAP or IFRS financial statement exists. *See id.* § 451(b)(3)(C).

¹⁷ The International Accounting Standards Board (“IASB”) tracks which firms and which countries use IFRS. *See* IASB, *Who Uses IFRS Accounting Standards?: United States*, <https://www.ifrs.org/use-around-the-world/use-of-ifrs-standards-by-jurisdiction/view-jurisdiction/united-states/>.

¹⁸ IASB, *Request for information: Third Agenda Consultation* 34–35 (2021), <https://www.ifrs.org/content/dam/ifrs/project/third-agenda-consultation/rfi-third-agenda-consultation-2021.pdf>; IASB, *Holdings of Cryptocurrencies—June 2019*, <https://www.ifrs.org/content/dam/ifrs/supporting-implementation/agenda-decisions/2019/holdings-of-cryptocurrencies-june-2019.pdf>.

¹⁹ *See Corporate Alternative Minimum Tax Applicable After 2022*, REG-112129-23, 89 Fed. Reg. 75,062, 75,067 (Sept. 13, 2024) (discussing Proposed Treas. Reg. § 1.56A-1(b)(20)). During the congressional deliberations over the IRA, Senate Finance Committee Chairman Wyden explicitly stated that OCI does not count as financial statement income for CAMT purposes. *See* 168 Cong. Rec. S4166 (daily ed. Aug. 6, 2022) (statement from Sen. Wyden) (“[F]or purposes of the corporate alternative minimum tax, Other Comprehensive Income is not included in financial statement income.”).

At the time CAMT was enacted, corporations using GAAP also would not have included unrealized gains in crypto assets in AFSI: Under the GAAP accounting rules then in place, companies recorded crypto assets at cost and then tested the assets for impairment.²⁰ In other words, a company could realize a loss on the value of crypto assets on its financial statements, but any increase in value would not be reported as income on financial statements unless and until the gain was realized. Accordingly, when CAMT was enacted as part of the IRA in August of 2022, neither GAAP nor IFRS generally required unrealized crypto gains to be recognized in financial statement net income.

In December 2023, however, more than a year after CAMT was enacted, this parity changed. FASB published an update to its GAAP rules to “improve the accounting for and disclosure of crypto assets.”²¹ Under FASB’s new Accounting Standards Update 2023-08, Accounting for and Disclosure of Crypto Assets (“ASU 2023-08”), crypto assets are now required to be measured at fair value, and corporations must generally recognize changes in value in their net income in each reporting period.²² As a result of this accounting rule change, a U.S. corporation subject to CAMT will effectively be required to pay taxes on mark-to-market gains in the value of crypto assets without any realization event.²³ Conversely, taxpayers employing IFRS accounting generally will not have exposure to CAMT liability on unrealized crypto gains. And correspondingly, U.S. corporations with unrealized losses in the fair value of their crypto will be able to reduce their AFSI by that amount, while taxpayers using IFRS accounting will not.

This distortive outcome was not intended by Congress. Neither CAMT nor its legislative history refers to targeting crypto or unrealized gains, and under the GAAP accounting rules in

²⁰ FASB, Board Meeting Handout, *Accounting for Exchange - Traded Digital Assets and Commodities* (May 11, 2022).

²¹ FASB, Accounting Standards Update No. 2023-08, *Intangibles-Goodwill and Other Crypto Assets* (Subtopic 350-60), at 1 (Dec. 2023).

²² The new rule mandates separate presentation of crypto assets from other intangible assets on the balance sheet and the income statement, and it is effective for fiscal years beginning after December 15, 2024, although early adoption is permitted. *Id.* at 4.

²³ Current federal mark-to-market taxation provisions have been enacted via federal legislation, not through accounting rules, and they provide tax methods of accounting to target timing mismatches for certain industries or types of assets. *See, e.g.*, I.R.C. § 475 (generally providing for a mandatory mark-to-market method of accounting for dealers in securities and an election to mark to market for dealers in commodities and traders in securities); *id.* § 877A (providing a mark-to-market mechanism for taxing certain property owned by a covered expatriate); *id.* § 1256 (providing for mark-to-market treatment of certain exchange-traded options).

effect at the time of enactment, a domestic corporation's unrealized crypto gains would not have been treated as taxable income—the same treatment that foreign issuers continue to enjoy.²⁴

III. TREASURY SHOULD REMOVE UNREALIZED CRYPTO GAINS AND LOSSES FROM AFSI.

Until CAMT, and with the exception of the failed three-year experiment of BURP nearly 40 years ago, this country did not have a federal income tax with a tax base consisting of financial statement income. We recognize that such novel legislation creates numerous unintended consequences, placing an extraordinary regulatory burden on Treasury. As explained above, one such unintended consequence is that because of the interaction of CAMT and FASB's accounting standards update, domestic (but not foreign) corporations holding substantial cryptocurrency assets are now subject to taxation on unrealized crypto gains.

Treasury should eliminate this unintended consequence by exercising its authority under sections 56A(c)(15) and (e) to adjust the definition of AFSI to exclude unrealized gains and losses on an applicable corporation's holdings. Treasury should also implement prompt interim guidance to the same effect, in order to avoid the immediate impact of the problems discussed below.

There are three alternative ways for Treasury to accomplish this regulatory adjustment. First, Treasury's final rule (and interim guidance) can provide that unrealized gains and losses shall be excluded from AFSI on all investments that are marked to market for book purposes but not for tax purposes.

Second, Treasury's final rule (and interim guidance) could provide that "any accounting standards updates that post-date CAMT's enactment will not be taken into consideration for CAMT purposes unless and until Treasury and the IRS affirmatively incorporate them into the CAMT tax base through published guidance." Because the accounting standard update at issue

²⁴ An early analysis of CAMT by the Joint Committee on Taxation reflected an intent to annually tax approximately 150 corporate taxpayers, nearly half of whom were in the manufacturing sector. *See* Letter from Thomas A. Barthold, Joint Committee on Taxation, to the Honorable Ron Wyden, Senate Committee on Finance (Aug. 1, 2022), <https://tinyurl.com/4z5wtn7t>. This impact assessment—cited several times in CAMT's legislative history—was developed via a review of income tax returns and did not include an estimate of unrealized property gains, crypto or otherwise. *See* Letter from Phillip L. Swagel, Congressional Budget Office, to the Honorable Lindsey Graham, Senate Committee on the Budget (Aug. 14, 2022), <https://www.cbo.gov/system/files/2022-08/58357-Graham.pdf>; 168 Cong. Rec. H7653 (daily ed. Aug. 12, 2022) (statement from Rep. Jackson Lee: "This would apply to about 150 corporations that average nearly \$9 billion in profit, but which paid effective tax rates of just 1.1 percent."); *id.* at H7655 (statement from Rep. Carter: "We can achieve this goal by strengthening IRS enforcement against wealthy tax cheats and closing tax loopholes exploited by the wealthiest few, 150 massive corporations.").

here post-dates CAMT, this provision would provide relief from the tax on unrealized crypto gains and the mismatch between GAAP and IFRS Standards. It would also ensure that similar problems do not arise from any future accounting standard updates that exclude or include book income from tax, without Treasury first having an opportunity to consider the issue.

Third, and at minimum, Treasury’s final rule (and interim guidance) should provide that “‘Adjusted Financial Statement Income’ shall be adjusted to exclude the amount of any unrealized gains or losses in the fair value of a corporation’s assets required by ASU 2023-08, which shall be disregarded for purposes of calculating AFSI.” That regulatory provision would eliminate both the unintended tax on unrealized gains in the fair value of crypto and the mismatch between GAAP and IFRS standards. It would also ensure that corporations do not avoid paying CAMT as a result of unrealized losses in the fair value of crypto. And it would avoid discriminating against, and disincentivizing the acquisition of, crypto assets.

IV. TREASURY HAS THE REQUISITE AUTHORITY, AND HAS EXERCISED IT TO AVOID SIMILAR PROBLEMS.

Treasury has the authority to make these proposed adjustments to AFSI. Congress recognized that certain adjustments to corporations’ AFSI were needed to avoid unfair tax burdens,²⁵ and recognized, as well, that it could not foresee every appropriate adjustment—it therefore authorized the Secretary “to provide for such adjustments to [AFSI] as the Secretary determines necessary.”²⁶ Treasury also has statutory authority to make miscellaneous adjustments to AFSI under its general grant of regulatory authority provided by section 7805.²⁷ Those provisions provide Treasury ample authority to directly adjust AFSI to exclude unrealized gains and losses.

Indeed, Treasury already has used these authorities a number of times to make (or propose) AFSI adjustments to exclude unrealized gains and losses.

1. Ownership In Non-Consolidated Corporations — For CAMT taxpayers that hold investments in entities that are not consolidated for financial statement purposes, Proposed Treas. Reg. § 1.56A-18(c)(2) would exclude from AFSI gains and losses in investments in stock that would otherwise arise from applying the equity method or the fair market value method to valuing those investments. The preamble to the Proposed CAMT Regulations explained that this adjustment was necessary because “a shareholder generally has income or deductions upon the occurrence of a realization event with respect to the shareholder’s stock,” whereas “financial

²⁵ See I.R.C. § 56A(c)(1)-(14).

²⁶ *Id.* § 56A(c)(15); see also *id.* § 56A(e) (providing authority for other “regulations and other guidance as necessary”).

²⁷ See *Id.* § 7805.

statement income often includes gain or loss with respect to stock even if there has been no realization event for Federal income tax purposes.”²⁸ The same is true for crypto assets.

2. Insurance Contracts — In both an interim notice and the Proposed CAMT regulations, Treasury provided relief to certain insurance companies and to companies in other specified industries where application of the CAMT statute could result in adverse tax treatment for certain contracts those entities hold. Under GAAP, unrealized gain and loss on the assets underlying certain insurance contracts is required to be included in the issuing company’s financial statement income. This gain or loss is *offset* by the related change (increase or decrease) in the insurance company’s obligation to its contract holder. Absent regulatory relief, however, under CAMT the gain or loss on the underlying assets consisting of corporate stock and partnership interests would be excluded from AFSI, but the related change (increase or decrease) in the obligation to the contract holder would not, creating an untenable mismatch. This mismatch—like the current adverse treatment of crypto—is rooted in the absence of a realization requirement in financial accounting. Treasury provided relief from the mismatch in Section 3 of Notice 2023-23 and, with modifications, included that relief in the Proposed CAMT regulations as well. Prop. Treas. Reg. § 1.56A-22.²⁹

3. Other Comprehensive Income — The Proposed CAMT Regulations provide relief from unrealized gain that might otherwise be included in the book reporting of OCI. In order to provide a broader view of a company’s financial condition, FASB standards require the presentation of “other” OCI, which includes revenue, expenses, gains, and losses that have yet to be realized. A common example is the unrealized gain or loss on a portfolio of bonds that have yet to mature or be redeemed. While a component of book accounting, OCI is not included in the net income or loss of a company that is required to be reflected on financial statements prepared in accordance with GAAP or IFRS. To eliminate any uncertainty around the treatment of unrealized gains or losses that are included in OCI for book (but not net income) reporting purposes, Prop. Treas. Reg. § 1.56A-1(b)(20) broadly excludes OCI and its component parts of unrealized gain and loss from the definition of “financial statement income” (“FSI”).

4. Partners’ Distributive Share of Partnership AFSI — In order to again avoid taxing unrealized gain on subsidiary entity investments, the Proposed CAMT Regulations exclude from tax certain mark-to-market book income on partnership interests and distributive shares. CAMT entities commonly hold controlling and non-controlling interests in affiliated partnerships that

²⁸ 89 Fed. Reg. at 75,092. While this adjustment might be viewed as implementing section 56A(c)(2), rather than as an exercise of the authority under section 56A(c)(15), the preamble explained that it was justified by the “considerabl[e]” differences between book income and taxable income—the same consideration that warrants adjusting AFSI to avoid taxing unrealized crypto gains. *Id.*; *see id.* at 75,071-72.

²⁹ *See* Notice 2023-20, 2023-10 I.R.B. 523 (providing an adjustment to AFSI to mitigate the insurance industry issue); 89 Fed. Reg. at 75,107 (summarizing a revised AFSI adjustment for the previously identified insurance-related mismatch).

are required to be reflected on their financial statements at fair value. Treasury considered two approaches to reflect the treatment of the fair value of partnership interests for CAMT, (1) a “bottom-up” approach that looks only to the distributive share of book income reported up the partnership ownership chain to the CAMT entity (including through a tiered partnership structure), and (2) a “top-down” approach that looks to the mark-to-market value of the partnership interest, including unrealized gains and losses inherent in that interest. In Prop. Treas. Reg. § 1.56A-5, Treasury takes the bottom-up approach. The preamble to the Proposed CAMT Regulations explains that this approach was chosen to avoid taxing unrealized gains and losses on partnership interests, as would occur under the “top-down” approach.³⁰

5. *Troubled Companies* — The Proposed CAMT Regulations exclude unrealized, mark-to-market gain and loss for troubled companies emerging from bankruptcy. For book purposes, certain companies emerging from bankruptcy may be required to mark assets to their fair value, with gain or loss reported as income in the amount of the change. See FASB, Accounting Standards Codification § 852-10-45-21.³¹ This book treatment differs from treatment for regular income tax purposes, where relief is available under section 108 from the cancellation of indebtedness income that would otherwise arise on the discharge in bankruptcy of a troubled company’s liabilities. In the Proposed CAMT Regulations, Treasury recognized the compelling need for relief from potential CAMT liability for book income for taxpayers emerging from bankruptcy and provided relief in Prop. Treas. Reg. § 1.56A-21.

6. *Hedging Transactions* — The Proposed CAMT Regulations exclude from the tax mark-to-market gains and losses on hedging transactions. For various business reasons unconnected to tax, CAMT taxpayers frequently enter into hedging transactions to reduce a broad range of economic exposures, including risks associated with fluctuations in foreign currency in countries where they have investments or operations. For book purposes, taxpayers with hedged positions may be required to periodically measure one asset or liability at fair value and include the unrealized gain or loss in FSI, but not include the gain or loss on the offsetting (hedged) asset or liability. Prop. Treas. Reg. § 1.56A-24 provides relief from the imposition of CAMT on items of book income resulting from this mismatch, which would have constituted a tax on unrealized gains.

V. ADJUSTING THE FINAL RULE TO EXCLUDE UNREALIZED GAINS AND LOSSES FROM AFSI IS GOOD POLICY AND AVOIDS SIGNIFICANT LEGAL PROBLEMS.

