

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Parts 1, 31, and 301**

[REG–122793–19]

RIN 1545–BP71

**Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations regarding information reporting, the determination of amount realized and basis, and backup withholding, for certain digital asset sales and exchanges. Based on existing authority as well as changes to the applicable tax law made by the Infrastructure Investment and Jobs Act, these proposed regulations would require brokers, including digital asset trading platforms, digital asset payment processors, and certain digital asset hosted wallets, to file information returns, and furnish payee statements, on dispositions of digital assets effected for customers in certain sale or exchange transactions. These proposed regulations would also require real estate reporting persons, who are treated as brokers with respect to reportable real estate transactions, to include on filed information returns and furnished payee statements the fair market value of digital asset consideration received by real estate sellers in reportable real estate transactions. Additionally, these real estate reporting persons would also be required to file information returns and furnish payee statements with respect to real estate purchasers who use digital assets to acquire real estate in these transactions.

**DATES:** Written or electronic comments must be received by October 30, 2023. A public hearing on this proposed regulation has been scheduled for November 7, 2023, at 10 a.m. ET. If the number of requests to speak at the hearing exceed the number that can be accommodated in one day, a second public hearing date for this proposed regulation will be held on November 8, 2023. Requests to speak and outlines of topics to be discussed at the public hearing must be received by October 30, 2023. If no outlines are received by October 30, 2023, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5

p.m. ET on November 3, 2023. The public hearing will be made accessible to people with disabilities. Requests for special assistance during the public hearing must be received by 5 p.m. ET on November 2, 2023.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG–122793–19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish any comments submitted electronically or on paper to the public docket. Send paper submissions to: CC:PA:LPD:PR (REG–122793–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–122793–19), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations under sections 1001 and 1012, Kyle Walker, (202) 317–4718, or Harith Razaa, (202) 317–7006, of the Office of the Associate Chief Counsel (Income Tax and Accounting); concerning the international sections of the proposed regulations under sections 3406 and 6045, John Sweeney or Alan Williams of the Office of the Associate Chief Counsel (International) at (202) 317–6933, and concerning the remainder of the proposed regulations under sections 3406, 6045, 6045A, 6045B, 6050W, 6721, and 6722, Roseann Cutrone of the Office of the Associate Chief Counsel (Procedure and Administration) at (202) 317–5436 (not toll-free numbers). Concerning submissions of comments and requests to participate in the public hearing, Vivian Hayes at [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred) or at (202) 317–5306 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

These proposed regulations extend the information reporting rules in § 1.6045–1 to brokers who, in the ordinary course of a trade or business, act as agents, principals, or digital asset middlemen for others to effect sales or exchanges of digital assets for cash, broker services, or property of a type that is subject to reporting by 5

brokers (including different digital assets, securities, and real estate) under section 6045 of the Internal Revenue Code (Code) or effect on behalf of customers payments of digital assets associated with payment card and third party network transactions subject to reporting under section 6050W of the Code. These proposed regulations also clarify that the definition of *broker* for purposes of section 6045 includes digital asset trading platforms, digital asset payment processors, certain digital asset hosted wallet providers, and persons who regularly offer to redeem digital assets that were created or issued by that person. In addition, these proposed regulations would require real estate reporting persons to report on real estate purchasers who use digital assets to acquire real estate in a reportable real estate transaction and extend the information that must be reported under § 1.6045–4 with respect to sellers of real estate to include the fair market value of digital assets received by sellers in exchange for real estate. Additionally, in the case of a transaction involving the exchange of digital assets for goods (other than digital assets) or services, these proposed regulations treat the provision of the goods or services as reportable under section 6050W and the disposition of the digital assets as reportable under proposed § 1.6045–1 and not under section 6050W. These proposed regulations also provide that exchanges of digital assets for property or services are generally not reportable as barter exchange transactions under the existing rules under § 1.6045–1(e). Finally, these proposed regulations provide specific rules under section 1001 for determining the amount realized in a sale, exchange, or other disposition of digital assets and under section 1012 for calculating the basis of digital assets.

These proposed regulations concern Federal tax laws under the Internal Revenue Code only. No inference is intended with respect to any other legal regime, including the Federal securities laws and the Commodity Exchange Act, which are outside the scope of these regulations.

*I. Background on Digital Assets and Virtual Currency*

Digital assets are digital representations of value that use cryptography to secure transactions that are digitally recorded using distributed ledger technology on a distributed ledger, such as a blockchain or similar technology. Digital assets do not exist in physical form. Depending on the particular digital asset, individual units of a digital asset may be referred to as

coins or tokens. Some digital assets are referred to as virtual currency or as cryptocurrency.

Virtual currency is defined in Notice 2014–21, 2014–16 I.R.B. 938 (April 14, 2014) (Notice 2014–21 or Notice), for Federal income tax purposes as a digital representation of value that functions as a medium of exchange, a unit of account, or a store of value other than the U.S. dollar or a foreign currency (fiat currency). The Notice provides that convertible virtual currency (that is, virtual currency that has an equivalent value in real currency or that acts as a substitute for real currency) is treated as property for Federal income tax purposes.

A digital asset account or wallet generally provides its owner or custodian with the ability to store the public and private keys to digital asset holdings. These keys are required to conduct transactions with the digital assets associated with those keys and thus to control the ability to transfer those digital assets. References in this preamble and these proposed regulations to an owner holding digital assets generally or holding digital assets in a wallet or account are meant to refer to holding or controlling, whether directly or indirectly through a custodian, the keys to the digital assets and, thus, the ability to transfer those digital assets.

Some wallets may provide additional or different capabilities beyond storing keys. Wallets can be digital (software) or physical (hardware) and can be connected to the internet (hot) or disconnected from the internet (cold). Wallets can be custodial (hosted) or non-custodial (unhosted). Unhosted wallets are sometimes referred to as self-hosted or self-custodial wallets. Some owners use the services of a hosted wallet provider that stores their public and private keys. A hosted wallet provider may also maintain balance information, provide cybersecurity services, and facilitate the owners' ability to own, and conduct transactions using, digital assets. These services may also include providing owners with online platforms that directly link owners to third party services that allow owners to buy and sell digital assets held in their hosted wallets. Other owners do not use the services of a hosted wallet provider and instead store private keys in a software program or written record, often referred to as an unhosted wallet. In general, only the user of an unhosted wallet has access to both the public and private keys necessary to effect transactions in the digital assets associated with those keys. Additionally, some providers of

unhosted wallets also provide their unhosted wallet users with online platform services, which may include links or other mechanisms for direct access to third party services that allow users to buy and sell digital assets held in their unhosted wallets.

A person that operates a trading platform or website that allows users to exchange digital assets in return for different digital assets or cash (meaning the U.S. dollar or foreign currency) is referred to in this preamble as a digital asset trading platform. Some digital asset trading platforms also offer hosted wallet services. In some circumstances, the custodial digital asset trading platform will match up buy and sell orders from separate users, whereas in other circumstances, the digital asset trading platform will settle users' orders using the digital asset trading platform's own account. In either circumstance, the digital asset trading platform could elect to require users to deposit with the trading platform the digital assets traded on the platform. Users typically pay these digital asset trading platforms a transaction fee (sometimes in digital assets). A custodial digital asset trading platform might often record its users' digital asset sale and exchange transactions on a centralized, omnibus ledger without also recording the transactions on the relevant distributed ledgers of the digital asset sold or exchanged. In other instances, however, the custodial digital asset trading platform might record user transactions directly on the distributed ledgers of the applicable digital assets involved in the transaction. These custodial digital asset trading platforms may provide users with valuations (in fiat currency) of the digital asset involved in these exchanges and keep records of each user's exchange activity.

