



November 12, 2023

Via electronic submission to www.regulations.gov (IRS – REG-122793-19)

United States Department of the Treasury
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Re: “Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions” (RIN 1545-BP71)

To Whom It May Concern:

We respectfully submit this letter on behalf of the Wall Street Blockchain Alliance (“WSBA”), in response to the United States Department of the Treasury, Internal Revenue Service, regarding the above noted Proposed Rulemaking. This letter reflects the views of select persons of our member-based organization, and only in our individual capacities, which may not reflect the views of our respective organizations.

The WSBA is an industry-leading non-profit trade association based in New York City, with a mission to guide and promote the comprehensive adoption of blockchain technology and digital assets across global markets in a manner that complies with all applicable laws and regulations. The WSBA is structured into Working Groups that, in turn, coordinate the collaboration of leaders across industries and professions to fulfill the WSBA’s mission. The WSBA membership encompasses a wide variety of organizations and roles, including, banks, broker-dealers, investment firms, law firms, accounting firms and compliance professionals, all of whom are deeply familiar with and appreciative of laws and regulations relating to blockchain technologies and digital assets.

The industry debate and comments submitted regarding the above noted proposed rulemaking are already numerous, so our submission will instead focus on several key areas we collectively feel are deserving of additional consideration and/or emphasis. These include, but are not limited to, the following:

1. Although certain exclusions to the proposed rulemaking do exist, namely the exclusion of distributed ledger validations operating under a proof-of-work or proof-of-stake consensus

protocol as well as hosted wallets that solely hold and/or transfer assets on behalf of customers, the proposed rulemaking still creates an overly broad definition of a digital asset broker.

2. The proposed rulemaking does not specify whether a loan of a digital asset is required to be reported, or if transactions involving “liquidity pools” would be covered by this proposed rulemaking.
3. The proposed rulemaking seems to indicate inconsistent reporting requirements regarding certain subsets of digital assets. Specifically, non-fungible tokens (NFTs) which have already been subject to additional proposed rules related to look-through assessments, remain subject to inconsistent treatment as the proposed rulemaking is currently written.
4. The proposed rulemaking provides no exemption from reporting for digital transactions whose sole purpose is to facilitate clearing, processing, or other settlement functions. Given the rapid expansion into tokenized transactions by financial institutions, this not only inconsistent, but also not adaptive enough for future industry developments.
5. The proposed rulemaking appears to still have the intent to force decentralized exchanges, automated market makers and aggregators (“Decentralized Platforms”) to collect and report a wide array of information on platform or network users, including, but not limited to, performing AML/KYC process. These requirements have no de minimis exemption and do not exclude transactions based on the value of any digital asset. Given the profound difficulties that would be associated with data collection and reporting, including cross-jurisdictional legal and compliance considerations, from Decentralized Platforms, we believe that this position is not practical and may lead to unintended consequences such as reporting errors and customer privacy/confidentiality violations.
6. The proposed rulemaking does not offer an exclusion for stablecoins backed by fiat currencies, which seems to work contrary to market developments, namely the development of stable tokens by TradFi institutions such as PayPal and proposed projects such as the Wyoming stable token¹.
7. Real estate transactions appear to be another area where inconsistent treatment has been written into the proposed rulemaking. Tokenized real estate, under the current proposed rulemaking, would be subject to the same requirements as non-tokenized real estate, even

¹ <https://wyoleg.gov/Legislation/2023/SF0127>



if no other material differences exist. This will also place additional burden on reporting of Section 1031 exchanges by settlement agents.

8. Very limited guidance has been provided as to how the IRS will use the large volume of information collected via these reporting requirements. With the rise of artificial intelligence and other innovations used in tax analytics, this lack of clarity in the proposed rulemaking is worth further analysis and discussion.
9. The proposed rulemaking provides little to no guidance as to how these proposed rules would interoperate with proposed rules coming out from the Organisation for Economic Co-operation and Development (OECD), specifically the Crypto Asset Reporting Framework². This lack of guidance and transparency could unnecessarily complicate reporting and filing for crypto investors and the accounting professionals that service them.
10. Starting in 2023, third-party payment networks are required to submit Form 1099-K to the IRS and furnish a corresponding copy to the taxpayer if the gross payment surpasses \$600. It is not clear how, from the proposed rulemaking, these new reporting requirements would apply for transactions involving peer-to-peer payment platform or digital wallets; and, more specifically if certain transactions would have to be reported more than once.

Thank you for your consideration and for the opportunity to submit this response. We would be happy to provide further information and commentary if needed.

Respectfully Submitted,

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² <https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.pdf>