There are multiple compelling reasons for Treasury to adjust AFSI to exclude unrealized gains and losses. As Treasury has already recognized through its other adjustments to AFSI, taxing unrealized gains is fundamentally unfair. Doing so in the case of crypto would leave domestic corporations subject to GAAP at a substantial disadvantage relative to foreign

³⁰ 89 Fed. Reg. at 75,076.

³¹ <https://asc.fasb.org/1943274/2147481435>.

taxpayers subject to IFRS. Treasury should act to avert this adverse impact on crypto and U.S. businesses, which Congress never intended. By doing so, Treasury can also avoid the serious constitutional difficulties presented by taxing unrealized gains, difficulties that are compounded when the tax results from the decision of a private body unaccountable to Congress and the public.

A. Adjusting AFSI To Exclude Unrealized Gains Is Good Policy.

Multiple practical problems result from AFSI including unrealized gains and losses in the fair value of crypto assets. As Treasury has recognized in providing the relief described in section IV above, including unrealized gains and losses in fair value makes sense in the accounting context, but it is inappropriate in the context of taxation. That is in part because taxes on unrealized gains may force taxpayers to engage in economically irrational decisions, including liquidating assets to pay the tax liabilities. Treasury should avoid a situation where corporations are selling crypto assets—potentially creating volatility in the market—just to pay their alternative minimum tax liability. Similarly, as discussed above, because Treasury has already recognized that it would be bad policy to include other sorts of unrealized gains and losses in AFSI, it would be inequitable not to accord crypto assets the same treatment.

Including unrealized gains and losses in AFSI is also inconsistent with principles of fair notice, given that the accounting rule that results in crypto gains being included in AFSI post-dates CAMT's enactment. It is important for corporations to be able to project their tax liability in the future: certainty is the keystone for capital formation. Allowing a newly promulgated, unforeseeable change in accounting rules to create surprise tax liability compromises the certainty that corporations need to thrive.

Moreover, because the domestic, but not the foreign, accounting rules require corporations to treat unrealized gains in the fair value of crypto assets as income, failing to exclude unrealized crypto gains from AFSI will put domestic corporations at a disadvantage. If the tax liability is large enough, it could lead to capital flight to foreign countries that use IFRS accounting rules. Treasury should act to avoid this.

Finally, principles of administrative procedure counsel in favor of adjusting AFSI to exclude unrealized crypto gains and losses. It is a “fundamental norm of administrative procedure” that agencies must “treat like cases alike.”³² As outlined above, Treasury has already excluded from AFSI no fewer than six different types of unrealized gains and losses that corporations must recognize under GAAP. *See supra* at pp. 9-11. Treasury should treat like cases alike by excluding *all* unrealized crypto gains and losses from CAMT. Similarly, without an adjustment, domestic companies that follow GAAP would have to pay CAMT on unrealized crypto gains, whereas similarly situated foreign taxpayers relying on IFRS generally would not. There is no rational basis for this differential treatment of U.S. and non-U.S. corporations, and

³² *Westar Energy, Inc. v. FERC*, 473 F.3d 1239, 1241 (D.C. Cir. 2007).

Treasury should therefore exercise its authority to provide for like treatment and a level playing field.

B. Adjusting AFSI To Exclude Unrealized Gains And Losses Avoids Serious Constitutional Concerns.

If, as we have urged, Treasury adjusts AFSI to ensure fair and consistent treatment of U.S. companies' holdings, Treasury would also avoid having to address the serious constitutional concerns that the current CAMT framework presents.

Taxing unrealized gains would violate the “realization” requirement that several Justices recently affirmed is inherent in Congress’s limited authority to impose an income tax. In *Moore v. United States*, four of the five Justices to address the question agreed that the Sixteenth Amendment to the Constitution does not allow Congress to tax unrealized gains as income.³³ This follows from the Court’s earlier explanation that “the characteristic and distinguishing attribute of income,” as the term is used in the Sixteenth Amendment, is that it is “*received or drawn by* the recipient (the taxpayer) for his *separate* use, benefit and disposal.”³⁴ Unrealized crypto gains are not “received or drawn,” and are not “used”—taxing them would violate this core constitutional limitation that so recently was emphasized by four Justices of the Court.

Additionally, imposing CAMT based on accounting standards established by a private entity would violate the private non-delegation doctrine. The Constitution does not allow the government to delegate core governmental power to private entities.³⁵ While the government, in regulating the securities markets, may perhaps defer to privately adopted standards of accounting that have gained widespread acceptance among parties transacting in those markets, it is quite another thing for the government to delegate the “vital and fundamental” power to tax, which is “essential to the very existence of government.”³⁶ Yet that is what happened here. In 2002,

³³ See 144 S. Ct. 1680, 1701 (2024) (Barrett, J., concurring in the judgment) (the Sixteenth Amendment’s textual “reference to income ‘derived’ from any source encompasses a requirement that income, to be taxed without apportionment, must be realized”); *id.* at 1721 (Thomas, J., dissenting) (“Because the Sixteenth Amendment requires a way to distinguish between income and source, it includes a realization requirement. The text of the Amendment incorporates such a requirement, and the concept of realization was well understood at the time of ratification. The Constitution thus limits unapportioned income taxes to taxes on *realized* income.”).

³⁴ *Eisner v. Macomber*, 252 U.S. 189, 207 (1920).

³⁵ See *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537 (1935) (delegating legislative power to a private body “is unknown to our law, and is utterly inconsistent with the constitutional prerogatives and duties of Congress”); *Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936) (private delegation is “legislative delegation in its most obnoxious form”).

³⁶ *Charles C. Steward Mach. Co. v. Davis*, 301 U.S. 548, 610 (1937) (Sutherland, J., concurring); *N.C. Dep’t of Revenue v. Kimberley Rice Kaestner 1992 Fam. Tr.*, 588 U.S. 262, 269 (2019).

Congress authorized the SEC to recognize “generally accepted” accounting principles,³⁷ and for the promulgation of such standards the SEC looked to FASB.³⁸ The IRA then incorporated those private standards into its definition of AFSI for CAMT purposes, and FASB shortly thereafter adopted a whole new treatment of crypto that Congress was unaware of. FASB, of course, was focused on its ordinary responsibilities—delineating accounting standards—and not on questions of taxation that lie beyond its authority and its expertise. But unintended consequences such as this—a regime under which holders of substantial amounts of crypto assets will be subject to potentially onerous tax burdens, in contravention of constitutional principles of taxation—cannot be permitted to flow from the actions of a private entity.

There is another respect in which the new role FASB has assumed with respect to taxation is materially different from its role under the securities laws: As suggested above, the securities laws regulate relationships between private parties (issuers and investors), in which other private bodies may naturally have a role. Taxation, by contrast, involves the direct, and very sensitive, relationship between the public and their government. In that relationship, a private body should play no part in determining taxpayers’ obligations.

Treasury can and should exercise its statutory authority to exempt unrealized gains and losses in crypto asset prices as a matter of constitutional avoidance. When agencies “interpret and apply their statutory duties,” they cannot “look the other way when it comes to as-applied constitutional challenges and constitutional-avoidance arguments.”³⁹ Accordingly, given that there are substantial constitutional doubts as to the legality of the current CAMT system, in which increases in crypto asset prices that have not been realized as income are subject to income tax based on a rule promulgated by a private entity, Treasury should avoid these concerns by issuing an adjustment.

VI. TREASURY SHOULD PUBLISH INTERIM GUIDANCE TO RESOLVE THIS PROBLEM IMMEDIATELY.

The same considerations that warrant adjusting the final rule warrant immediate action to fix these problems. The new accounting standard takes effect in 2025 (although some early adopters have begun using it already). That means that as of January, corporations that have not already done so will start accounting for unrealized gains and losses in the fair value of crypto in their financial statements. And without some assurance from Treasury that those unrealized gains and losses will not affect their tax liability, corporations are likely to start adjusting their behavior. They may engage in economically irrational transactions or even transfer crypto holdings to entities that use IFRS accounting standards.

This issue is particularly important and time-sensitive for taxpayers with a significant portfolio of cryptocurrency assets, where there is the potential for a major impact on the

³⁷ 15 U.S.C. § 77s(b).

³⁸ See 68 Fed. Reg. 23,333.

³⁹ *Jones Bros., Inc. v. Sec’y of Lab.*, 898 F.3d 669, 674 (6th Cir. 2018).

determination of a taxpayer's AFSI arising from market volatility with respect to such assets. Such determination of a taxpayer's AFSI impacts not only the amount of its CAMT liability, but whether a taxpayer is subject to CAMT in the first place. In addition, as noted above, holders of cryptocurrency were not on notice with respect to a potential CAMT impact in the same way as other potentially affected corporations because they were swept into CAMT by a post-statutory change by FASB. Thus, it is important for taxpayers with a significant portfolio of cryptocurrency assets to have certainty on their potential exposure to the CAMT in advance of the promulgation of the final regulations.

The Internal Revenue Service previously recognized the time sensitivity of the treatment of unrealized gains and losses in the context of the CAMT in the issuance of Notice 2023-20, 2023-10 I.R.B. 523. That Notice, issued a full year before the proposed rule, provided interim guidance regarding the treatment of certain unrealized gains and losses that was "intended to help avoid substantial unintended adverse consequences to the insurance industry from the application of the new corporate alternative minimum tax." Given the precedent established by Notice 2023-20, we respectfully request that similar interim guidance be issued with respect to unrealized gains and losses related to cryptocurrency assets to help avoid similar adverse consequences.

VII. CONCLUSION

CAMT is the first tax with a base consisting of financial statement income. Unintended consequences are an inevitability of such a novel experiment. Treasury must act to correct the consequence of the new mark-to-market accounting requirements for crypto assets under GAAP, and the resulting mismatch between the tax liabilities of foreign and domestic corporations. Accordingly, we respectfully request that Treasury exercise its discretionary authority under sections 56A(c)(15) and (e) to remove unrealized crypto gains and losses from AFSI in the final regulations, and that it use its authority to issue prompt interim guidance explaining that unrealized holdings will not be taxed under CAMT.

Respectfully submitted,

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Attachments:

FASB, Accounting Standards Update No. 2023-08, *Intangibles-Goodwill and Other Crypto Assets* (Subtopic 350-60) (Dec. 2023)

Andrew Strelka, *Corporate AMT's Shadow Grows As FASB Goes Mark-to-Market*, 182 Tax Notes Federal 2231 (Mar. 18, 2024)

Andrew Strelka & Angelina Richards, *The Corporate AMT's Crypto Problem Has Constitutional Hazards*, 185 Tax Notes Federal 1967 (Dec. 9, 2024)



ACCOUNTING STANDARDS UPDATE

No. 2023-08
December 2023

Intangibles—Goodwill and Other— Crypto Assets (Subtopic 350-60)

Accounting for and Disclosure of Crypto Assets

An Amendment of the *FASB Accounting Standards Codification*®

Financial Accounting Standards Board

The FASB Accounting Standards Codification® is the source of authoritative generally accepted accounting principles (GAAP) recognized by the FASB to be applied by nongovernmental entities. An Accounting Standards Update is not authoritative; rather, it is a document that communicates how the Accounting Standards Codification is being amended. It also provides other information to help a user of GAAP understand how and why GAAP is changing and when the changes will be effective.

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Financial Accounting Standards Board
801 Main Avenue • Norwalk, CT • 06851

Accounting Standards Update 2023-08

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December 2023

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Summary

Why Is the FASB Issuing This Accounting Standards Update (Update)?

The Board is issuing the amendments in this Update to improve the accounting for and disclosure of crypto assets. Stakeholder feedback, including from respondents to the 2021 FASB Invitation to Comment (ITC), *Agenda Consultation*, indicated that improving the accounting for and disclosure of crypto assets should be a top priority for the Board. Stakeholders stated that the current accounting—except as provided in generally accepted accounting principles (GAAP) for certain specialized industries—for holdings of crypto assets as indefinite-lived intangible assets, which is a cost-less-impairment accounting model, does not provide investors, lenders, creditors, and other allocators of capital (collectively, “investors”) with decision-useful information. Specifically, accounting for only the decreases, but not the increases, in the value of crypto assets in the financial statements until they are sold does not provide relevant information that reflects (1) the underlying economics of those assets and (2) an entity’s financial position. Investors also requested additional disclosures about the types of crypto assets held by entities and the changes in those holdings.

In addition to better reflecting the economics of crypto assets, measuring those assets at fair value will likely reduce cost and complexity associated with applying the current cost-less-impairment accounting model for many entities.

Who Is Affected by the Amendments in This Update?

The amendments in this Update apply to all entities holding assets that meet certain scope criteria.

What Are the Main Provisions?

The amendments in this Update apply to assets that meet all of the following criteria:

1. Meet the definition of *intangible assets* as defined in the Codification
2. Do not provide the asset holder with enforceable rights to or claims on underlying goods, services, or other assets
3. Are created or reside on a distributed ledger based on blockchain or similar technology
4. Are secured through cryptography
5. Are fungible
6. Are not created or issued by the reporting entity or its related parties.

An entity is required to subsequently measure assets that meet those criteria at fair value with changes recognized in net income each reporting period.

The amendments in this Update also require that an entity present (1) crypto assets measured at fair value separately from other intangible assets in the balance sheet and (2) changes from the remeasurement of crypto assets separately from changes in the carrying amounts of other intangible assets in the income statement (or statement of activities for not-for-profit entities).

While the amendments in this Update do not otherwise change the presentation requirements for the statement of cash flows, the amendments require specific presentation of cash receipts arising from crypto assets that are received as noncash consideration in the ordinary course of business (or as a contribution, in the case of a not-for-profit entity) and are converted nearly immediately into cash.

For annual and interim reporting periods, the amendments in this Update require that an entity, including an entity that is subject to industry-specific guidance, disclose the following information:

1. The name, cost basis, fair value, and number of units for each significant crypto asset holding and the aggregate fair values and cost bases of the crypto asset holdings that are not individually significant
2. For crypto assets that are subject to contractual sale restrictions, the fair value of those crypto assets, the nature and remaining duration of the restriction(s), and the circumstances that could cause the restriction(s) to lapse.

For annual reporting periods, the amendments in this Update require that an entity disclose the following information:

1. A rollforward, in the aggregate, of activity in the reporting period for crypto asset holdings, including additions (with a description of the activities that resulted in the additions), dispositions, gains, and losses
2. For any dispositions of crypto assets in the reporting period, the difference between the disposal price and the cost basis and a description of the activities that resulted in the dispositions
3. If gains and losses are not presented separately, the income statement line item in which those gains and losses are recognized
4. The method for determining the cost basis of crypto assets.