Some digital asset trading platforms do not have access to the private keys and, therefore, do not take custody of their users' digital assets.<sup>1</sup> Owners of digital assets using these non-custodial trading platforms can buy, sell, and trade digital assets directly with others using automatically executing contracts (so-called smart contracts) to ensure that transactions are executed as agreed. For example, some peer-to-peer trading platforms facilitate transactions between owners of digital assets by matching

<sup>1</sup> Some digital asset trading platforms that do not claim to offer custodial services may be able to exercise effective control over a user's digital assets. See Treasury Department, *Illicit Finance Risk Assessment of Decentralized Finance* (April 2023), <https://home.treasury.gov/system/files/136/DeFi-Risk-Full-Review.pdf>. No inference is intended as to the meaning or significance of custody under any other legal regime, which are outside the scope of these regulations.

buyers and sellers without holding the funds or digital assets of buyers or sellers. Some peer-to-peer trading platforms use software that connects buyers and sellers, who then effect the desired transactions off the platform. Other non-custodial trading platforms use automated market maker (AMM) systems that rely on liquidity pools or liquidity providers to automatically facilitate buy and sell orders on a platform. Some non-custodial trading platforms involve persons (operators) who provide services beyond that provided by software that merely facilitates digital asset trading. For example, to enhance secure transactions, non-custodial trading platform operators might process a transaction by communicating (or providing software that will communicate) with the wallets of buyers and sellers. Operators of non-custodial trading platforms may charge fees for some or all of these services, which may also include advertising or other services closely related to the facilitation of sales of digital assets.

In addition to buying, selling, and exchanging digital assets, taxpayers can participate in an increasing number and type of transactions that involve digital assets. For example, taxpayers can purchase or enter into derivative transactions involving digital assets, such as options, regulated futures contracts, and forward contracts. Some digital asset owners also use digital assets to make payments, including to purchase goods or services from merchants or to pay taxes or other fees to government entities. Digital assets may also be used as payment in consideration for the purchase of real estate. These payment transactions can be made directly to the seller through the use of smart contracts that can execute a transaction without an intermediary party, or through an intermediary that can process payments in digital assets (digital asset payment processor). To effect payment transactions using digital assets, some digital asset payment processors will, for a fee, accept digital assets directly from payors in exchange for the payment of cash at predetermined exchange rates to payment recipients or will facilitate the transfer of the payor's digital assets as part of a payment transaction. In some instances, digital asset payment processors will instead direct payors to transfer the digital asset payment directly to payment recipients, who may have the right to exchange the received digital asset for cash with the digital asset payment processors at predetermined fixed exchange rates.

## II. Application of Existing Information Reporting Rules to Virtual Currency or Other Digital Assets

Notice 2014–21 provides guidance on the application of the current information reporting requirements when virtual currency is used to pay wages (requiring the filing of Forms W–2, *Wage and Tax Statement*), to make miscellaneous payments (requiring the filing of Forms 1099–MISC, *Miscellaneous Income*), and to settle third party network transactions (requiring the filing of Forms 1099–K, *Payment Card and Third Party Network Transactions*). The guidance provided by the Notice, however, focuses only on information reporting for virtual currency payments received by payees. The guidance does not address the information reporting requirements for income realized by persons who dispose of virtual currency or other digital assets. Although there are several existing information reporting provisions in the Code that do, or may, apply to dispositions of virtual currency and other digital assets, those provisions do not provide clear and comprehensive rules for consistent reporting of these dispositions.

### A. Sections 1001 and 1012

Section 1001 of the Code provides rules for determining the amount of gain or loss recognized in a sale or exchange transaction. Under section 1001(a), gain from the sale or other disposition of property equals the excess of the amount realized from the transaction over the adjusted basis of the property, and loss from the sale or other disposition of property equals the excess of the adjusted basis of the property over the amount realized. Section 1.1001–1(a) provides that “[e]xcept as otherwise provided in subtitle A of the Code, the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained.” These regulations do not specifically address the determination of gain or loss with respect to digital assets.

Section 1012 of the Code provides that the basis of property is the cost of the property. The existing regulations under section 1012 provide special rules regarding the calculation of basis for certain types of property. These regulations do not expressly address the calculation of basis for digital assets.

### B. Section 6041

Section 6041 of the Code requires any person who, in the course of a trade or

business, makes payments of \$600 or more that are deemed to be fixed or determinable income to file information returns, and furnish statements to the payee (payee statements), setting forth the amount of gains, profits, and income resulting from that payment and the name and address of the recipient of that payment. Published guidance states that the amount of gains, profits, or income resulting from a payment made in consideration for a capital asset is not fixed or determinable under section 6041 if the payor has no way of ascertaining the payee’s basis in that asset. *See*, for example, Rev. Rul. 80–22, 1980–1 C.B. 286 (January 21, 1980). Thus, a payor otherwise required to report on a payment made in exchange for digital assets is required to report the payee’s gain from that transaction under section 6041 if the payor has a way to ascertain the payee’s basis and if the gain (in addition to any other payments made by that payor to the payee during the calendar year) is equal to \$600 or more. Reporting under section 6041, however, does not apply to brokers with respect to payments made to customers. *See* § 1.6041–3(b). If a payment that is reportable under section 6041 is also subject to the information reporting rules under section 6050W, § 1.6041–1(a)(1)(iv) provides that the transaction must instead be reported under section 6050W.

### C. Sections 6045, 6045A, and 6045B

Section 6045 and the regulations thereunder require a person doing business as a broker to file information returns, and furnish payee statements, in accordance with regulations, for each customer for whom the broker has sold stocks, certain commodities, options, regulated futures contracts, securities futures contracts, forward contracts or debt instruments, in exchange for cash, showing each customer’s name and address, details regarding gross proceeds, the adjusted basis of certain categories of assets sold, and other information as the Secretary of the Treasury or her delegate (Secretary) may require by forms or regulations. Section 80603 of the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1339 (2021) (Infrastructure Act) made several changes to the broker reporting provisions under section 6045 to clarify the rules regarding how certain digital asset transactions should be reported by brokers, and to expand the categories of assets for which basis reporting is required to include all digital assets. These changes are discussed below in Part III of this *Background*. This Part II.C. of this *Background* discusses the rules in place

prior to the changes made by the Infrastructure Act.

The term broker is defined by section 6045(c)(1) to include a dealer, a barter exchange, and any other person who (for a consideration) regularly acts as a middleman with respect to property or services. The existing regulations under section 6045 (existing regulations), further refine the meaning of a broker. Under existing § 1.6045–1(a)(1), a broker is defined to mean “any person . . . , U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others.” The term effect, as defined under existing § 1.6045–1(a)(10), means either to act as a principal with respect to a sale (for example, a dealer in securities who buys a security from one customer and then sells that security to another customer) or to act as an agent with respect to a sale if the nature of the agency is such that the agent ordinarily would know the gross proceeds of the sale. Accordingly, the term broker for purposes of gross proceeds reporting includes persons that may not otherwise be considered to act as a broker, including certain securities custodians, escrow agents, and stock transfer agents. The term broker for this purpose also includes persons that are not custodians. For example, a non-custodial executing broker that acts as an agent for customers to effect sales of securities is included in this definition. Finally, an obligor that regularly issues and retires its own debt obligations and a corporation (such as a mutual fund described in existing § 1.6045–1(b) Example 1 (i)) that regularly redeems its own stock also are treated as brokers under existing § 1.6045–1(a)(1).