How Do the Main Provisions Differ from Current Generally Accepted Accounting Principles (GAAP) and Why Are They an Improvement?

Under current GAAP, unless otherwise provided in industry-specific GAAP, crypto assets that are within the scope of the amendments in this Update are accounted for as indefinite-lived intangible assets. Those assets are tested for impairment annually and more frequently if events or circumstances indicate that it is more likely than not that an asset is impaired. If the carrying amount of the asset exceeds its fair value, an entity is required to recognize an impairment loss and reduce the carrying amount of the asset to its fair value. Subsequent increases in the carrying amount of the asset and reversal of an impairment loss are prohibited.

The amendments in this Update require that an entity measure crypto assets at fair value in the statement of financial position each reporting period and recognize changes from remeasurement in net income. The amendments also require that an entity provide enhanced disclosures for both annual and interim reporting periods to provide investors with relevant information to analyze and assess the exposure and risk of significant individual crypto asset holdings.

In addition, fair value measurement aligns the accounting required for holders of crypto assets with the accounting for entities that are subject to certain industry-specific guidance (such as investment companies) and eliminates the

requirement to test those assets for impairment, thereby reducing the associated cost and complexity of applying the current guidance.

When Will the Amendments Be Effective and What Are the Transition Requirements?

The amendments in this Update are effective for all entities for fiscal years beginning after December 15, 2024, including interim periods within those fiscal years. Early adoption is permitted for both interim and annual financial statements that have not yet been issued (or made available for issuance). If an entity adopts the amendments in an interim period, it must adopt them as of the beginning of the fiscal year that includes that interim period.

The amendments in this Update require a cumulative-effect adjustment to the opening balance of retained earnings (or other appropriate components of equity or net assets) as of the beginning of the annual reporting period in which an entity adopts the amendments.

Amendments to the *FASB Accounting Standards Codification*[®]

Introduction

1. The Accounting Standards Codification is amended as described in paragraphs 2–13. Terms from the Master Glossary are in **bold** type. Added text is underlined, and deleted text is ~~struck out~~.

Addition of Subtopic 350-60

2. Add Subtopic 350-60, with a link to transition paragraph 350-60-65-1, as follows:

[For ease of readability, the new Subtopic is not underlined.]

Intangibles—Goodwill and Other—Crypto Assets

Overview and Background

General

350-60-05-1 This Subtopic provides guidance on the subsequent measurement, presentation, and disclosure of crypto assets that are within the scope of this Subtopic.

350-60-05-2 This Subtopic does not address the initial measurement, recognition, and derecognition of crypto assets. Reporting entities shall account for the initial measurement, recognition, and derecognition of crypto assets in accordance with other generally accepted accounting principles (GAAP).

Scope and Scope Exceptions

General

> Overall Guidance

350-60-15-1 The guidance in this Subtopic applies to holdings of assets that meet all of the following criteria:

- a. Meet the definition of **intangible assets** as defined in the Codification
- b. Do not provide the asset holder with enforceable rights to or claims on underlying goods, services, or other assets
- c. Are created or reside on a distributed ledger based on blockchain or similar technology
- d. Are secured through cryptography
- e. Are fungible
- f. Are not created or issued by the reporting entity or its **related parties**.

> Entities

350-60-15-2 The guidance in this Subtopic applies to all entities that hold crypto assets.

Glossary

Contribution

An unconditional transfer of cash or other assets, as well as **unconditional promises to give**, to an entity or a reduction, settlement, or cancellation of its liabilities in a voluntary nonreciprocal transfer by another entity acting other than as an owner. Those characteristics distinguish contributions from:

- a. Exchange transactions, which are reciprocal transfers in which each party receives and sacrifices approximately commensurate value
- b. Investments by owners and distributions to owners, which are nonreciprocal transfers between an entity and its owners
- c. Other nonreciprocal transfers, such as impositions of taxes or legal judgments, fines, and thefts, which are not voluntary transfers.

In a contribution transaction, the resource provider often receives value indirectly by providing a societal benefit although that benefit is not considered to be of commensurate value. In an exchange transaction, the potential public benefits are secondary to the potential direct benefits to the resource provider. The term *contribution revenue* is used to apply to transactions that are part of the entity's ongoing major or central activities (revenues), or are peripheral or incidental to the entity (gains). See also **Inherent Contribution** and **Conditional Contribution**.

Conditional Contribution

A contribution that contains a **donor-imposed condition**.

Customer

A party that has contracted with an entity to obtain goods or services that are an output of the entity's ordinary activities in exchange for consideration.

Donor-Imposed Condition

A donor stipulation (donors include other types of contributors, including makers of certain grants) that represents a barrier that must be overcome before the recipient is entitled to the assets transferred or promised. Failure to overcome the barrier gives the contributor a right of return of the assets it has transferred or gives the promisor a right of release from its obligation to transfer its assets.

Fair Value (second definition)

The price that would be received to sell an asset or paid to transfer a liability in an **orderly transaction** between **market participants** at the measurement date.

Inherent Contribution

A contribution that results if an entity voluntarily transfers assets (or net assets) or performs services for another entity in exchange for either no assets or for assets of substantially lower value and unstated rights or privileges of a commensurate value are not involved.

Intangible Asset Class

A group of intangible assets that are similar, either by their nature or by their use in the operations of an entity.

Intangible Assets

Assets (not including financial assets) that lack physical substance. (The term intangible assets is used to refer to intangible assets other than goodwill.)

Market Participants

Buyers and sellers in the principal (or most advantageous) market for the asset or liability that have all of the following characteristics:

- a. They are independent of each other, that is, they are not **related parties**, although the price in a related-party transaction may be used as an input to a fair value measurement if the reporting entity has evidence that the transaction was entered into at market terms
- b. They are knowledgeable, having a reasonable understanding about the asset or liability and the transaction using all available information, including information that might be obtained through due diligence efforts that are usual and customary
- c. They are able to enter into a transaction for the asset or liability
- d. They are willing to enter into a transaction for the asset or liability, that is, they are motivated but not forced or otherwise compelled to do so.

Not-for-Profit Entity

An entity that possesses the following characteristics, in varying degrees, that distinguish it from a business entity:

- a. Contributions of significant amounts of resources from resource providers who do not expect commensurate or proportionate pecuniary return
- b. Operating purposes other than to provide goods or services at a profit
- c. Absence of ownership interests like those of business entities.

Entities that clearly fall outside this definition include the following:

- a. All investor-owned entities
- b. Entities that provide dividends, lower costs, or other economic benefits directly and proportionately to their owners, members, or participants, such as mutual insurance entities, credit unions, farm and rural electric cooperatives, and employee benefit plans.

Orderly Transaction

A transaction that assumes exposure to the market for a period before the measurement date to allow for marketing activities that are usual and customary for transactions involving such assets or liabilities; it is not a forced transaction (for example, a forced liquidation or distress sale).

Promise to Give

A written or oral agreement to contribute cash or other assets to another entity. A promise carries rights and obligations—the recipient of a promise to give has a right to expect that the promised assets will be transferred in the future, and the maker has a social and moral obligation, and generally a legal obligation, to make the promised transfer. A promise to give may be either conditional or unconditional.

Related Parties

Related parties include:

- a. Affiliates of the entity
- b. Entities for which investments in their equity securities would be required, absent the election of the fair value option under the Fair Value Option Subsection of Section 825-10-15, to be accounted for by the equity method by the investing entity
- c. Trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management
- d. Principal owners of the entity and members of their immediate families
- e. Management of the entity and members of their immediate families
- f. Other parties with which the entity may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests
- g. Other parties that can significantly influence the management or operating policies of the transacting parties or that have an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

Unconditional Promise to Give

A **promise to give** that depends only on passage of time or demand by the promisee for performance.

Subsequent Measurement

General

350-60-35-1 An entity shall measure crypto assets at **fair value** in the statement of financial position. Gains and losses from the remeasurement of crypto assets shall be included in net income.

Other Presentation Matters

General

> Statement of Financial Position

350-60-45-1 Crypto assets shall be presented separately from other **intangible assets** in the statement of financial position. An entity is permitted to present crypto assets on a more disaggregated basis (for example, by individual crypto asset holding or **intangible asset class**).

> Income Statement

350-60-45-2 Gains and losses from the remeasurement of crypto assets shall be included in net income and presented separately from changes in the carrying amount of other intangible assets.

> Statement of Cash Flows

350-60-45-3 For guidance related to the presentation of cash receipts arising from the sale of crypto assets that are received as noncash consideration in the ordinary course of business (or as a **contribution**, in the case of a **not-for-profit entity**) and are converted nearly immediately into cash, see paragraphs 230-10-45-21A and 230-10-45-27A.

Disclosure

General

350-60-50-1 At interim and annual reporting periods, an entity shall disclose the following for each significant (as determined by the **fair value**) crypto asset holding:

- a. Name of the crypto asset
- b. Cost basis
- c. Fair value
- d. Number of units held.

An entity shall disclose the aggregated cost bases and fair values of the crypto asset holdings that are not individually significant.

350-60-50-2 At annual reporting periods, an entity shall disclose both of the following:

- a. The method used to determine its cost basis for computing gains and losses (for example, first-in, first-out; specific identification; average cost; or other method used)
- b. If not presented separately, the line item in which gains and losses are reported in the income statement.

350-60-50-3 At annual reporting periods, an entity shall provide a reconciliation, in the aggregate, of activity from the opening to the closing balances of crypto assets, separately disclosing changes during the period attributable to the following:

- a. Additions.
- b. Dispositions.
- c. Gains included in net income for the period, determined on a crypto-asset-by-crypto-asset basis. Each crypto asset holding that has a net gain from remeasurement as included in net income for the period shall be included in the gains line.
- d. Losses included in net income for the period, determined on a crypto-asset-by-crypto-asset basis. Each crypto asset holding that has a net loss from remeasurement as included in net income for the period shall be included in the losses line.

350-60-50-4 An entity shall disclose the following information about the reconciliation in paragraph 350-60-50-3:

- a. A description of the nature of activities that result in additions (for example, purchases, receipts from **customers**, or mining activities) and dispositions (for example, sales or use as payment for services)
- b. Total amount of cumulative realized gains and cumulative realized losses from dispositions that occurred during the period.

350-60-50-5 An entity that receives crypto assets as noncash consideration in the ordinary course of business (or as a **contribution**, in the case of a **not-for-profit entity**) that are converted nearly immediately into cash need not include that activity in the disclosures required by paragraphs 350-60-50-3 through 50-4.

350-60-50-6 For interim and annual reporting periods, an entity shall disclose the following information for crypto assets subject to contractual sale restrictions at the balance sheet date:

- a. The fair value of the crypto assets that are subject to contractual sale restrictions
- b. The nature and remaining duration of the restriction(s)
- c. Circumstances that could cause the restriction(s) to lapse.

350-60-50-7 In providing the required disclosures in paragraph 350-60-50-6, an entity with multiple crypto assets subject to contractual sale restrictions shall consider all of the following:

- a. The level of detail necessary to satisfy the required disclosures
- b. How much emphasis to place on each of the required disclosures
- c. How much aggregation or disaggregation to undertake
- d. Whether users of financial statements need additional information to evaluate the quantitative information disclosed.

Transition and Open Effective Date Information

General

> Transition Related to Accounting Standards Update No. 2023-08, *Intangibles—Goodwill and Other—Crypto Assets (Subtopic 350-60): Accounting for and Disclosure of Crypto Assets*

350-60-65-1 The following represents the transition and effective date information related to Accounting Standards Update No. 2023-08, *Intangibles—Goodwill and Other—Crypto Assets (Subtopic 350-60): Accounting for and Disclosure of Crypto Assets*:

- a. The pending content that links to this paragraph shall be effective for all entities for fiscal years beginning after December 15, 2024, including interim periods within those fiscal years. Early adoption is permitted for both interim and annual financial statements that have not yet been issued (or made available for issuance). If an entity adopts the pending content that links to this paragraph in an interim period, it must adopt the content as of the beginning of the fiscal year that includes that interim period.

- b. An entity shall recognize the cumulative effect of initially applying the pending content that links to this paragraph as an adjustment to the opening balance of retained earnings (or other appropriate components of equity or net assets in the statement of financial position) as of the beginning of the annual reporting period in which the entity first applies the pending content that links to this paragraph.
- c. The adjustment to the opening balance of retained earnings (or other appropriate components of equity or net assets in the statement of financial position) shall be calculated as the difference between the carrying amount of crypto assets as of the end of the prior annual reporting period and the **fair value** of those crypto assets as of the beginning of the annual reporting period in which the entity first applies the pending content that links to this paragraph.

Amendments to Subtopic 230-10

3. Amend paragraph 230-10-45-21A and its related heading and add paragraph 230-10-45-27A and its related heading, with a link to transition paragraph 350-60-65-1, as follows:

Statement of Cash Flows—Overall

Other Presentation Matters

> Classification

• > **Acquisitions and Sales of Certain ~~Securities~~ Securities, and Loans, and Crypto Assets**

230-10-45-21A Cash receipts resulting from the sale of donated **financial assets** (for example, donated debt or equity instruments) or crypto assets accounted for in accordance with Subtopic 350-60 by NFPs that upon receipt were directed without any NFP-imposed limitations for sale and were converted nearly immediately into cash shall be classified as operating cash flows. If, however, the donor restricted the use of the contributed resource to a long-term purpose of the nature of those described in paragraph 230-10-45-14(c), then those cash receipts meeting all the conditions in this paragraph shall be classified as a financing activity.

• **> Crypto Assets Received as Noncash Consideration**

230-10-45-27A If crypto assets accounted for in accordance with Subtopic 350-60 are received as noncash consideration in the ordinary course of business (for example, in exchange for goods and services transferred to a customer) and converted nearly immediately into cash, the cash received shall be classified as operating activities. In this context, the term *nearly immediately* refers to a short period of time that is expected to be within hours or a few days, rather than weeks.

Amendments to Subtopic 270-10

4. Amend paragraph 270-10-50-7 by adding item p, with a link to transition paragraph 350-60-65-1, as follows:

Interim Reporting—Overall

Disclosure

> Guidance Related to Disclosure of Other Topics at Interim Dates

270-10-50-7 The following may not represent all references to interim disclosure:

- p. For disclosure requirements for crypto assets, see paragraphs 350-60-50-1 and 350-60-50-6 through 50-7.

Amendments to Subtopic 350-10

5. Amend paragraphs 350-10-05-3 and 350-10-40-3, with a link to transition paragraph 350-60-65-1, as follows:

Intangibles—Goodwill and Other—Overall

Overview and Background

350-10-05-3 This Topic includes the following Subtopics:

- a. Overall.

- b. Goodwill—Subtopic 350-20 provides guidance on the measurement of goodwill after acquisition, derecognition of some or all of goodwill allocated to a reporting unit, other presentation matters, and disclosures.
- c. General Intangibles Other Than Goodwill—Subtopic 350-30 provides guidance on the initial recognition and measurement of intangible assets other than goodwill that are either:
 - 1. Acquired individually or with a group of assets in a transaction that is not a business combination or an acquisition by a not-for-profit entity
 - 2. Internally generated.
- d. Internal-Use Software—Subtopic 350-40 provides guidance on the accounting for the cost of computer software that is developed or obtained for internal use and **hosting arrangements** obtained for internal use.
- e. Website Development Costs—Subtopic 350-50 provides guidance on whether to capitalize or expense costs incurred to develop a website.
- f. Crypto Assets—Subtopic 350-60 provides guidance on the subsequent measurement, presentation, and disclosure of crypto assets.

In addition, amend the following pending content for paragraph 350-10-05-3, with a link to transition paragraph 805-60-65-1:

Pending Content

Transition Date: (P) January 1, 2025; (N) January 1, 2025 | **Transition Guidance:** 805-60-65-1

350-10-05-3 This Topic includes the following Subtopics:

- a. Overall.
- b. Goodwill—Subtopic 350-20 provides guidance on the measurement of goodwill after acquisition, derecognition of some or all of goodwill allocated to a reporting unit, other presentation matters, and disclosures.
- c. General Intangibles Other Than Goodwill—Subtopic 350-30 provides guidance on the initial recognition and measurement of intangible assets other than goodwill that are either:
 - 1. Acquired individually or with a group of assets in a transaction that is not a business combination, an acquisition by a not-for-profit entity, or a joint venture formation

- 2. Internally generated.
- d. Internal-Use Software—Subtopic 350-40 provides guidance on the accounting for the cost of computer software that is developed or obtained for internal use and **hosting arrangements** obtained for internal use.
- e. Website Development Costs—Subtopic 350-50 provides guidance on whether to capitalize or expense costs incurred to develop a website.
- f. Crypto Assets—Subtopic 350-60 provides guidance on the subsequent measurement, presentation, and disclosure of crypto assets.

Derecognition

> Transfer or Sale of Intangible Assets

350-10-40-3 If an entity transfers a nonfinancial asset in accordance with paragraph 350-10-40-1, and the contract does not meet all of the criteria in paragraph 606-10-25-1, the entity shall not derecognize the nonfinancial asset and shall follow the guidance in paragraphs 606-10-25-6 through 25-8 to determine if and when the contract subsequently meets all of the criteria in paragraph 606-10-25-1. Until all of the criteria in paragraph 606-10-25-1 are met, the entity shall continue to do ~~all~~ any of the following, as applicable:

- a. Report the nonfinancial asset in its financial statements
- b. Recognize amortization expense as a period cost for those assets with a finite life
- c. Apply the impairment guidance in Section 350-30-35 ~~350-30-35~~.
- d. For crypto assets accounted for in accordance with Subtopic 350-60, recognize gains and losses from remeasurement.

Amendments to Subtopic 350-30

6. Amend paragraph 350-30-15-4, with a link to transition paragraph 350-60-65-1, as follows:

Intangibles—Goodwill and Other—General Intangibles Other Than Goodwill

Scope and Scope Exceptions

> Transactions

350-30-15-4 The guidance in this Subtopic does not apply to the following:

- a. Subparagraph not used.
- b. Subparagraph superseded by Accounting Standards Update No. 2010-07.
- c. Except for certain disclosure requirements as noted in paragraph 350-30-15-3, capitalized software costs
- d. Except for disclosures required by paragraph 944-805-50-1 (however, an insurance entity need not duplicate disclosures that also are required by paragraphs 944-30-50-2A through 50-2B), intangible assets recognized for acquired insurance contracts under the requirements of Subtopic ~~944-805~~ 944-805.
- e. Crypto assets accounted for in accordance with Subtopic 350-60, except for recognition and initial measurement of crypto assets.

Amendments to Subtopic 958-230

7. Amend paragraph 958-230-55-3, with a link to transition paragraph 350-60-65-1, as follows:

Not-for-Profit Entities—Statement of Cash Flows

Implementation Guidance and Illustrations

> Implementation Guidance

• > Cash Received with a Donor-Imposed Restriction That Limits Its Use to Long-Term Purposes

958-230-55-3 When an NFP reports cash received (or cash receipts from the sale of donated **financial assets** or crypto assets accounted for in accordance with Subtopic 350-60 that upon receipt were directed without any NFP-imposed limitations for sale and were converted nearly immediately into cash as discussed in paragraph 230-10-45-21A) with a **donor-imposed restriction** that limits its use to long-term purposes in conformity with paragraph 958-210-45-6, an adjustment to the change in net assets to reconcile to net cash flows from operating activities is necessary when using the indirect method of reporting cash flows in order to present those cash receipts as cash inflows from financing activities as required by paragraph 230-10-45-14(c).

Amendments to Status Sections

8. Amend paragraph 230-10-00-1, by adding the following items to the table, as follows:

230-10-00-1 The following table identifies the changes made to this Subtopic.

Paragraph	Action	Accounting Standards Update	Date
230-10-45-21A	Amended	2023-08	12/13/2023
230-10-45-27A	Added	2023-08	12/13/2023

9. Amend paragraph 270-10-00-1, by adding the following item to the table, as follows:

270-10-00-1 The following table identifies the changes made to this Subtopic.

Paragraph	Action	Accounting Standards Update	Date
270-10-50-7	Amended	2023-08	12/13/2023

10. Amend paragraph 350-10-00-1, by adding the following items to the table, as follows:

350-10-00-1 The following table identifies the changes made to this Subtopic.

Paragraph	Action	Accounting Standards Update	Date
350-10-05-3	Amended	2023-08	12/13/2023
350-10-40-3	Amended	2023-08	12/13/2023

11. Amend paragraph 350-30-00-1, by adding the following item to the table, as follows:

350-30-00-1 The following table identifies the changes made to this Subtopic.

Paragraph	Action	Accounting Standards Update	Date
350-30-15-4	Amended	2023-08	12/13/2023

12. Add paragraph 350-60-00-1 as follows:

350-60-00-1 The following table identifies the changes made to this Subtopic.

Paragraph	Action	Accounting Standards Update	Date
Contribution	Added	2023-08	12/13/2023
Conditional Contribution	Added	2023-08	12/13/2023
Customer	Added	2023-08	12/13/2023
Donor-Imposed Condition	Added	2023-08	12/13/2023
Fair Value (2 nd def.)	Added	2023-08	12/13/2023
Inherent Contribution	Added	2023-08	12/13/2023
Intangible Asset Class	Added	2023-08	12/13/2023
Intangible Assets	Added	2023-08	12/13/2023
Market Participants	Added	2023-08	12/13/2023
Not-for-Profit Entity	Added	2023-08	12/13/2023
Orderly Transaction	Added	2023-08	12/13/2023
Promise to Give	Added	2023-08	12/13/2023
Related Parties	Added	2023-08	12/13/2023
Unconditional Promise to Give	Added	2023-08	12/13/2023

Paragraph	Action	Accounting Standards Update	Date
350-60-05-1	Added	2023-08	12/13/2023
350-60-05-2	Added	2023-08	12/13/2023
350-60-15-1	Added	2023-08	12/13/2023
350-60-15-2	Added	2023-08	12/13/2023
350-60-35-1	Added	2023-08	12/13/2023
350-60-45-1 through 45-3	Added	2023-08	12/13/2023
350-60-50-1 through 50-7	Added	2023-08	12/13/2023
350-60-65-1	Added	2023-08	12/13/2023

13. Amend paragraph 958-230-00-1, by adding the following item to the table, as follows:

958-230-00-1 The following table identifies the changes made to this Subtopic.

Paragraph	Action	Accounting Standards Update	Date
958-230-55-3	Amended	2023-08	12/13/2023

The amendments in this Update were adopted by the unanimous vote of the seven members of the Financial Accounting Standards Board:

Richard R. Jones, *Chair*
James L. Kroeker, *Vice Chairman*
Christine A. Botosan
Frederick L. Cannon
Susan M. Cospers
Marsha L. Hunt
Dr. Joyce T. Joseph

Background Information and Basis for Conclusions

Introduction

BC1. The following summarizes the Board's considerations in reaching the conclusions in this Update. It includes reasons for accepting certain approaches and rejecting others. Individual Board members gave greater weight to some factors than to others.

Background Information

BC2. Before adding this project to its agenda, the Board directed the staff to conduct research and monitor developments in the accounting for and reporting of crypto assets. That research focused on whether there was a pervasive need to improve financial reporting, whether feasible solutions existed, and whether a scope for the project could be established. The staff performed pre-agenda research with stakeholders and monitored the development of U.S. accounting practice and the application of both existing authoritative and nonauthoritative guidance and guidance in other jurisdictions. The Board also considered multiple agenda requests that highlighted concern that the current accounting for crypto assets as indefinite-lived intangible assets does not reflect the economic nature of those assets because of the historical-cost-less-impairment accounting model that applies to their subsequent measurement.

BC3. Stakeholders' feedback, including respondents to the 2021 FASB Invitation to Comment (ITC), *Agenda Consultation*, indicated that improving the accounting for and disclosure of crypto assets should be a top priority for the Board. Nearly 500 respondents to the 2021 ITC requested that the Board add to its agenda a project related to crypto assets. Although some stakeholders made observations about other aspects of the accounting for crypto assets and related transactions, stakeholders indicated that the current accounting for crypto assets under a cost-less-impairment accounting model does not provide investors, lenders, creditors, and other allocators of capital (collectively, "investors") with decision-useful information. Specifically, those stakeholders noted that reflecting only the decreases but not the increases in the value of crypto assets in the financial statements until they are sold does not reflect (a)

the underlying economics of those assets and (b) an entity's financial position. Investors also requested additional disclosures about the types of crypto assets held by entities and changes in those holdings.

BC4. Some stakeholders requested that the Board add a project on crypto assets to its agenda because measuring crypto assets at historical cost less impairment created a barrier to acceptance of crypto assets. The Board did not give any weight to this feedback as a rationale for adding this project to its agenda or in making decisions. Rather, the Board acknowledged the need to (a) improve the accounting for crypto assets in order to provide investors with more decision-useful financial information and (b) reduce complexity related to the application of the current accounting to crypto assets.

BC5. Throughout this project, the Board and staff conducted substantial outreach with investors, preparers, practitioners, regulators, industry groups, and others to obtain their views about key considerations in this project. Those stakeholders provided input about how investors would use that information and the expected cost and operability of the Board's decisions. Those outreach activities included more than 180 interactions with stakeholders in groups or one-on-one meetings.

BC6. Many stakeholders indicated that applying the current accounting to crypto assets is unnecessarily complex and costly. Some crypto assets are frequently traded, which is not typical for most intangible assets. For indefinite-lived intangible assets, entities are required to test for impairment annually and more frequently if events or circumstances indicate that it is more likely than not that the asset is impaired. For crypto assets, this process results in reporting entities considering price and other information throughout the reporting period. In addition, reporting entities often voluntarily provide their investors with fair value or price information as of the end of their reporting period.

BC7. The Board issued proposed Accounting Standards Update, *Intangibles—Goodwill and Other—Crypto Assets (Subtopic 350-60): Accounting for and Disclosure of Crypto Assets*, for public comment on March 23, 2023, and received 83 comment letters in response to the amendments in that proposed Update. Overall, comment letter respondents supported the proposed amendments and the project's objectives. While nearly all respondents expressed broad support for the proposed scope, measurement, presentation, and disclosure requirements, some respondents suggested

clarifications and other potential improvements. The Board considered stakeholders' feedback received throughout the course of this project and respondents' comments in reaching its conclusions in this Update, as discussed further below.

Benefits and Costs

BC8. The objective of financial reporting is to provide information that is useful to present and potential investors, creditors, donors, and other capital market participants in making rational investment, credit, and similar resource allocation decisions. However, the benefits of providing information for that purpose should justify the related costs. Present and potential investors, creditors, donors, and other allocators of capital benefit from improvements in financial reporting, while the costs to implement new guidance are borne primarily by present investors. The Board's assessment of the costs and benefits of issuing new guidance is unavoidably more qualitative than quantitative because there is no method to objectively measure the costs to implement new guidance or to quantify the value of improved information in financial statements.

BC9. On the basis of stakeholders' substantial input, the Board concluded that applying the amendments in this Update provides investors with more decision-useful information than current GAAP. In particular, the amendments improve the accounting for crypto assets by requiring that all changes in fair value be recognized in net income, which will provide investors with greater transparency about an entity's holdings of crypto assets. The Board observed that the current accounting, which reflects only decreases but not increases in the value of crypto assets in an entity's financial statements until those assets are sold, does not reflect the underlying economics of those assets and does not provide decision-useful information about future cash flows that may be generated by those assets.

BC10. In addition, reporting crypto assets at fair value aligns the accounting required for all holders of crypto assets with the accounting required for entities that follow certain industry-specific guidance (such as investment companies within the scope of Topic 946, Financial Services—Investment Companies) and eliminates the requirement for those entities to test crypto assets for impairment, reducing the cost and complexity of applying the current guidance. The amendments in this Update also improve the information provided to

investors about an entity's crypto asset holdings by requiring disclosure about the types of and changes in holdings of crypto assets.

BC11. When making its decisions, the Board considered the benefits and costs of specific requirements, as well as the overall benefits and costs of the amendments in this Update. The Board noted that there may be incremental costs of applying some provisions of the amendments that may offset the reductions in costs that will result from no longer applying the existing requirements. The costs of applying the amendments will vary depending on several factors, including whether an entity is currently determining the fair value measurement of crypto assets for voluntary reporting or other purposes and whether the entity's existing systems can track costs, impairments, and changes in a crypto asset's value. For example, some stakeholders indicated that measuring crypto assets without quoted prices in active markets at fair value could result in incremental costs and challenges. However, research and outreach conducted with other stakeholders indicated that those costs and challenges could be present in applying the current cost-less-impairment accounting model. Furthermore, nearly all comment letter respondents stated that measuring crypto assets at fair value would not be costly or complex.