The term commodity is defined in existing § 1.6045–1(a)(5) to mean any type of personal property (or interest therein), the trading of regulated futures contracts in which has been approved by the Commodities Futures Trading Commission (CFTC). At the time existing § 1.6045–1(a)(5) was promulgated, affirmative CFTC approval was required to list new regulated futures contracts on a commodities exchange. Since that time, however, the CFTC has revised its approval procedures pursuant to the Commodity Futures Modernization Act (“CFMA”), Public Law 106–554, 114 Stat. 2763 (2000). The CFTC now also allows new contracts to be listed if the listing market self-certifies that the new contracts comply with the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, and the CFTC’s regulations. *See* CFTC, *Listing of New Contracts by Self-Certification*, <https://cftc.gov/IndustryOversight/>

*ContractsProducts/index.htm* and 17 CFR 40.2. Section 1.6045-1(a)(5) does not explicitly address whether digital assets, the trading of regulated futures contracts in which is permitted pursuant to the CFTC's self-certification procedures, are commodities subject to reporting.

For brokers required to file an information return with respect to the sale of a covered security, section 6045(g) requires that the return include the adjusted basis of the security and whether any gain or loss with respect to the security is long-term or short-term (adjusted basis reporting). With the exception of stock, covered securities are defined under section 6045(g)(3) as specified securities that are acquired on or after January 1, 2013, or such later date as determined by the Secretary. For stock to be included in the definition of *covered securities*, it must be acquired on or after either January 1, 2011, or January 1, 2012, depending on whether the average basis method is permissible with respect to the stock under section 1012. Under section 6045(g)(3)(B), specified securities generally include: (i) shares of corporate stock, (ii) notes, bonds, debentures, and other evidence of indebtedness, (iii) commodities, contracts, or derivatives with respect to commodities, if the Secretary determines that adjusted basis reporting is appropriate, and (iv) any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate. The existing regulations under section 6045 do not specifically include digital assets as a specified security.

Section 6045A of the Code generally requires applicable persons who transfer securities that are covered securities in the hands of those applicable persons to a broker (the receiving broker) to furnish to the receiving broker a written statement setting forth such information as the Secretary may by regulations require. Existing § 1.6045A-1(b) requires transfer statements to include the name of the person effecting the transfer, the receiving broker, the name and account number of the customer for whom the security is transferred, as well as information about the security itself, including the transfer date, the adjusted basis, and the original acquisition date of the security. Prior to amendments made by the Infrastructure Act, section 6045A did not address the extent to which these requirements applied to transfers of digital assets. These amendments are discussed below in Part III of this *Background*.

Section 6045B of the Code requires certain securities issuers to report to the IRS as well as to shareholders or their

nominees the effect on basis of certain organizational actions (such as a stock split, merger, or acquisition) that impact the basis of issued securities. These rules also do not explicitly address the reporting requirements with respect to digital assets.

Any organization with members or clients that contract with each other or with the organization to trade or barter property or services is a barter exchange under existing § 1.6045-1(a)(4). A barter exchange must file information returns, and furnish payee statements, with respect to the exchange of property or services by its members or clients. Property or services are considered exchanged through a barter exchange if payment is made by means of a credit on the books of the barter exchange or a scrip issued by the barter exchange, or if the barter exchange arranges a direct exchange of property or services between members. See existing § 1.6045-1(e)(2).

Section 6045(e) requires real estate reporting persons to file information returns, and furnish payee statements, including the seller's name and address, the gross proceeds paid to the seller, and other information as the Secretary may require by forms or regulations with respect to certain real estate transactions. A real estate reporting person is defined in section 6045(e)(2) to mean the person responsible for closing the transaction or, if no such person exists, the mortgage lender, the transferor's broker, the transferee's broker, or the person designated by the Secretary pursuant to regulations. Real estate reporting persons are treated as brokers under section 6045(e)(2) for purposes of the reporting obligations under section 6045. An exception to this real estate reporting rule is made for real estate reporting persons who rely on seller certifications setting forth written assurances in compliance with Rev. Proc. 2007-12, 2007-1 C.B. 357 (January 22, 2007), that the real estate being sold is the seller's principal residence and the full amount of the gain on the sale or exchange of the principal residence is excludable from gross income under section 121 of the Code, which generally permits individuals to exclude from gross income gain up to \$250,000 (and married individuals filing joint returns gain up to \$500,000) on the sale or exchange of a principal residence if certain conditions are met. Section 1.6045-4(i) also limits gross proceeds reporting required under section 6045(e) to cash received and cash to be received (also referred to in the existing regulations as consideration treated as cash) by or on behalf of the real estate seller in connection with the real estate

transaction. As a result, these rules do not require the reporting of payments using digital assets made to real estate sellers in partial or full consideration for the sale of real estate, except to the extent that a digital asset falls within the definition of *consideration treated as cash* under existing § 1.6045-4(i)(1).

The definition of *broker* in existing regulations generally excludes a person described as a non-U.S. payor or non-U.S. middleman under § 1.6049-5(c)(5) with respect to a sale that is effected by the broker on behalf of a customer at an office outside the United States. Additionally, under existing regulations, regardless of a broker's status as U.S. or non-U.S. broker, a broker is not required to file an information return under section 6045 with respect to a sale for a customer whom the broker may treat as an exempt foreign person based primarily on documentation requirements that depend on whether the sale is effected at an office of the broker inside or outside the United States.<sup>2</sup> Generally, the effect of these rules is that non-U.S. securities brokers (other than controlled foreign corporations (CFCs) and a limited class of other brokers with U.S. activities, such as U.S. branches of foreign brokers) are not required to report information to the IRS on their customers, and that both U.S. and non-U.S. securities brokers are not required to report information to the IRS on non-U.S. customers under section 6045.

#### D. Section 6050W

Section 6050W requires payment settlement entities to file information returns, and furnish payee statements, with respect to each participating payee to whom they have made one or more payments in settlement of reportable payment transactions. Payment settlement entities are merchant acquiring entities, which are banks or other organizations that are contractually obligated to make payments to participating payees in settlement of payment card transactions, and third party settlement organizations (TPSOs). TPSOs are central organizations that are contractually obligated to make payments to participating payees with respect to third party network transactions for the purchase of goods or services sold through a third party payment network.

Payments by TPSOs to settle third party network transactions are required to be reported only if they exceed a *de*

<sup>2</sup> See Part I.L.4 of the Explanation of Provisions footnote 5 regarding the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*) and the Financial Crimes Enforcement Network's (FinCEN) implementing regulations thereunder.