BC12. The Board also acknowledged that the amendments in this Update could introduce additional costs for preparers to comply with those requirements. In particular, comment letter respondents mentioned costs related to the cost basis and historical realized gain and loss disclosures. However, most comment letter respondents as well as other research and outreach conducted with stakeholders indicated that the costs of preparing and providing the required disclosures are not expected to be significant. Overall, the Board decided that the expected benefits of the amendments justify the expected costs.

Basis for Conclusions

Scope

BC13. In developing the scope criteria, the Board sought to leverage existing guidance and provide a solution that would clearly describe and address the population of crypto assets whose accounting, according to most stakeholders, should be improved. The Board considered the definition of and current accounting for certain assets, including intangible assets, securities, and other financial assets, to determine whether, and to what extent, those existing

definitions (or aspects of them) should be leveraged. The Board also considered key characteristics of crypto assets that differentiate them from other assets and the fungibility and marketability of crypto assets. The Board acknowledged that the criteria result in a relatively narrow, but in the Board's view, appropriately defined scope, given the wide range of digital and other assets.

BC14. The Board decided that assets that meet all of the following criteria are subject to the amendments in this Update:

- a. Meet the definition of *intangible assets* as defined in the Codification
- b. Do not provide the asset holder with enforceable rights to or claims on underlying goods, services, or other assets
- c. Are created or reside on a distributed ledger based on blockchain or similar technology
- d. Are secured through cryptography
- e. Are fungible
- f. Are not created or issued by the reporting entity or its related parties.

BC15. The Board determined that crypto assets created or issued by a reporting entity or its related parties should be excluded from the scope of the amendments in this Update. The Board observed that stakeholders did not ask that the Board address an issuer's accounting. In addition, many issuers and others did not support measuring crypto assets created or issued by a reporting entity or its related parties at fair value.

BC16. While many comment letter respondents agreed with the Board's decision to exclude crypto assets created or issued by a reporting entity or its related parties, some respondents requested that the Board address the accounting for issuers of crypto assets in a future project. Others noted that fair value measurement may become relevant for crypto assets created and held by an issuer when the issuer's involvement with the crypto assets diminishes over time. The Board affirmed its decision to exclude the accounting for crypto assets created or issued by the reporting entity because stakeholders broadly agreed that the need to address the issuer's accounting is less pervasive and addressing the accounting for issuers of crypto assets would expand the scope of the project.

BC17. Some stakeholders questioned whether a reporting entity that mines crypto assets would be excluded from the scope of the amendments in this Update. The Board clarified that a reporting entity that mines or validates and receives newly created crypto assets is not the creator of the crypto assets that it receives as consideration for performing services if mining or validating is the only involvement that an entity has in the creation of the asset.

BC18. The Board observed that the definition of *intangible assets* generally includes the types of crypto assets that stakeholders stated needed improvements in accounting. That definition specifically excludes financial assets. Therefore, fiat currency and many securities are excluded and should be accounted for under other GAAP. The Board also observed that there are multiple definitions of *security* and that certain assets that are considered securities for regulatory purposes may not be considered securities as defined in the Master Glossary.

BC19. The Board included a scope criterion that excludes crypto assets that provide the holder with enforceable rights to or claims on underlying goods, services, or other assets. Without that criterion, some Board members observed that the accounting for certain arrangements—such as contracts with customers, guarantees, and insurance contracts—inadvertently could be included within the scope of the amendments in this Update. Those arrangements, which may be in digital form, should continue to be subject to other GAAP.

BC20. Some respondents to the proposed Update requested that the Board clarify the meaning of the term *enforceable* and whether a legal opinion would be necessary. The Board observed that the notion of an enforceable right is used throughout GAAP and agreed with respondents who observed that determining whether there are enforceable rights may require judgment. Furthermore, the Board noted that in many, but not necessarily all, cases it will be clear whether a crypto asset provides an asset holder with enforceable rights to underlying goods, services, or other assets.

BC21. The Board observed that crypto assets may provide an asset holder with rights to other crypto assets and, therefore, are outside the scope of the amendments in this Update. In deciding to include this scope criterion in the proposed Update, the Board expressed concern that broadening the scope to include crypto assets that provide rights to other crypto assets was not identified as pervasive and expanding the scope to include crypto assets that

derive value principally by providing rights to other assets could have consequences that have not been fully evaluated. Respondents broadly supported the proposed scope, partly because a narrower scope would allow the Board to finalize the amendments in this Update in a timely manner. More than a quarter of the respondents requested that the scope include assets that provide rights to other crypto assets. The Board considered the feedback and, for reasons similar to those described above, affirmed the criterion as proposed.

BC22. The scope criteria also include certain characteristics of crypto assets that differentiate them from other assets, that is, they are created, or reside on, a distributed ledger based on blockchain or similar technology and are secured through cryptography. The Board decided that including those characteristics within the scope criteria will prevent other digital intangible assets, such as software and media, from being included within the scope of the amendments in this Update. In addition, on the basis of outreach and comment letter feedback, the Board sought to describe the technological form of those assets within the scope criteria while also providing flexibility because of the continued evolution in the technology underlying crypto assets. The Board considered but ultimately decided not to specify that the distributed ledger should be public because determining the meaning of *public* in this context would require judgment and may be complex.

BC23. The Board decided to include fungibility as a criterion because obtaining market prices for items that are not fungible could be costly and complex and fair value measurement may not be relevant for nonfungible items. The fungibility criterion excludes nonfungible tokens (NFTs) from the amendments in this Update. Investors indicated that they do not observe reporting entities holding material amounts of NFTs at this time and that if they were to observe those holdings, the reported value may not affect their analyses or capital allocation decisions because of the nature of those assets and the uncertainty surrounding their value. Many respondents supported the proposed scope criterion. Excluding NFTs from the scope of the amendments also is consistent with the feedback received from many respondents to the ITC that favored a narrow-scope project.

BC24. In developing the scope criteria for the amendments in this Update, the Board acknowledged that other characteristics, such as “medium of exchange” and “store of value,” are used by others when describing or defining

crypto assets. The Board did not include those characteristics because (a) other assets, such as fiat currency, may share those characteristics and (b) evaluating whether those characteristics exist for financial reporting purposes may be subjective. Therefore, including those characteristics within the scope criteria could have increased the cost and complexity of an entity's assessment of whether an asset is within the scope of the amendments.

BC25. The Board also considered whether to exclude crypto assets without an active market from the amendments in this Update. The Board ultimately dismissed that alternative, however, because (a) that criterion could have resulted in complexity because, for example, a crypto asset could be moved within and outside the scope based on changes in the market activity for that asset, (b) if those assets were excluded from the amendments, the presentation and disclosure requirements would not have applied to those assets, (c) the existence of an active market is considered part of the fair value measurement of crypto assets in accordance with Topic 820, Fair Value Measurement, and (d) the impairment testing guidance still requires that an entity determine fair value for the purpose of recognizing any potential impairment loss. Almost all respondents agreed with the Board's decision, which did not exclude crypto assets without an active market.

Entities

BC26. The accounting for intangible assets applies broadly to public business entities, private companies, not-for-profit entities, and employee benefit plans. Stakeholders stated that applying current guidance to crypto assets is costly and complex and is not consistent with the underlying economics of those assets. Therefore, Board members agreed that improving the accounting, presentation, and disclosures for crypto assets that meet the scope criteria benefits all entities. Comment letter respondents supported the broad application of the amendments in this Update for all entities.

BC27. Although industry-specific guidance, such as guidance for investment companies, currently permits or requires accounting for crypto assets at fair value, the Board decided that it is beneficial to include those entities within the scope of the amendments in this Update primarily because investors will benefit from enhanced disclosures. Subtopic 946-205, Financial Services—Investment Companies—Presentation of Financial Statements, requires presentation of a statement of net assets, which includes a schedule detailing

an entity's investments on a more disaggregated basis, and provides guidance on the presentation of changes in the fair value of investments in an investment company's statement of operations. The Board decided that investment companies should continue to present amounts related to crypto assets in their financial statements in accordance with that industry-specific guidance.

BC28. The Board also considered the *Private Company Decision-Making Framework: A Guide for Evaluating Financial Accounting and Reporting for Private Companies*, and consulted the Private Company Council to determine whether exceptions or practical expedients related to measurement, presentation, and disclosure were needed. The Board did not receive feedback from private company investors indicating that they have different informational needs related to crypto assets. Furthermore, on the basis of stakeholders' feedback received, including support from the investors on the Private Company Council, the Board decided that private company investors generally will benefit from having more relevant information about crypto assets. The amendments in this Update also are expected to reduce the cost and complexity for some entities. Therefore, the Board decided not to include any exceptions or practical expedients for private companies.

Measurement

BC29. The amendments in this Update require that an entity subsequently measure crypto assets at fair value at each reporting period. The Board decided to require fair value measurement because it will provide investors with more decision-useful information about the value at which crypto assets can be sold and about changes in that value. In reaching that conclusion, the Board observed that the predominant way that an entity realizes value from a crypto asset that meets the scope criteria is through exchange and crypto assets are not used in combination with any other assets to generate value. The fair value measurement guidance in Topic 820 also is well understood in practice and familiar to many investors because it is used to measure other assets. Nearly all comment letter respondents and other stakeholders, including those who responded to the ITC, supported requiring that entities measure crypto assets at fair value for similar reasons.

BC30. Before the issuance of the proposed Update, the Board considered and dismissed two other measurement alternatives—historical cost with modified impairment (which would have required that an entity test crypto

assets for impairment only as of the end of the reporting period) and net realizable value—on the basis that, among other reasons, the alternatives would have provided investors with less relevant information. That is because the historical-cost-with-modified-impairment alternative would have prohibited the recognition of increases in price movement and the net-realizable-value alternative would have introduced a new measurement basis for crypto assets that would have created measurement differences between entities. Two respondents to the proposed Update recommended measurement alternatives, one of which would have been to provide an option to use the current cost-less-impairment accounting model for measuring some or all of an entity's crypto asset holdings. The Board did not support providing entities with an option, as opposed to a requirement, to subsequently measure crypto assets at fair value because it would have diminished comparability between similar entities and similar assets, would have resulted in additional effort for investors to understand an entity's measurement policies and evaluate the entity's financial results, and likely would not have reduced costs or complexity for preparers.

BC31. The Board also considered whether the guidance in Topic 820 provides a sufficient basis for entities to measure the fair value of crypto assets. Specifically, the Board observed that Topic 820 provides guidance on:

- a. Identifying the principal (or most advantageous) market
- b. Categorizing the inputs to valuation techniques used to measure fair value into three levels within the fair value hierarchy
- c. Determining how fair value may be affected by transactions with related parties
- d. Measuring fair value when the volume or level of activity for an asset has decreased significantly
- e. Identifying transactions that are not orderly
- f. Using quoted prices provided by third parties.

BC32. While judgment may be required in evaluating those aspects of Topic 820 when measuring the fair value of crypto assets, an evaluation of those aspects involving judgment also is required when measuring other assets in accordance with Topic 820. Therefore, the Board decided that the existing guidance in Topic 820 is sufficient. Additionally, the Board acknowledged that reporting entities currently apply the fair value measurement principles in Topic 820 when determining impairments under the cost-less-impairment accounting model and when following industry-specific guidance that requires or allows fair

value measurement for crypto assets. Although a few comment letter respondents suggested that the Board either provide additional measurement guidance or clarify the application of certain aspects of Topic 820 to crypto assets, almost all respondents indicated that Topic 820 is operable and sufficient for measuring the fair value of crypto assets within the scope of the amendments in this Update.

Certain Transaction Costs to Acquire Crypto Assets

BC33. The Board proposed that transaction costs to acquire crypto assets, such as commissions and other related transaction fees, should be expensed as incurred unless an entity capitalizes those costs in accordance with industry-specific guidance (for example, investment companies within the scope of Topic 946). A majority of the Board supported the proposal to expense transaction costs because it would (a) provide investors with greater visibility into gains and losses that arise because of price changes in an entity's crypto asset holdings and (b) eliminate the potential for diversity in practice.

BC34. While a majority of comment letter respondents supported the Board's proposal to expense transaction costs as incurred, some respondents stated that expensing transaction costs would not align with other areas of GAAP that either require that an entity capitalize transaction costs or do not provide guidance on the accounting for transaction costs. Some respondents preferred capitalizing transaction costs because including those costs in the gains and losses from holding a crypto asset would better reflect the performance of that holding and a few of those respondents noted that it would align with industry-specific guidance for investment companies. Other respondents either (a) supported an option that would allow entities to either capitalize or expense transaction costs or (b) stated that it is unnecessary for the Board to provide guidance on the accounting for transaction costs for crypto assets.

BC35. In considering the comment letter feedback, the Board acknowledged that requiring transaction costs to be expensed as incurred may not provide investors with decision-useful information because the amendments in this Update do not require separate presentation or disclosure of those costs. Additionally, the Board observed that, regardless of whether transaction costs are capitalized or expensed, the effect on comprehensive income in the period that crypto assets are acquired is the same because those crypto assets are required to be remeasured to fair value.

BC36. Therefore, the Board decided not to provide guidance on how to recognize or present transaction costs to acquire crypto assets. In addition, the amendments in this Update do not amend industry-specific guidance for an entity that is required to capitalize transaction costs.

Alternatives Considered for Measuring Crypto Assets without Quoted Prices in Active Markets

BC37. While almost all ITC respondents and other stakeholders supported fair value measurement, some stakeholders raised concerns about whether fair value is an appropriate measurement basis for crypto assets that do not have a quoted price in an active market. One concern noted was that the techniques and inputs used to value crypto assets using a market approach may be unreliable, which could result in financial information that lacks relevance. Additionally, because of the largely unregulated nature of crypto asset markets, certain transactions that are not orderly (for example, wash trades that are intended to manipulate prices) may appear as orderly transactions and could distort an entity's fair value measurement. Therefore, those stakeholders suggested that the Board preclude fair value measurement of crypto assets without existing active markets.

BC38. Other stakeholders expressed different views on applying the valuation techniques described in Topic 820. Some observed that the economic benefits provided to the holders of crypto assets are realized through the exchange of those assets. Therefore, those stakeholders indicated that it would be rare to apply any valuation technique other than a market approach based on observed transactions or market quotes when measuring a crypto asset's fair value. Certain stakeholders also suggested that when there is no quoted market price in an active market, the appropriate measure would be zero. Other stakeholders disagreed with that view but acknowledged that the fair value measurement of a crypto asset with no quoted market price in an active market may be a minimal or immaterial amount. Board members agreed that the application of the guidance in Topic 820 may result in a fair value for those crypto assets that is minimal or zero.

BC39. Before the issuance of the proposed Update, the Board considered three measurement alternatives for crypto assets without quoted prices in active markets:

- a. Require that the cost-less-impairment accounting model be applied until the market for the crypto asset becomes active
- b. Provide reporting entities with a policy election to remeasure those assets at fair value only upon impairment and when observable orderly transactions occur
- c. Require that those assets be measured at zero until the market for the crypto asset becomes active.

BC40. The Board rejected those measurement alternatives for several reasons. Topic 820 specifically addresses the broadly applicable requirements for measuring the fair value of assets and liabilities without quoted prices in active markets. Additionally, entities that apply the current cost-less-impairment accounting model are required to determine the fair value of all crypto assets, including those without quoted prices in active markets, to evaluate those assets for impairment. Entities that follow certain industry-specific guidance (for example, investment companies within the scope of Topic 946) measure crypto assets at fair value, regardless of whether there are quoted prices in an active market for those assets. Furthermore, unless there is a requirement to measure those assets at zero, an entity is still required to determine the fair value for impairment purposes.

BC41. Almost all comment letter respondents supported the Board's decision not to provide measurement alternatives for crypto assets without quoted prices in active markets. The few respondents that disagreed recommended measurement alternatives that are similar to those that the Board considered and rejected. Additionally, there was no clear consensus among respondents on how they would describe or define an inactive market for crypto assets. Therefore, the amendments in this Update do not provide any measurement alternatives for crypto assets without a quoted price in an active market.

Presentation

Statement of Financial Position

BC42. Reporting entities currently are required, at a minimum, to present all intangible assets as a separate line item in the balance sheet. The amendments in this Update require that an entity present crypto assets measured at fair value separately from intangible assets measured at historical cost less amortization and impairment. The Board decided that crypto assets

should be presented separately from other intangible assets because they are measured and generate benefits differently from other intangible assets. Additionally, separately presenting crypto assets better responds to investors' requests that information about crypto assets should be transparently displayed in the financial statements.

BC43. Nearly all comment letter respondents supported separate presentation of crypto assets measured at fair value from intangible assets measured at historical cost less amortization and impairment. One comment letter respondent requested that the Board provide presentation guidance for the classification of crypto assets as either current or noncurrent in a classified balance sheet. However, the Board decided not to provide incremental presentation guidance for crypto assets because Topic 210, Balance Sheet, provides adequate guidance for determining the balance sheet classification of assets.

Income Statement

BC44. The amendments in this Update require that an entity include all changes from the remeasurement of crypto assets in net income. The Board decided that reflecting the periodic changes in net income, combined with additional disclosures about an entity's crypto assets at each balance sheet date, provides investors with relevant information about how management is generating value from its crypto asset positions over time. Outreach also indicated that most stakeholders favor aligning the accounting for crypto assets with the accounting for investments in equity securities because both are investments without defined payouts and maturity dates. Requiring periodic changes from the remeasurement of crypto assets in net income is consistent with the presentation requirements for those changes in investments in equity securities.

BC45. Nearly all comment letter respondents supported including changes from the remeasurement of crypto assets in net income. However, a few stakeholders supported including changes in the fair value of crypto assets in other comprehensive income until those gains and losses are realized through the sale or disposal of the crypto asset. Those stakeholders were concerned primarily about the volatility in earnings that the changes in fair value may cause.

BC46. The Board decided not to present changes in the fair value of crypto assets in other comprehensive income. Many investors said that they would prefer to see that volatility reflected in net income because it would provide transparent, decision-useful information about the performance of crypto assets and an entity's ability to manage them. Furthermore, neutrally reflecting changes (that is, both decreases and increases in fair value) in net income would improve financial reporting and address concerns that the current accounting model does not reflect the underlying economics of crypto assets.

BC47. The Board also decided to present aggregate gains and losses on crypto assets separately from amortization expense and impairment losses of other intangible assets. Similar to its decisions on the balance sheet presentation, the Board decided that changes from remeasurement of crypto assets should be presented separately from changes in other intangible assets because crypto assets are measured and generate benefits differently from other intangible assets.

BC48. Several comment letter respondents recommended that the Board clarify whether changes from remeasurement should be presented in operating or nonoperating income. Those respondents commented that without specific guidance entities would analogize to other GAAP, which could result in diversity in practice. The Board considered that feedback and observed that an entity should classify gains or losses from the remeasurement of crypto assets as operating or nonoperating based on its facts and circumstances. Additionally, the Board observed that GAAP does not provide explicit guidance on the income statement presentation of gains and losses from the remeasurement of other assets, such as equity securities.

BC49. A few comment letter respondents recommended that the Board provide guidance on the presentation of *realized* and *unrealized* gains and losses in the income statement. The Board observed that gains and losses on crypto assets are the result of fair value remeasurements throughout the holding period. Because those assets are remeasured at fair value up to the date of sale, the gain or loss recognized as a result of sale may be zero. In addition, because gains and losses on crypto assets are recognized in net income at each remeasurement (unlike certain debt securities), there is no recognition upon disposition of gains or losses that have been recognized in other comprehensive income. The Board acknowledged that, in practice, some consider the difference between the carrying amount at the last balance sheet

date and the consideration received at the time of sale to be a *realized* gain or loss. However, that amount does not represent the total amount of realized gains and losses from disposition, which is the difference between the disposal price and the cost basis of the asset. The total realized gain or loss from disposition is required to be disclosed under the amendments in this Update. Therefore, the Board observed that distinguishing whether gains and losses recognized in a given period are realized or unrealized is unnecessary and could be confusing.

Statement of Cash Flows

BC50. The amendments in this Update specify that cash receipts arising from crypto assets that are received as noncash consideration in the ordinary course of business (or as a contribution, in the case of a not-for-profit entity) and are converted nearly immediately into cash should be presented as operating cash flows.

BC51. The Board decided that specific presentation requirements are important for crypto asset transactions with near immediate liquidation because a different classification in the specified circumstances likely would mislead investors. That is because classifying these cash receipts as investing activities when an entity receives crypto as a form of consideration for a routine operating activity or as a contribution that is immediately (or nearly immediately) converted to cash would not reflect the economics of the activity and could diminish an investor's ability to assess the uncertainty of an entity's prospective cash flows. The Board expects that entities will be able to apply that guidance consistently without creating additional cost or complexity. Almost all comment letter respondents supported the proposed classification of those cash flows as operating activities because it would better reflect the economics of the activity.

BC52. Similarly, on the basis of feedback received in the comment letters, the Board decided to require that a not-for-profit entity that nearly immediately liquidates crypto assets received with donor-imposed restrictions for long-term or capital use classify the cash inflows as financing, which is consistent with the required classification of donated financial assets with those donor-imposed restrictions.

BC53. The Board intended the phrase *nearly immediately* to mean a short period of time that is expected to be within hours or a few days, rather than weeks. Almost all comment letter respondents supported the Board's decision

on using the phrase *nearly immediately* in the context of crypto asset transactions. The Board expects that the meaning of the phrase *nearly immediately* in the context of businesses to be similar but not identical to the meaning of the phrase in the context of not-for-profit entities. Paragraph BC8 of Accounting Standards Update No. 2012-05, *Statement of Cash Flows (Topic 230)—Not-for-Profit Entities: Classification of the Sale Proceeds of Donated Financial Assets in the Statement of Cash Flows*, states that the term *nearly immediately* in the context of the liquidation of donated financial assets means days, not months. For that reason, the Board concluded that it would be appropriate for not-for-profit organizations to apply the same threshold to the sale proceeds of donated crypto assets as to the sale proceeds of donated financial assets.

BC54. Notwithstanding the amendments in this Update, on the basis of requests for incremental guidance from some respondents, the Board also considered whether the current guidance is sufficient for entities to determine the presentation of cash and noncash activities related to other crypto asset transactions in the statement of cash flows. Current guidance does not prescribe a particular classification for the cash paid to acquire, or cash received to sell, intangible assets. The Board concluded that incremental cash flow presentation guidance for crypto assets is unnecessary because the guidance in Topic 230, *Statement of Cash Flows*, although not specific to crypto assets, provides sufficient guidance for classifying cash flows. Entities should continue to apply Topic 230 in classifying cash flows associated with crypto asset transactions based on an entity's facts and circumstances, including evaluating the nature of the cash flows and the purpose of the activities that give rise to them, which will involve judgment.

Disclosure

BC55. A key objective for this project, based on stakeholders' feedback on the ITC and outreach, is to improve the information about crypto assets provided to investors in the financial statements.

BC56. Chapter 8, *Notes to Financial Statements*, of FASB Concepts Statement No. 8, *Conceptual Framework for Financial Reporting*, suggests possible information for the Board's consideration when deciding on the disclosure requirements for a Topic in the Codification. The amendments in this Update result from the Board's consideration of the guidance in Chapter 8 of

Concepts Statement 8 as well as feedback received from outreach with stakeholders and comment letter respondents. The enhancement to disclosures is incremental to any disclosures required by other Topics to which crypto assets or the entities that hold them may be subject.

BC57. The Board affirmed that the fair value disclosures required by Topic 820 are required for crypto assets. The Board concluded that the disclosure requirements in that Topic provide decision-useful information about crypto assets measured at fair value. In affirming that the Topic 820 fair value disclosures should be provided for crypto assets, the Board observed that private companies are exempt from certain of those disclosure requirements.

BC58. Additionally, for all entities, the Board considered disclosures beyond those required by Topic 820 related to the unique nature of crypto assets, the variation in the regulation of domestic and international markets for crypto assets, and the relative maturity of the markets in which crypto assets are traded. The Board considered those additional disclosures for all holders of crypto assets to improve the information provided to investors and increase comparability.

Significant Holdings Disclosure

BC59. Investors requested more transparency about an entity's individual holdings of crypto assets to understand the present risks at the reporting date. The Board proposed that entities disclose at interim and annual periods for each significant holding of crypto assets the name, cost basis, fair value, and number of units held, as well as the aggregate fair value and cost basis of the crypto asset holdings that are not individually significant. Determining which crypto asset holdings are significant should be based on the fair value of each holding.

BC60. Many respondents commented that the proposed significant holdings disclosure is operable and that requiring that disclosure will allow investors to analyze and assess the exposure and risk of significant individual crypto asset holdings. The Board decided not to prescribe what cost method a reporting entity must use when determining and disclosing the cost basis (for example, first-in, first-out; specific identification; average cost; or other method used) and decided to require disclosure of the cost basis used. The majority of respondents supported the Board's decision not to prescribe a cost method. Respondents observed that entities analogize to existing guidance and

consider various factors in selecting a cost method and that prescribing a cost method would be complex and costly for entities to implement. On the basis of feedback from respondents, the Board decided to require the disclosure as proposed.

BC61. Although some comment letter respondents suggested that the Board prescribe a threshold for determining significant holdings (such as an entity's top 5 or 10 crypto asset holdings by fair value), there was no consensus on what that threshold should be. The Board decided, and many comment letter respondents agreed, that a bright line may not be suitable and may be insufficient in reflecting an entity's risks associated with various crypto assets. Therefore, the Board decided to allow entities to use appropriate judgment to determine their significant holdings. Using the term *significant holdings* is consistent with other GAAP requirements and is not further defined in the amendments in this Update.

BC62. A trade group recommended that the Board provide certain investment companies within the scope of Topic 946 with an exemption from the significant holdings disclosure because it is similar to what is required to be disclosed as part of the schedule of investments. The Board observed that an entity is not required to duplicate the significant holdings disclosure if that information is presented or disclosed elsewhere in the financial statements. However, if an entity provides the information required in the significant holdings disclosure outside the financial statements, that entity must provide the required disclosures within the financial statements.

Restrictions of Crypto Assets Disclosure

BC63. The Board decided to require that an entity disclose when its crypto assets are subject to contractual sale restrictions, the fair value of the restricted crypto assets, the nature and remaining duration of the restriction, and the circumstances that would cause the restriction to lapse. In outreach, investors supported requiring this disclosure because it would provide additional information about the liquidity risk associated with an entity's holding of restricted crypto assets. Most comment letter respondents who commented on that disclosure supported this requirement for similar reasons.

Reconciliation of Crypto Assets Held during the Period Disclosure

BC64. Investors who participated in outreach on this project and many comment letter respondents supported disclosing the reconciliation of the beginning and ending balances of crypto asset holdings because it would provide information about an entity's crypto asset activities during the period and capital allocation strategy. Furthermore, some respondents stated that a disclosure of this nature may not be costly because crypto asset recordkeeping software currently tracks the information that would be necessary to provide the reconciliation. Some respondents that are not investors disagreed and stated that the disclosure would not be decision useful and would be excessive given the other disclosures that the Board proposed and other existing disclosure requirements in GAAP. However, based on strong support from investors, the Board decided to require that entities disclose an aggregate reconciliation of crypto assets, but only for annual periods. That reconciliation should include separate disclosure of additions, disposals, gains recognized during the period, and losses recognized during the period.

BC65. The Board decided that gains and losses should be separately disclosed in the reconciliation because that information allows an investor to identify whether there are large gains offsetting large losses during the period. The amendments in this Update also specify that gains and losses should be determined on a crypto-asset-by-crypto-asset basis to increase the consistency and comparability of that information between reporting entities. The Board observed that the disclosure of gains and losses may indicate unique circumstances related to a particular crypto asset or that an entity has changed its strategy.

BC66. An entity is required to provide a description of the additions (for example, purchases, receipts from customers, or mining activities) and dispositions (for example, sales or payment for services) as part of the reconciliation or in its annual disclosures. The Board noted that the information about the nature of additions and dispositions helps investors more easily identify and analyze noncash transactions involving crypto assets.

BC67. The amendments in this Update also require that an entity disclose the cumulative realized gains and cumulative realized losses resulting from crypto asset disposals that occurred during the period. The gains and losses

represent the difference between the disposal price and the cost basis of those assets. Some investors noted that a disclosure of this nature would provide them with useful information about an entity's effectiveness over the management of its crypto assets.