*minimis* threshold. Section 9674(a) of the American Rescue Plan Act of 2021, Public Law 117–2, 135 Stat. 4, 185 (ARP), lowered and modified this threshold for calendar years beginning after December 31, 2021. Under the prior threshold, payments by TPSOs to settle third party network transactions were required to be reported only if the aggregate number of transactions with a payee exceeded 200 and the aggregate amount to be reported with respect to those transactions exceeded \$20,000 for a calendar year. Under the ARP provision, TPSOs must report third party network transactions with any participating payee that exceed a minimum threshold of \$600 in aggregate payments, regardless of the aggregate number of these transactions. The rules under section 6050W, however, do not expressly address whether exchanges of digital assets for cash, services, or property effected through TPSOs are subject to reporting under section 6050W or whether the information reporting provisions under section 6045 would apply to such exchanges.

### III. Infrastructure Investment and Jobs Act

Section 80603 of the Infrastructure Act clarifies and expands the rules regarding how digital assets should be reported by brokers under sections 6045 and 6045A to improve IRS and taxpayer access to gross proceeds and adjusted basis information when taxpayers dispose of digital assets in transactions involving brokers. First, section 80603(a) of the Infrastructure Act clarifies the definition of *broker* to include any person who, for consideration, is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person. Second, section 80603(b)(1) of the Infrastructure Act modifies the definition of *specified securities* under section 6045(g) to explicitly include digital assets and to provide that these specified securities are treated as covered securities for purposes of basis reporting if they are acquired on or after January 1, 2023. Third, section 80603(b)(1)(B) of the Infrastructure Act defines a digital asset broadly to mean any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary, except as otherwise provided by the Secretary. Fourth, section 80603(b)(2) of the Infrastructure Act clarifies that transfer statement reporting under section 6045A(a) applies to covered securities that are digital assets, and also adds a new information reporting

provision under section 6045A(d) to provide for broker reporting on transfers of digital assets that are covered securities, provided the transfer is not a sale and is not to an account maintained by a person that the broker knows or has reason to know is also a broker. Section 80603(c) of the Infrastructure Act provides that these amendments apply to returns required to be filed, and statements required to be furnished, after December 31, 2023. Finally, section 80603(d) of the Infrastructure Act provides a rule of construction which states that these statutory amendments shall not be construed to create any inference for any period prior to the effective date of the amendments with respect to whether any person is a broker under section 6045(c)(1) or whether any digital asset is property which is a specified security under section 6045(g)(3)(B).

### IV. Reasons for New Information Reporting Rules for Digital Assets

Digital assets have grown in popularity as both a payment method and an investment or trading asset. Proponents believe that digital assets may offer potential benefits over traditional fiat currencies, such as lower transaction costs and faster transaction speeds. Digital assets may also be popular, however, because the distributed ledger record of transactions does not include the identity of the parties involved in the transactions. This pseudonymity creates a significant risk to tax administration.

Digital assets are increasingly common in ordinary course transactions of a type that may be subject to information reporting if carried out using fiat currency or traditional financial assets. For example, several payment processors and credit card issuers that handle large volumes of payments now facilitate payments made using digital assets. Taxpayers can buy and sell digital assets directly or invest in digital assets through investment funds. Taxpayers can also trade derivatives, including futures and option contracts, on digital assets. A number of traditional financial institutions are offering, or have announced plans to offer, custody and trading services with respect to digital assets for institutional investors. In addition, some institutions are converting, or tokenizing, stock and security ownership interests into digital tokens. These tokenized stock and security interests trade on some digital asset trading platforms, and other trading platforms offer unique digital assets referred to as non-fungible tokens (NFTs) for sale in exchange for cash or

other digital assets. Transactions of these kinds by U.S. taxpayers may take place either on U.S. custodial or non-custodial trading platforms or with U.S. financial intermediaries, or on foreign custodial or non-custodial trading platforms or with foreign financial intermediaries.

According to the Government Accountability Office (GAO), limits on third party information reporting to the IRS is an important factor contributing to the tax gap, which is the difference between taxes legally owed and taxes actually paid. GAO, *Tax Gap: Multiple Strategies Are Needed to Reduce Noncompliance*, GAO–19–558T at 6 (Washington, DC: May 9, 2019). Third party information reporting generally leads to higher levels of taxpayer compliance because the income earned by taxpayers is made transparent to both the IRS and taxpayers (who will use the furnished information to avoid both inadvertent errors and intentional misstatements). With third party information reporting that specifically identifies digital asset transactions, the IRS could more easily identify taxpayers with digital asset transactions that are otherwise difficult to discover. An information reporting regime requiring reporting to the IRS on digital asset transactions would benefit tax compliance by helping to close the information gap with respect to digital assets. See TIGTA, Ref. No. 2020–30–066, *The Internal Revenue Service Can Improve Taxpayer Compliance for Virtual Currency Transactions*, 10 (Sept. 2020); GAO, *Virtual Currencies: Additional Information Reporting and Clarified Guidance Could Improve Tax Compliance*, 28, GAO–20–188 (Washington, DC: Feb. 2020). In addition to the loss of information with respect to the recipients of digital asset payments that the IRS otherwise might receive if these transactions were carried out using fiat currency or traditional investment assets, these transactions give rise to a separate tax compliance concern because the disposition of digital assets is itself a taxable event that may give rise to gain or loss to the transferor that is reportable on a tax return. Existing information reporting rules do not specifically address how certain transactions involving digital assets must be reported to the party who disposes of the digital assets in exchange for cash, services, stored-value cards, or other property (including different digital assets).

Expanding information reporting for digital assets also benefits taxpayers. First, taxpayers use information provided to them by brokers to prepare their tax returns. The lack of such

information reporting for digital assets may make it difficult for taxpayers to properly track and report their gain or loss from dispositions of digital assets. Publicly available information indicates that this gap is being filled in part by voluntary tax reporting to customers by some digital asset platforms, and by digital asset tax service providers, including providers of tax software, who charge for the preparation of tax information. The existence of these services illustrates the benefits of information reporting to taxpayers because the same information that is reported by brokers to the IRS on dispositions of digital assets must also be furnished by brokers to their customers. A second benefit to taxpayers from information reporting is that it enables the IRS to focus its audit efforts on taxpayers who are more likely to have underreported their income from digital asset transactions.

Consequently, tax compliance would be increased if brokers, including digital asset trading platforms, digital asset payment processors, certain digital asset hosted wallet providers, and persons who regularly offer to redeem digital assets that were created or issued by that person, were required to file information returns, and furnish payee statements, under section 6045 with respect to digital asset dispositions in exchange for cash, broker services, or other property the sale of which is separately subject to reporting under section 6045 or with respect to transactions that are subject to reporting (with respect to the digital asset recipient) under section 6050W. Thus, for example, a digital asset trading platform, including an operator of a peer-to-peer or AMM trading platform, that facilitates a digital asset sale on behalf of a customer should be required to file an information return, and furnish a payee statement with respect to that sale, reporting the gross proceeds realized by the customer as a result of that sale. In addition, reporting should be required by digital asset payment processors who facilitate the use of digital assets to make payments of cash to others by either effecting the sale of digital assets on behalf of the person making payment (and paying the cash to the payment recipient) or by agreeing with the recipient of a digital asset payment in advance of the payment to exchange the digital assets received by that recipient for cash at a predetermined exchange rate. Further, digital asset payment processors who facilitate payments that are potentially subject to reporting under the existing section 6050W regulations should be

required to report on the payor's exchange of digital assets in those transactions as well. Additionally, a stockbroker who accepts digital assets from a customer as payment for the customer's purchase of stock should be required to file an information return, and furnish a payee statement, reporting the gross proceeds realized by the customer as a result of that customer's exchange of digital assets for stock. Reporting should also be required in this example if the broker accepts digital assets in exchange for the broker's services (for example, transaction fees or commissions). Finally, to facilitate the filing by taxpayers of accurate information returns with respect to digital asset dispositions, substantive rules are needed for determining gain or loss in a digital asset sale or exchange transaction and for calculating the basis of digital assets.

### Explanation of Provisions

The Treasury Department and the IRS expect to make the changes to broker reporting for digital assets in multiple phases. These proposed regulations generally focus on changes to existing § 1.6045-1 to require brokers to report on digital asset sales. Later phases will generally focus on implementing transfer statement reporting under section 6045A(a) and broker information reporting under section 6045A(d) for covered security transfers that are not transfers to accounts maintained by persons known to be brokers or subject to reporting as sales.

#### I. Proposed § 1.6045-1

These proposed regulations generally follow the framework and concepts of the existing rules for broker information reporting but differ from those rules as necessary to reflect both the unique nature of digital assets and the clarifications and changes made to section 6045 by the Infrastructure Act. These proposed regulations do not address every transaction involving digital assets that may give rise to income, such as the receipt of digital assets in hard forks, because it is more appropriate to address those transactions under other provisions of the Code.

#### A. Expansion of the Types of Property Subject to Reporting

Under existing § 1.6045-1(a)(9), brokers are generally required to file an information return for each sale effected on behalf of a customer. A disposition is treated as a sale subject to reporting only if the property disposed of is a security, commodity, option, regulated futures contract, securities futures

contract, or forward contract and the disposition is for cash. These proposed regulations provide that reporting under section 6045 is also required for certain dispositions of digital assets that are made in exchange for cash, different digital assets, stored-value cards, broker services, or property subject to reporting under existing section 6045 regulations.

### 1. Definition of Digital Assets

The definition of *digital assets* in these proposed regulations follows the definition in section 80603(b)(1)(B) of the Infrastructure Act. Specifically, proposed § 1.6045-1(a)(19)(i) defines a *digital asset* as a digital representation of value that is recorded on a cryptographically secured distributed ledger (or similar technology). These proposed regulations also provide that a digital asset does not include cash, for example, a fiat currency in digital form such as funds in a bank or payment processor account accessed through the internet. In addition, under these proposed regulations, the determination of whether an asset is a digital asset is made without regard to whether each individual transaction involving that digital asset is actually recorded on the cryptographically secured distributed ledger. The use of cryptography, through the use of public and private keys to transfer assets, distinguishes digital assets as defined by the Infrastructure Act from other virtual assets and is therefore an essential part of the definition.

By not limiting the definition of *digital assets* to only those digital representations of value for which each transaction is actually recorded or secured on a cryptographically secured distributed ledger, the definition of *digital assets* covers transactions involving digital representations of value that are recorded by a broker only on its own centralized internal ledger. For example, a broker may hold a number of units of a digital asset in its own name, similar to holding shares of stock in street name, and carry out transactions between customers that wish to buy or sell units of that digital asset by first matching transactions internally and executing only net purchases or sales on the distributed ledger. Additionally, the definition covers transactions involving digital representations of value that are recorded on ledgers that may or may not be widely or publicly distributed.

The definition of *digital assets* includes digital representations of value that are capable of being recorded using technology that is similar to technology that uses cryptography to secure transactions. These proposed

regulations include this similar technology standard to ensure that the definition of *digital assets* captures digital representations of value that reflect advancements to the techniques, methods, and technology, upon which digital assets are based.

Section 80603(b)(1)(B) of the Infrastructure Act provides authority to the Secretary to modify the definition of *digital assets* for purposes of reporting under section 6045. The Treasury Department and the IRS considered applying these regulations to only virtual currency or a variant thereof rather than to all digital assets. The Treasury Department and the IRS also considered whether newer forms of digital assets, such as those referred to as stablecoins or NFTs, should be subject to the section 6045 broker reporting rules. The proposed regulations would require broker reporting for all types of digital assets, for multiple reasons. First, the definition of *digital assets* in the Infrastructure Act is expansive. Second, because the disposition of digital assets may give rise to gain or loss, reporting of gross proceeds and basis information is useful to taxpayers as well as the IRS. For example, some NFTs are readily being bought and sold, often as speculative investments on digital asset trading platforms, giving rise to gain or loss that is subject to reporting by taxpayers. The Treasury Department and the IRS are aware of concerns that applying these proposed regulations to such NFTs would create disparate reporting of transactions involving the subject of the NFT (such as ownership or license interests in artwork or sports memorabilia) depending on whether those interests are transferred using an NFT or as a traditional sale or license contract. But given that NFTs are popular investments, the buying and selling of NFTs raise tax administration concerns similar to the concerns associated with other types of digital assets that the physical analogues of NFTs do not. For example, like other digital assets, NFTs can readily be transferred to a private wallet or an offshore account, while the transfer of a physical artwork or trading card may be more difficult or costly. Third, there is a continuing evolution in the types of digital assets that can be used for payment transactions, investment, or for other purposes and this inclusive approach is designed to provide clarity as these types of digital assets continue to evolve. For example, a taxpayer may acquire an NFT to enjoy its artistic merit or for investment, or both. The treatment of any particular type of

digital asset as reportable under these proposed regulations is not intended to imply any characterization of that type of digital asset as a matter of substantive law. See Part I.K of this *Explanation of Provisions* for further discussion of the reasons why privately issued stablecoins are treated as digital assets for purposes of these regulations.

Finally, it is intended that the definition of *digital assets* used in these proposed regulations would not apply to other types of virtual assets, such as assets that exist only in a closed system (such as video game tokens that can be purchased with U.S. dollars or other fiat currency but can be used only in-game and that cannot be sold or exchanged outside the game or sold for fiat currency). It is also intended that the regulations would not apply to uses of distributed ledger technology or similar technology for ordinary commercial purposes that do not create new transferable assets, such as tracking inventory or processing orders for purchase and sale transactions, which are unlikely to give rise to sales as defined for purposes of the regulations. Comments are requested on whether the proposed definition of *digital assets* accurately and appropriately defines the type of assets to which these regulations should apply.

## 2. Coordination With Reporting Rules for Securities, Commodities, and Real Estate

The Treasury Department and the IRS are aware that many provisions of the Code incorporate references to the terms security or commodity, and that questions exist as to whether, and if so, when, a digital asset may be treated as a security or a commodity for purposes of those Code sections. Apart from the rules proposed under sections 1001 and 1012 discussed in Part II of this *Explanation of Provisions*, these proposed regulations are information reporting regulations, and are therefore not the appropriate vehicle for answering those questions. Because the existing regulations under section 6045 require reporting with respect to sales for cash of securities and certain commodities, and with respect to real estate transactions in which gross proceeds are paid in cash (or consideration treated as cash), coordination rules have been included to provide certainty to brokers with respect to whether a particular transaction, or portion thereof, is reportable under those existing rules or under the proposed rules for digital assets and to avoid duplicate reporting obligations. Accordingly, the treatment of an asset as reportable as a security,

commodity, digital asset or otherwise in these proposed rules applies only for purposes of sections 1001, 1012, 3406, 6045, 6045A, 6045B, 6050W, 6721, and 6722 and should not be construed to apply for any other purpose of the Code to determine whether a digital asset should or should not be properly classified as a security, commodity, option, securities futures contract, regulated futures contract, or forward contract. See proposed § 1.6045-1(a)(19)(ii). Similarly, the potential characterization of digital assets as securities, commodities, or derivatives for purposes of any other legal regime, such as the Federal securities laws and the Commodity Exchange Act, is outside the scope of these proposed regulations.