BC68. The Board decided that an entity need not include within the reconciliation activity related to crypto assets received as noncash consideration in the ordinary course of business (or as a contribution, in the case of a not-for-profit entity) that are converted nearly immediately into cash. The Board supported this exemption because disclosing that activity may not provide investors with decision-useful information because those entities have no ongoing risk exposure to crypto assets, even if that activity was significant during the period.

BC69. The Board acknowledged that the Private Company Decision-Making Framework indicates that private companies generally should not be required to disclose a reconciliation of the beginning and ending balances of balance sheet line items. The Board received mixed feedback from comment letter respondents and Private Company Council members about requiring this disclosure for private companies. However, those that supported this disclosure stated that it would provide relevant information for private company investors and would allow an investor to understand an entity's crypto asset activities during the reporting period. Stakeholders told the Board that a disclosure of this nature may not be costly because crypto asset recordkeepers currently are tracking the information that would be necessary to provide the reconciliation. As a result, the Board decided not to have a different requirement for private companies.

Disclosures Considered but Rejected

BC70. Before the issuance of the proposed Update, the Board considered feedback received from stakeholder outreach for other suggested disclosures about crypto assets that could be useful, including additional information about gains and losses, the nature and purpose of holding crypto assets, information about pricing, and information about the cryptographic private key. In some cases, the Board observed that similar information is not currently required for similar assets and could be obtained by the disclosure of the reconciliation, by the disclosure about significant holdings, or from other existing disclosure requirements. For other suggested disclosures, the Board decided that the

information to be disclosed was too detailed. A majority of comment letter respondents agreed with the Board's rationale and some commented that additional disclosures could be provided by entities on a voluntary basis. Therefore, the Board decided not to require those additional disclosures.

BC71. Some comment letter respondents suggested additional disclosures for the Board's consideration. However, the Board decided not to require those additional disclosures because they duplicate existing requirements or are not within the scope of the amendments in this Update.

Effective Date and Transition

BC72. The Board decided that the amendments in this Update are effective for fiscal years beginning after December 15, 2024, including interim periods within those fiscal years, for all entities. Consistent with feedback from investors and preparers, the Board decided that early adoption is permitted, including adoption in an interim period as of the beginning of the annual period that includes that interim period or in an annual period as of the beginning of that annual period.

BC73. A majority of comment letter respondents indicated that they would not incur significant implementation costs or need a significant amount of time to apply the amendments in this Update because (a) entities currently apply Topic 820 when evaluating crypto assets for impairment and (b) some entities are currently providing similar information to their investors on a voluntary basis. Therefore, the Board concluded that the effective date should provide sufficient time for entities to understand and apply the amendments. Additionally, nearly all respondents who provided feedback on whether early adoption should be permitted indicated that it should be permitted.

BC74. Some comment letter respondents provided feedback on whether entities other than public business entities would need more time than public business entities to implement the amendments in this Update. Half of those respondents indicated that entities other than public business entities should have a deferred effective date to learn from the implementation experiences of public business entities. The other half of respondents indicated that all entities should have the same amount of time to implement the amendments because all entities currently need to apply the guidance in Topic 820 when evaluating crypto assets for impairment. Additionally, based on respondents' feedback, the Board anticipates that many entities will early adopt the amendments,

which will provide examples of financial statements and disclosures that may be useful for other entities adopting the amendments in this Update. Considering that, as well as the effective date and that entities currently apply Topic 820 in evaluating the impairment of crypto assets, the Board decided not to provide a different effective date for entities other than public business entities.

BC75. The amendments in this Update require a cumulative-effect adjustment, including the direct effects of that adjustment such as tax consequences, to the opening balance of retained earnings (or other appropriate components of equity or net assets) as of the beginning of the annual period in which an entity adopts the amendments.

BC76. Nearly all comment letter respondents supported those transition requirements. However, a few respondents commented that they would support an option or requirement for entities to apply the amendments in this Update on a full retrospective basis. Those respondents commented that full retrospective application would improve comparability and may not be costly. Other respondents supported not requiring full retrospective application because it would be complex and costly and would provide investors with limited incremental information.

BC77. The Board decided against requiring that reporting entities apply the amendments in this Update through a full retrospective approach, or providing an option for entities to do so, because it concluded that the expected costs of full retrospective application may not justify the potential expected benefits for investors. The Board agreed with comment letter respondents who said that full retrospective application could be complex and costly and would provide investors with limited benefits, given continuous changes in the fair value of those crypto assets.

BC78. The Board also considered, but rejected, prospective application of the amendments in this Update, which would have resulted in recognizing the effects of initially applying the amendments through net income. In doing so, the decision usefulness of information provided to investors could have been diminished because those effects would have been presented with any gains or losses that may arise from subsequently measuring crypto assets in the period of adoption.

BC79. Consistent with feedback from investors and preparers, the Board decided that early adoption is permitted, including adoption in an interim period as of the beginning of the annual period that includes that interim period.

Comparison to International Financial Reporting Standards Accounting Standards (IFRS Accounting Standards)

BC80. In June 2019, the IFRS Interpretations Committee (IFRIC) clarified that cryptocurrencies (a subset of crypto assets that have certain characteristics that differ from the scope of the amendments in this Update) held for sale in the ordinary course of business should be measured at the lower of cost and net realizable value in accordance with IAS 2, *Inventories*, unless the asset holder is a commodity broker-trader, in which case the cryptocurrencies should be measured at fair value less costs to sell. All other holdings of cryptocurrencies should be accounted for in accordance with IAS 38, *Intangible Assets*.

BC81. IAS 38 requires impairment testing of intangible assets, which is similar to current GAAP. However, unlike current GAAP, impairment losses may be reversed under certain circumstances. In addition, entities may elect to carry an intangible asset with an active market at a revalued amount, which is its fair value at the date of revaluation less any accumulated impairment losses that are recognized after the revaluation date. IFRS Accounting Standards require that any changes in fair value above historical cost be recognized in other comprehensive income, while any changes in fair value below historical cost should be recognized in profit and loss.

BC82. There are similarities between the amendments in this Update and the IFRS Accounting Standards revaluation model. One important similarity is that for crypto assets traded in active markets, if entities elect to apply the revaluation model in IAS 38, both require recognition of crypto assets at fair value on the balance sheet. There also are four key differences between the amendments and IFRS Accounting Standards. Those differences are that:

- a. The amendments apply to a subset of crypto assets that differ from cryptocurrencies as described by the IFRIC.
- b. The amendments require fair value measurement for crypto assets (a subset of intangible assets), whereas the revaluation model under IFRS Accounting Standards is an election for intangible assets.

- c. The amendments require fair value measurement for crypto assets, whereas the revaluation model under IFRS Accounting Standards requires reference to an active market for measuring at fair value.
- d. The amendments require the recognition of all remeasurements of crypto assets in net income, whereas IFRS Accounting Standards require recognition of any gains above original cost in other comprehensive income without recycling to net income.

BC83. Additionally, the amendments in this Update require disclosures that are specific to crypto assets that are not included in IFRS Accounting Standards.

Amendments to the GAAP Taxonomy

The amendments to the *FASB Accounting Standards Codification*® in this Accounting Standards Update require improvements to the GAAP Financial Reporting Taxonomy and SEC Reporting Taxonomy (collectively referred to as the “GAAP Taxonomy”). Those improvements, which will be incorporated into the proposed 2024 GAAP Taxonomy, are available through [GAAP Taxonomy Improvements](#) provided at www.fasb.org, and finalized as part of the annual release process.

Corporate AMT's Shadow Grows As FASB Goes Mark-to-Market

by Andrew Strelka

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Corporate AMT's Shadow Grows As FASB Goes Mark-to-Market

by Andrew Strelka

Andrew Strelka is counsel at Latham & Watkins LLP and has previously served in several federal government roles, including most recently as senior tax counsel in the Biden administration.

In this article, Strelka explores how a recent Financial Accounting Standards Board accounting rule change that requires entities following generally accepted accounting principles to use mark-to-market accounting for cryptoassets will affect the corporate alternative minimum tax.

Barbie, nominated for eight Academy Awards, took us to Barbie Land — a magical place where the Barbies had achieved everything and anything to which they had set their minds. But unexpected and surprising results can arise when worlds collide, and when Barbie begins to introduce real-world concepts like mortality into her plastic universe, her famously pointed feet fall flat and the Dreamhouse gives way to Ken's Mojo Dojo Casa House.

Like Barbie, federal income taxation has generally existed in its own world: not so pink, but perhaps still magical. In this world, federal tax laws are passed by Congress and regulations are issued by Treasury after commentary from the public. Journey beyond the borders of the Internal Revenue Code, however, and you may end up in accounting world, where taxable income and tax returns give way to book income and financial statements. The rules in accounting world are not set by the government; they are set by a private group of dedicated accounting professionals that compose the Financial Accounting Standards Board, a nonprofit whose mission is to guide the accounting profession from outside the legislative process.

For 50 years, federal income tax world and accounting world have generally grown and evolved separately. But these worlds collided in 2022 when Congress created the corporate alternative minimum tax, an alternative federal income tax based on income reported on consolidated financial statements.¹ With the walls between worlds down, the authority of the nongovernmental FASB has inadvertently grown, drawing taxwriting power away from the federal government. A rule quietly issued by the FASB last year demonstrates that new accounting rules designed to support better financial reporting can now have material unintended tax effects.

In December 2023 the FASB issued ASU 2023-08, a new accounting standard generally requiring entities following generally accepted accounting principles to use mark-to-market accounting for cryptoassets, reporting increases and decreases in cryptoasset value in financial statement income.² While the new rule is appropriately aimed at clearer financial reporting, unless Treasury or Congress provides an exception, the rule from accounting world will lead to a seemingly unintended corporate AMT windfall for the government in federal income tax world. And although the affected class is crypto this time, unintended effects could follow. With the walls down, financial reporting rules are now linked to the new federal tax on financial statement income,

¹The corporate AMT was enacted in 2022 via the Inflation Reduction Act (P.L. 117-169). It generally applies to large corporations with annual consolidated financial statement income (subject to certain adjustments) that exceeds \$1 billion. In December 2022 Treasury announced forthcoming proposed corporate AMT regulations. See Notice 2023-7, 2023-3 IRB 390 (Dec. 27, 2022).

²See generally FASB, "Accounting Standards Update No. 2023-08, Intangibles — Goodwill and Other — Crypto Assets (Subtopic 350-60): Accounting for and Disclosure of Crypto Assets" (Dec. 2023) (ASU No. 2023-08).

effectively forcing the accounting experts of the FASB into new taxwriting roles. And the FASB's issuance of ASU 2023-08 demonstrates that while Treasury is focused on getting the new financial statement tax off the ground, the federal government is not in control.

Who or What Is the FASB?

Established in 1973, the FASB is an organization that sets financial accounting and reporting standards for public and private companies, as well as nonprofit organizations that follow GAAP.³ The FASB is controlled by the Financial Accounting Foundation, a section 501(c)(3) public charity with a board of directors made up of accounting professionals.⁴ And even though it is not part of the government, the SEC recognizes the FASB as the designated organization for setting accounting standards for public companies.⁵

The FASB regularly publishes a systematic framework of its standards and principles, known as the Accounting Standards Codification.⁶ The Accounting Standards Codification is available online and is meant to organize U.S. GAAP-compliant policies consistently among accounting topics.

Cryptoassets historically have fallen under Accounting Standards Codification 350, the FASB accounting rule that covers intangible assets like goodwill, which requires accounting at historical cost less impairment.⁷ But this rule's reliance on historical cost has sometimes resulted in a significant mismatch between reported value and actual value. For example, bitcoin's value has increased by more than 250 percent in the last year. Without a rule change, GAAP financial reporting would not take into consideration that significant increase in value, leading to potential real-world problems, such as reduced borrowing

credit. With these practical issues in mind, the FASB set out to craft a solution outside of the tax legislative process for the purpose of better financial reporting.

Enter ASU 2023-08

Introduced on December 13, 2023, the new accounting rule requires corporations to measure cryptoassets at fair value each reporting period, with any increases or decreases in value recognized in net income.⁸ Crypto is therefore marked to market without any realization event. ASU 2023-08 is effective for fiscal years beginning after December 15, 2024, with early adoption permitted but not required.⁹

The FASB's official reason for issuing ASU 2023-08 is that by only taking value decreases into consideration, the prior rule did not provide investors, lenders, and creditors with "decision-useful" information.¹⁰ But with the walls between worlds down, the effective result is an unintended corporate AMT nightmare for large corporations with significant cryptoassets. By marking cryptoassets to market, unrealized gains resulting from the fluctuations of cryptoasset value will begin appearing on audited financial statements. In turn, unless an exception applies, these financial statements will generally inform the computation of the corporate AMT, causing the corporation to become an "applicable corporation" and thus subject to the new AMT at a rate of 15 percent. The new accounting rule can therefore result in a federal tax on crypto gains, despite no sale of the asset.

Treasury Ceding Power to FASB

Without any commentary from Treasury on the new accounting rule, it is not clear if Treasury has a position. In previously released notices, Treasury and the IRS have indicated that the treatment of unrealized gains and losses is being

³ FASB, "About the FASB" (last accessed Feb. 22, 2024).

⁴ Established in 1972, the Financial Accounting Foundation holds itself out as an independent private sector nonprofit that oversees and administers the FASB and its government accounting counterpart, the Governmental Accounting Standards Board. See FASB, *id.*

⁵ *Id.*

⁶ FASB, "Welcome to the Accounting Standards Codification" (last accessed Feb. 22, 2024).

⁷ *Id.* at para. 350-20.

⁸ ASU No. 2023-08, at 10-11.

⁹ *Id.* at 4.

¹⁰ *Id.* at 1.

considered, but there is no indication of the intended approach yet.¹¹

Nor is there any indication that taxing unrealized crypto gains was ever intended under the new tax law. The corporate AMT's statutory language is expressly industry- and asset-neutral. And in 2022 the Joint Committee on Taxation projected that, while approximately 150 corporate taxpayers would be subject to the corporate AMT each year, nearly half of those would be in the manufacturing industry, with chemical manufacturing representing the largest industry share.¹² The legislative history does not support that the corporate AMT was intended to target a specific asset class, nor does it support a taxwriting power shift from the federal government to the FASB.

While the FASB is likely finding itself unprepared for its consequential new role, a tax lobbying wave may form on the horizon once tax policy shops appreciate this shift of power and realize that the complicated world of lobbying restrictions and disclosures does not generally apply to lobbying the FASB. And in that world, tax lobbyists may be able to help the FASB craft

rules that support robust accounting and reporting while avoiding additional tax exposure.

What Happens Next?