The Treasury Department and the IRS are aware that some digital asset tokens may be classified as securities for U.S. Federal income tax purposes, and that it is possible that tokens constituting securities issued by certain U.S. issuers or companies could be traded on certain digital asset trading platforms that are subject to these rules. If those tokens are securities for Federal income tax purposes, and also qualify as digital assets (as defined in proposed § 1.6045-1(a)(19)), the sale of those tokens for cash could be subject to the existing regulations requiring brokers to provide information reporting with respect to the sale of securities for cash (that is, gross proceeds and basis information) as well as to these proposed regulations relating to the sale of digital assets. The Treasury Department and the IRS considered several different alternatives for addressing this potential overlap.

The Treasury Department and the IRS considered providing a rule that would treat the sale for cash of any digital asset treated as a security under current law as a sale of securities and not a sale of digital assets for purposes of these proposed regulations. The Treasury Department and the IRS, however, have not issued guidance addressing when a digital asset should be treated as a security for substantive U.S. Federal income tax purposes. Because digital asset trading platforms may not be certain whether a particular asset should be reported as a security or as a digital asset without that guidance, and for the additional reasons described in the next paragraph, the Treasury Department and the IRS determined that this alternative would not provide the clarity and certainty necessary for information reporting purposes.

The Treasury Department and the IRS also considered providing a more limited exception to the definition of *digital assets* for digital representations of value that represent interests in one

or more units of a security to provide the same information reporting rules for a sale of stock for cash as for a sale of tokenized stock for cash. This alternative would have several undesirable results. First, digital asset trading platforms that trade both tokenized stock and other digital assets would be subject to two different sets of reporting rules when such assets were sold for cash. Second, tokenized stock would be subject to one set of reporting rules if sold for cash—that is, the existing regulations relating to the reporting of sales of securities for cash—and to a different set of reporting rules if sold for another digital asset or other consideration—that is, these proposed regulations for sales of digital assets. Moreover, the tax compliance concerns associated with transactions in digital assets are different from the tax compliance concerns associated with trading in conventional or non-digital asset securities, including as a result of the common market practice of transferring digital assets from a centralized platform to a private wallet and back again. Accordingly, different reporting rules are warranted for digital assets regardless of whether they would also qualify as a security.

As a result of these considerations, these proposed regulations make no changes to the definition of the term *security* (as defined in existing § 1.6045-1(a)(3)) but instead provide a coordination rule in proposed § 1.6045-1(c)(8)(i) applicable to transactions involving the sale of a digital asset that also constitutes a sale of a security as so defined (other than options that constitute contracts covered by section 1256(b)). Under this proposed coordination rule, the broker must report the sale of an asset that qualifies both as such a security and as a digital asset only as a sale of a digital asset and not as a sale of a security. See Part I.B of this *Explanation of Provisions*, however, for a discussion of the additional information that the broker may be required to provide for transactions involving the sale of a digital asset that also constitutes a sale of such a security. See Part I.B.3 of this *Explanation of Provisions* for a discussion of the applicable rules for digital assets that are also financial contracts, including contracts that are section 1256 contracts within the meaning of section 1256(b).

The Treasury Department and the IRS are aware that the financial services industry is exploring the use of distributed ledger technology or similar technology, such as a blockchain or a shared ledger, to process orders associated with conventional or non-

digital asset securities transactions. Using distributed ledger technology or similar technology to process orders associated with securities transactions may require the temporary creation of digital representations of securities that may fit within the definition of *digital assets* in these proposed regulations. It may be appropriate for these regulations not to apply to these transactions because these transactions would typically involve securities being transferred from one traditional brokerage or custodial account to another. Nonetheless, these proposed regulations do not provide a specific exception for these transactions because the Treasury Department and the IRS would like to understand whether an exception is necessary. Comments are requested on whether the definition of *digital asset* or the reporting requirements with respect to digital assets inadvertently capture transactions involving conventional or non-digital asset securities that may use distributed ledger technology, shared ledgers, or similar technology merely to facilitate the processing, clearing, or settlement of orders. Comments also are requested on whether and, if so, how the definitions or reporting rules should be modified to address other transactions involving tokenized or digitized financial instruments that are used to facilitate back-office processing of the transaction. If an exception for these types of transactions is necessary, the Treasury Department and the IRS would also like to understand how it should be drafted so that it does not sweep in other transactions (such as tokenized securities, or other digital assets treated as securities) that should not be exempted from reporting.

The Treasury Department and the IRS also considered how to apply section 6045A and section 6045B to assets that qualify both as specified securities under existing § 1.6045-1(a)(14)(i) through (iv) for basis reporting purposes and as digital assets under proposed § 1.6045-1(a)(19) (dual classification assets) for the period of time until rules are promulgated dealing with the application of sections 6045A and 6045B to digital assets. Although the existing regulations under section 6045A operate to provide important information to brokers required to report adjusted basis information to the IRS (and taxpayers), it is unclear whether digital asset brokers currently have the mechanisms in place to provide transfer statements to receiving brokers that receive these dual classification assets in transfers that are recorded on a blockchain. With regard to section

6045B, issuers of dual classification assets may not have procedures in place to report information affecting basis. Accordingly, the Treasury Department and the IRS have decided to delay transfer statement reporting under section 6045A(a) and issuer reporting under section 6045B for these dual classification assets and will consider rules for dual classification assets as part of the implementation of more general transfer statement reporting and issuer reporting rules for digital asset brokers as part of a later phase of information reporting guidance for broker effected digital asset transfers. Proposed §§ 1.6045A-1(a)(1)(vi) and 1.6045B-1(a)(6) have been added to specifically exempt from transfer and issuer reporting any specified security that is also a digital asset. See Proposed §§ 1.6045A-1 and 1.6045B-1 in Part IV of this *Explanation of Provisions*.

The definition of *commodity* under existing § 1.6045-1(a)(5) was first promulgated in 1983 as part of TD 7873, 48 FR 10302, 10304 (Mar 11, 1983). Under that definition, the term includes any type of personal property or interest therein, the trading of futures contracts in which have been approved by the CFTC. Sometime after the promulgation of this definition, the CFTC added a new self-certification mechanism under which new exchange-traded contracts become subject to the jurisdiction of the CFTC. Some digital asset trading platforms have taken the position that assets underlying futures contracts that are subject to the jurisdiction of the CFTC pursuant to the CFTC's self-certification procedures are not commodities under existing § 1.6045-1(a)(5) because the CFTC did not affirmatively approve the listing of these contracts on an exchange. The Treasury Department and the IRS believe that the reporting regulations should reflect the current practice of the CFTC and therefore have modified this rule in proposed § 1.6045-1(a)(5)(i) to ensure that assets that are subject to the jurisdiction of the CFTC pursuant to the CFTC's self-certification procedures are included in the definition of *commodity* for purposes of information reporting under section 6045.