At bottom, if Treasury fails to adequately address ASU 2023-08 or its implications in the forthcoming proposed corporate AMT regulations, public comments will be necessary to put Treasury on notice and invoke the protections of the Administrative Procedure Act.¹³ And even if Treasury proposes a corporate AMT exception that sidesteps the result provided by the new accounting rule, public comments supporting such a proposal will also be beneficial.

Corporations that do not hold cryptoassets should be as concerned as those that do. Book and wealth taxes are coming into fashion, and if these can completely pivot off a rule issued by a private entity without any consideration by the federal government, perhaps we should consider going back to when federal income tax world was separate from accounting world. Otherwise, the Capital Grille near the FASB headquarters in Stamford, Connecticut, may become just as hot a spot for lobbyists as the Capital Grille on Pennsylvania Avenue. Book your table now. ■

¹¹ See Notice 2023-7; Notice 2023-20, 2023-10 IRB 523 (Feb. 17, 2023); Notice 2023-42, 2023-26 IRB 1085 (June 7, 2023); Notice 2023-64, 2023-40 IRB 974 (Sept. 12, 2023); Notice 2024-10, 2024-2 IRB 406 (Dec. 15, 2023).

¹² See letter to Senate Finance Committee Chair Ron Wyden, D-Ore., from JCT Chief Thomas Barthold (Aug. 1, 2022).

¹³ The APA obligates agencies to "respond in a reasoned manner to [comments] that raise significant problems." *City of Waukesha v. EPA*, 320 F.3d 228, 257 (D.C. Cir. 2003). "Significant" comments to which an agency must respond include "those which raise relevant points and which, if adopted, would require a change in the agency's proposed rule." *American Mining Congress v. EPA*, 965 F.2d 759, 771 (9th Cir. 1992).

The Corporate AMT's Crypto Problem Has Constitutional Hazards

by Andrew Strelka and Angelina Richards

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The Corporate AMT's Crypto Problem Has Constitutional Hazards

by Andrew Strelka and Angelina Richards

Andrew Strelka and Angelina Richards are members of the tax department at Latham & Watkins LLP. Strelka has served in several federal government roles, most recently as senior tax counsel in the Biden administration.

In this article, Strelka and Richards examine the constitutional problems facing the corporate alternative minimum tax because of Treasury's failure to include an adjustment for cryptoassets in the recently released proposed corporate AMT regulations.

More than a century has passed since the 16th Amendment firmly established the assessment and collection of federal income taxes from sea to shining sea.¹ One might forget that the amendment was ratified in response to an 1895 Supreme Court ruling, which determined that an income tax was a direct tax necessitating apportionment among states based on population data.² Apportionment is an anachronistic function requiring that each state pay the implicated tax based on the state's proportionate population.³ The ruling effectively rendered a federal income tax unworkable until the 16th Amendment was enacted, removing the apportionment requirement for federal income taxes.

Fast-forward to the Supreme Court's summer ruling in *Moore*, in which two concurring opinions and a dissent round out a journey through Civil War-era taxation on the road to determining whether the mandatory repatriation tax can be

salvaged despite its imposition of an unapportioned tax on shareholders for undistributed income.⁴ The majority ultimately concluded that the mandatory repatriation tax passed muster through the introduction of an attribution doctrine.⁵ This doctrine allowed the Court to sidestep the question of whether income can exist absent a realization event. While the majority does not base its opinion on the question of realization, *Moore* sets the stage for how the corporate alternative minimum tax may be tested on constitutional grounds.

A problem concerning the corporate AMT's taxation of unrealized cryptoasset gains calls the new tax's constitutionality into question, as first discussed in *Tax Notes* in March.⁶ A recent accounting rule change requiring corporations to report unrealized crypto gains as financial statement income places cryptoassets in the direct path of the corporate AMT. Yet the recently released proposed corporate AMT regulations (REG-112129-23) are silent on the specific treatment of cryptoassets under the new tax.⁷ The failure to include an adjustment in the proposed regulations to remove unrealized crypto gains

¹U.S. Const. Amend. XVI.

²See *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429 (1895), *aff'd on rehearing*, 158 U.S. 601, 627-628 (1895). See also *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 570 (2012) (discussing direct tax apportionment based on state population).

³See *National Federation of Independent Business*, 567 U.S. at 570 (describing apportionment requirement).

⁴*Moore v. United States*, 144 S. Ct. 1680 (2024). In 2017, as part of a complex transition to a more territorial system, the Tax Cuts and Jobs Act imposed a one-time, backward-looking tax that targeted undistributed income of foreign corporations. The mandatory repatriation tax was codified under section 965. See IRC section 965; reg. section 1.965-0 through reg. section 1.965-9. In *Moore*, the Supreme Court found the tax to be consistent with income tax principles and held that it did not constitute a direct tax requiring apportionment because the tax base consisted of realized but undistributed income that was attributed to U.S. shareholders. *Moore*, 144 S. Ct. 1680.

⁵*Id.* at 1688-1689 (attributing the realized and undistributed income of an American-controlled foreign corporation to the entity's American shareholders).

⁶Andrew Strelka, "Corporate AMT's Shadow Grows as FASB Goes Mark-to-Market," *Tax Notes Federal*, Mar. 18, 2024, p. 2231.

⁷See REG-112129-23.

from adjusted financial statement income places the entire regime in constitutional jeopardy.

What Does *Moore* Say?

Moore summarizes three fundamental constitutional taxation principles:

- Direct taxes are taxes imposed on persons or property and must be apportioned among the states by population. It appears that Congress has not enacted an apportioned direct tax since the Civil War.
- Indirect taxes are imposed on activities or transactions and must be uniform throughout the country.
- Income taxes are indirect taxes, and the 16th Amendment confirms that they need not be apportioned among the states by population.⁸

The Crypto Problem

The corporate AMT's issue with cryptoassets stems from the fact that Congress writes the tax code but not the accounting rules on which the corporate AMT finds its tax base. In the United States, the Financial Accounting Standards Board, a private organization that sets financial accounting and reporting standards under generally accepted accounting principles drafts those rules.⁹ GAAP accounting is widely adopted in the United States and is required to be used by public companies listed with the SEC.

In December 2023 the FASB published an update to its GAAP rules to improve the accounting and disclosure of cryptoassets. Under Accounting Standards Codification 2023-08, "Accounting for and Disclosure of Crypto Assets (ASU 2023-08)," corporations must generally recognize changes in the fair value of cryptoassets on their income statements.¹⁰ For corporations subject to corporate AMT taxation, this accounting rule change results in a direct tax imposed on cryptoassets.

⁸ *Moore*, 144 S. Ct. at 1687 (referencing Article I).

⁹ The FASB is overseen and administered by the Financial Accounting Foundation, a nonprofit established in 1972. See FASB, "About the FASB" (2024).

¹⁰ See generally FASB, "Accounting Standards Update No. 2023-08, Intangibles — Goodwill and Other Crypto Assets (Subtopic 350-60)" (Dec. 2023).

In *Moore*, the Supreme Court saved the mandatory repatriation tax by labeling it an income tax — jumping through the intellectual hoop of attributing realized income from one entity to another. No such scenario exists that would attribute realized income to crypto, an asset that the IRS treats as property.¹¹ And while the Supreme Court remains divided over whether federal income taxation requires realization,¹² its views on direct taxes are clear. Direct taxes include taxes on personal property and must be apportioned among the states under Article I.¹³

Thus, unless unrealized crypto gains are removed from adjusted financial statement income in the final regulations, Treasury will force its new tax into Civil War-era constitutional scrutiny.

Restoring Congressional Intent

Notably, the legislative discussions and documents concerning the enactment of the corporate AMT and the Inflation Reduction Act do not focus on the realization principle as a central theme or on the taxation of unrealized property gains generally. From the outset, the corporate AMT's design has focused on ensuring that the largest corporations face tax obligations that are not excessively reduced by tax deductions disproportionate to their financial accounting income. The treatment of realized-vs.-unrealized income under the U.S. federal income tax system was never contemplated as a goal of the corporate AMT, and it was not a topic of discussion during the drafting or enactment of the bill.¹⁴

¹¹ See Notice 2014-21, 2014-16 IRB 938.

¹² Justice Ketanji Brown Jackson's concurrence in *Moore* states that the issue is undecided, while Justices Amy Coney Barrett, Samuel Alito, Clarence Thomas, and Neil Gorsuch argue in the concurrence and dissent that federal income taxation may not tax unrealized sums. *Moore*, 144 S. Ct. at 1699-1700, 1709.

¹³ *National Federation of Independent Business*, 567 U.S. at 571 (citing *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. at 618).

¹⁴ The corporate AMT was originally proposed as a primary revenue raiser in the Biden White House's Build Back Better proposal, which was publicly released October 28, 2021. See White House release (Oct. 28, 2021) ("In 2019, the largest corporations in the United States paid just 8 percent in taxes, and many paid nothing at all. President Biden believes this is fundamentally unfair. The Build Back Better framework will impose a 15 percent minimum tax on the corporate profits that large corporations — those with over \$1 billion in profits — report to shareholders. This means that if a large corporation says it is earning a billion dollars, then it can't avoid paying taxes.").

Indeed, the Joint Committee on Taxation's early analysis of the new tax estimated that the corporate AMT would tax approximately 150 corporate taxpayers — nearly half in the manufacturing industry.¹⁵ This focus on 150 corporate AMT taxpayers was repeated several times during the legislative process without any mention of taxing unrealized income or an intended distinction between domestic and international accounting standards.¹⁶

For accounting standards, the corporate AMT finds its tax base in both GAAP-generated financial statements and statements prepared in accordance with international financial reporting standards.¹⁷ When Congress enacted the Inflation Reduction Act, neither accounting framework recognized unrealized gains on cryptoassets as part of income:

- Under IFRS, entities that do not trade cryptocurrency as part of their normal business operations must use International Accounting Standard 38 to report cryptoassets in their financial statements.¹⁸ This standard dictates that any increase in the fair value of the asset beyond its historical cost counts as other comprehensive income.¹⁹ During the legislative process for the Inflation Reduction Act, Senate Finance Committee Chair Ron Wyden, D-Ore., explicitly stated

that other comprehensive income does not count as financial statement income for corporate AMT purposes.²⁰

- As for GAAP, at the time of the corporate AMT's enactment, the FASB had not yet published ASU 2023-08, the rule requiring unrealized crypto gains to be reported in income. Under the former accounting treatment, companies recorded cryptoassets at cost and then tested those assets for impairment.²¹ In other words, a company could realize a loss on the value of a cryptoasset on its financial statement, but any increase in the value of a cryptoasset would not be reported as income on financial statements.

Stated plainly, when Congress designed the corporate AMT, a tax on income reported on financial statements,²² those financial statements did not include unrealized increases in the value of cryptocurrencies. But unless an adjustment is made to remove unrealized crypto gains from adjusted financial statement income, the corporate AMT will deviate significantly from the accounting rules it was built on.²³

Treasury Can Fix This

Taxing unrealized crypto gains was never the intent of the corporate AMT. And to do so would seemingly risk categorization of the corporate AMT as a direct tax on property under Article I, requiring the tax to be apportioned among the states. The apportionment requirement, though not implicated for quite some time, is a

¹⁵ See letter from Joint Committee on Taxation chief of staff Thomas A. Barthold to Senate Finance Committee Chair Ron Wyden, D-Ore. (Aug. 1, 2022).

¹⁶ See letter from Congressional Budget Office Director Phillip L. Swagel to Sen. Lindsey Graham, R-S.C. (Aug. 4, 2022); 117 Cong. Rec. H7653-H765 (daily ed. Aug. 12, 2022) (Statement from Rep. Sheila Jackson Lee, D-Texas: "This would apply to about 150 corporations that average nearly \$9 billion in profit, but which paid effective tax rates of just 1.1 percent."); (Statement from Rep. Troy A. Carter, D-La.: "We can achieve this goal by strengthening IRS enforcement against wealthy tax cheats and closing tax loopholes exploited by the wealthiest few 150 massive corporations.").

¹⁷ Section 55(b)(2)(A)(i) (adjusted financial statement income is determined under section 56A); section 56A(b) (applicable financial statement is defined by section 451(b)(3)); section 451(b)(3) (applicable financial statement includes both statements prepared in accordance with GAAP and IFRS).

¹⁸ International Accounting Standards Board, "Request for Information Third Agenda Consultation," 34-35 (Mar. 2021); IASB, "Holdings of Cryptocurrencies" (June 2019).

¹⁹ IASB, "Request for Information Third Agenda Consultation," *supra* note 18; IASB, "Holdings of Cryptocurrencies" *supra* note 18.

²⁰ 117 Cong. Rec. S4166 (daily ed. Aug. 6, 2022) (statement from Wyden: "For purposes of the corporate minimum tax, Other Comprehensive Income is not included in financial statement income.").

²¹ FASB board meeting handout, "Accounting for Exchange-Traded Digital Assets and Commodities" (May 11, 2022).

²² See 117 Cong. Rec. S4166 (daily ed. Aug. 6, 2022) (statement from Sen. Benjamin L. Cardin, D-Md., clarifying whether the corporate AMT is based only on financial statement income).

²³ Accounting rules are not static, and there is no statutory or proposed regulatory limitation that would prevent the corporate AMT from pivoting wildly on the adoption of new or modified accounting rules by the FASB. We note that this arrangement, which seems to effectively place the FASB in control of the corporate AMT, may implicate the nondelegation doctrine, which has its roots in the separation-of-powers principles, and it is implied in Article I. By failing to make an adjustment for unrealized crypto gains, Treasury would effectively let the tax base for the corporate AMT be determined by a postenactment accounting rule designed by a private party, presenting significant separation-of-powers considerations.

fundamental principle of U.S. taxation. As stated by Justice Samuel Chase, a Founding Father:

The great object of the constitution was, to give congress a power to lay taxes adequate to the exigencies of government; but they were to observe two rules in imposing them, namely, the rule of uniformity, when they laid duties, imposts or excises; and the rule of apportionment, according to the CENSUS, when they laid any direct tax.²⁴

Because GAAP now requires corporate taxpayers to account for unrealized crypto gains in income statements, taxpayers subject to the corporate AMT will generally be subject to a direct tax on property. Fortunately, the seemingly anachronistic requirement of allocating the corporate AMT state by state can be avoided by simply removing unrealized crypto gains from adjusted financial statement income in the final regulations. ■

²⁴ *Hylton v. United States*, 3 U.S. 171, 173 (1796).

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