This modification applies broadly to all types of commodities subject to the jurisdiction of the CFTC for purposes of section 6045. However, because there has been some uncertainty about the scope of the term *commodity* for purposes of section 6045, reporting under section 6045 for sales of commodities as to which contracts have been self-certified to the CFTC is proposed to apply to any sale that occurs on or after January 1, 2025,

without regard to the date the self-certification procedures were undertaken. Thus, if an asset became subject to the jurisdiction of the CFTC pursuant to the CFTC's self-certification procedures prior to January 1, 2025, sales of that asset for cash on or after January 1, 2025, will be subject to reporting as a result of the revised definition of commodity under proposed § 1.6045-1(a)(5). This change to the definition of commodity does not affect the broker's obligation under existing § 1.6045-1(a)(9) and (c) to report on regulated futures contracts. For a detailed discussion of the broker reporting rules for financial contracts, see Part I.A.3 of this *Explanation of Provisions*.

Consequently, a digital asset, the trading of regulated futures contracts in which has been approved by or, pursuant to proposed § 1.6045-1(a)(5)(i), self-certified to the CFTC, would be treated as a commodity for purposes of reporting under section 6045 absent other changes to the existing regulations. Those assets would also be digital assets for purposes of these regulations. This dual classification could result in confusion as to whether sales of these digital assets should be reported as sales of commodities on Form 1099-B, sales of digital assets on a form prescribed by the Secretary for digital asset sales, or both—potentially resulting in duplicative reporting. To avoid confusion and potential duplicative reporting of sales made on or after January 1, 2025, these proposed regulations provide a coordination rule in proposed § 1.6045-1(c)(8)(i) applicable to transactions involving the sale of a digital asset that also constitutes a sale of a commodity. Under this proposed coordination rule, the broker must report the sale of an asset that qualifies both as a commodity and as a digital asset only as a sale of a digital asset (along with the additional information that this characterization requires) and not as a sale of a commodity.

Finally, the Treasury Department and the IRS are aware that distributed ledger technology or similar technology may be used in connection with transactions involving real estate. Using distributed ledger technology or similar technology to settle real estate transactions requires the creation of digital representations of real estate that may fit within the definition of *digital assets* in these proposed regulations. To avoid duplicative reporting for digital assets that also constitute reportable real estate and to avoid having real estate reporting persons report seller proceeds under an entirely new reporting regime, proposed

§ 1.6045-1(c)(8)(ii) provides a coordination rule applicable to transactions involving the sale of a digital asset that also constitutes reportable real estate (as defined under existing § 1.6045-4(b)(2)) that is subject to reporting under existing § 1.6045-4(a). Under this coordination rule, the broker must report the sale of reportable real estate only as a sale of reportable real estate (and not as a sale of a digital asset).

### 3. Rules Applicable to Financial Contracts on Digital Assets

To ensure reporting of sales of financial contracts involving or referencing digital assets, these proposed regulations expand the existing rules for certain financial products, such as options, futures, and forward contracts. Proposed § 1.6045-1(m)(1) expands the type of option transactions subject to reporting to generally include options on digital assets and options on derivatives with a digital asset as an underlying property. Generally, under these proposed regulations, how an option transaction is reported will depend on: (i) whether the option is a section 1256 contract within the meaning of section 1256(b) (section 1256 contract); (ii) whether the transaction is a disposition of the option itself or whether the transaction involves the delivery of the underlying property; and (iii) whether the option is itself a digital asset (digital asset option) or is not a digital asset (non-digital asset option).

For a disposition of an option that is not a section 1256 contract, the nature of the option itself determines the appropriate reporting treatment; that is, reporting would be required under proposed § 1.6045-1(a)(9)(i) if the option itself is a non-digital asset option and under proposed § 1.6045-1(a)(9)(ii) if the option itself is a digital asset option. Because the asset that is disposed of is the option itself, this proposed reporting treatment applies without regard to whether the digital asset option or non-digital asset option was issued with respect to digital asset or non-digital asset underlying property. In contrast, when an option that is not a section 1256 contract is settled by the delivery of the underlying property, reporting under these proposed regulations is based on the nature of the underlying property, with the delivery of non-digital asset underlying property reportable as a sale under proposed § 1.6045-1(a)(9)(i) and the delivery of digital asset underlying property reportable as a sale under proposed § 1.6045-1(a)(9)(ii). Because the asset that is disposed of is the asset

underlying the option, this proposed reporting treatment for the sale of underlying property that is physically delivered applies without regard to whether the option is itself a digital asset option or a non-digital asset option.

Because the Treasury Department and the IRS are currently unaware of any digital asset options that are also section 1256 contracts, these proposed regulations do not provide new rules for such options. Rather, proposed § 1.6045-1(c)(8)(iii) provides that reporting of these dual classification options should be under the existing rules for options that are section 1256 contracts and not under the proposed rules for digital assets. Accordingly, for a disposition of an option that is a section 1256 contract, reporting is required under existing § 1.6045-1(c)(5) regardless of whether the option disposed of is a non-digital asset option or a digital asset option or whether the option was issued with respect to digital asset or non-digital asset underlying property. Further, as required by existing § 1.6045-1(m)(3) and proposed § 1.6045-1(a)(9)(i) and (c)(8)(iii), when an option that is a section 1256 contract is settled by the delivery of the underlying property, the profit or loss on the contract itself is reportable under existing § 1.6045-1(c)(5), but the underlying sale will be subject to reporting under these proposed regulations based on the nature of the underlying property, with the delivery of non-digital asset underlying property reportable under proposed § 1.6045-1(a)(9)(i) and the delivery of digital asset underlying property reportable under proposed § 1.6045-1(a)(9)(ii). The Treasury Department and the IRS invite comments regarding the above-described option transactions, including comments about how common are digital asset options that are also section 1256 contracts. Comments are also requested regarding whether there are other less burdensome alternatives for reporting the above-described option transactions. For example, whether it would be less burdensome to allow brokers to report transactions involving section 1256 contracts that are also digital assets or the delivery of non-digital assets that underlie a digital asset option as a sale under proposed § 1.6045-1(a)(9)(ii).

No changes have been made to the rules relating to regulated futures contracts in the existing regulations because the definition of a *regulated futures contract* in existing § 1.6045-1(a)(6) can apply to a regulated futures contract on digital assets and to regulated futures contracts that are

themselves digital assets. Accordingly, pursuant to proposed § 1.6045–1(c)(8)(iii), regulated futures contracts will continue to be reported under the rules in existing § 1.6045–1(c)(5) and not under the proposed rules for digital assets.

Proposed § 1.6045–1(a)(7)(iii) expands the definition of a *forward contract* subject to reporting to include executory contracts requiring delivery of digital assets in exchange for cash, different digital assets, or any other property or services that would result in a sale of digital assets under proposed § 1.6045–1(a)(9)(ii) if the exchange occurred at the time the contract was executed. When a forward contract is disposed of without delivery of its underlying property, the nature of the forward contract itself determines the appropriate reporting treatment. Specifically, reporting is required under proposed § 1.6045–1(a)(9)(i) if the forward contract itself is a non-digital asset forward contract and under proposed § 1.6045–1(a)(9)(ii) if the forward contract is a digital asset forward contract. Because the asset that is disposed of is the forward contract itself, this proposed reporting treatment applies without regard to whether the forward contract was issued with respect to digital asset or non-digital asset underlying property. The reporting on the delivery of the underlying property with respect to a forward contract, in contrast, does turn on the nature of that underlying property. That is, when the underlying asset is non-digital asset property, the delivery is reportable under proposed § 1.6045–1(a)(9)(i); whereas when the underlying asset is digital asset property, the delivery is reportable under proposed § 1.6045–1(a)(9)(ii). Because the asset that is disposed of when there is delivery is the asset underlying the forward contract, this proposed reporting treatment for the sale of underlying property that is physically delivered applies without regard to whether or not the forward contract is itself a digital asset.

The Treasury Department and the IRS request comments with respect to whether there is anything factually unique in the way short sales of digital assets, options on digital assets, and other financial product transactions involving digital assets are undertaken compared to similar transactions involving non-digital assets, and whether these transactions with respect to digital assets raise any additional reporting issues that have not been addressed in these proposed regulations.

#### B. Definition of Brokers Required To Report

As described in Part II.C. of the *Background*, prior to the Infrastructure Act, section 6045(c)(1) defined the term *broker* to include a dealer, a barter exchange, and any other person who (for a consideration) regularly acts as a middleman with respect to property or services. Existing regulations under section 6045 apply the “middleman” portion of this definition to treat as a broker effecting a sale a person that as part of the ordinary course of a trade or business acts as an agent with respect to a sale if the nature of the agency is such that the agent ordinarily would know the gross proceeds of the sale. See existing § 1.6045–1(a)(1) and (a)(10)(i)(A).

Section 80603(a) of the Infrastructure Act clarifies that the definition of *broker* under section 6045 includes any person who, for consideration, is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person. According to a report by the Joint Committee on Taxation published in the *Congressional Record* prior to the enactment of the Infrastructure Act, the change clarified prior law to resolve uncertainty over whether certain market participants are brokers. The change was not intended to limit the Secretary’s authority to interpret the definition of *broker*. 167 Cong. Rec. S5702, 5703 (daily ed. Aug. 3, 2021) (Joint Committee on Taxation, Technical Explanation of Section 80603 of the Infrastructure Act).

To reflect this clarification made by the Infrastructure Act, proposed § 1.6045–1(a)(1) retains the existing definition of *broker* as any person that in the ordinary course of a trade or business stands ready to effect sales to be made by others. However, the definition of *effect* under existing § 1.6045–1(a)(10)(i) and (ii), which sets forth the various roles under which a broker may take actions on behalf of customers, has been revised to provide that any person that provides facilitative services that effectuate sales of digital assets by customers will be considered a broker, provided the nature of the person’s service arrangement with customers is such that the person ordinarily would know or be in a position to know the identity of the party that makes the sale and the nature of the transaction potentially giving rise to gross proceeds. This definition is similar to the definition in the existing regulations with respect to agents and is similarly intended to limit the definition of *broker* to persons who have the ability to obtain information that is

relevant for tax compliance purposes. The modified definition of *effect* takes into account whether a person is in a position to know information about the identity of a customer, rather than whether a person ordinarily would know such information, in recognition of the fact that some digital asset trading platforms that have a policy of not requesting customer information or requesting only limited information have the ability to obtain information about their customers by updating their protocols as they do with other upgrades to their platforms. The ability to modify the operation of a platform to obtain customer information is treated as being in a position to know that information. The Treasury Department and the IRS expect that this clarified proposed definition will ultimately require operators of some platforms generally referred to as decentralized exchanges to collect customer information and report sales information about their customers, if those operators otherwise qualify as brokers. This decision was made because the reasons for requiring information reporting on dispositions of digital assets do not depend on the manner by which a business operating a platform effects customers’ transactions. Customers need information about gross proceeds and basis to prepare their tax returns; the IRS needs that information in order to collect the taxes that are imposed under laws enacted by Congress and in order to focus its compliance efforts on taxpayers who fail to comply with their obligations to report their tax liability; and policy makers need that information in order to understand what taxpayers are doing so that they can make informed judgments about further laws or other guidance relating to digital assets. Moreover, if the manner in which a digital asset trading platform operates reduces or eliminates its obligation to report information on customer transactions, digital asset trading platforms might modify their operations to avoid reporting or customers who wish to evade taxes might elect to use a non-reporting platform in order to reduce the IRS’s ability to identify them as non-compliant.

The Treasury Department and the IRS recognize that some stakeholders may have concerns that providing personal identity information may raise privacy concerns, and request comments on whether there are alternative approaches that would satisfy tax compliance objectives while reducing privacy concerns. The Treasury

Department and the IRS also request comments on any technological or other technical issues that might affect the ability of a non-custodial digital asset trading platform that is a person who qualifies as a broker to obtain and transmit the information required under these proposed regulations and how these issues might be overcome. The Treasury Department and the IRS understand that digital asset trading platforms operate with varying degrees of centralization and effective control by founders or others, and request comments on whether the application of reporting rules only to “persons” (as described in the next paragraph) adequately limits the scope of reporting obligations to platforms that have one or more individuals or entities that can update, amend, or otherwise cause the platform to carry out the diligence and reporting rules of these proposed regulations.

As used in these proposed regulations, the term *person* generally has the meaning provided by section 7701(a)(1), which provides that the term generally includes an individual, a legal entity, and an unincorporated group or organization through which any business, financial operation or venture is carried on, such as a partnership. The term *person* includes a business entity that is treated as an association or a partnership for Federal tax purposes under § 301.7701–3(b). Accordingly, a group of persons providing facilitative services that are in a position to know the customer’s identity and the nature of the transaction effectuated by customers may be treated as a broker whether or not the group operates through a legal entity if the group is treated as a partnership or other person for U.S. Federal income tax purposes.

These clarifying changes are intended to apply the reporting rules to digital asset trading platforms that provide facilitative services and that are in a position to know the customer’s identity and the nature of the transaction effectuated by customers regardless of the manner in which they are organized or operate if the platform or its operator (or operators) is a person subject to reporting. Thus, for example, the reporting rules apply to custodial digital asset trading platforms that act as their customers’ legal agents in trading their customers’ digital assets as well as to operators of non-custodial trading platforms that provide digital asset middleman services that bring buyers and sellers together and rely on smart contracts to execute the transactions without further intervention from the operators, despite the fact that such digital asset middlemen may not

necessarily be acting as legal agents of the customers in those transactions. Accordingly, under this definition, in addition to acting as either a principal with respect to sales of digital assets in the ordinary course of a trade or business, or as an agent (including as a custodial agent) if the nature of the agency is such that the agent ordinarily would know the gross proceeds of the sale, a broker also includes a person who acts as a digital asset middleman for a party in a sale of digital assets. Proposed § 1.6045–1(a)(21)(i) defines a digital asset middleman as any person who provides a facilitative service with respect to a sale wherein the nature of the arrangement is such that the person ordinarily would know or be in a position to know the identity of the party that makes the sale and the nature of the transaction potentially giving rise to gross proceeds from the sale.

A facilitative service is defined in proposed § 1.6045–1(a)(21)(iii)(A) as any service that directly or indirectly effectuates a sale of digital assets, such as providing: a party in the sale with access to an automatically executing contract or protocol; access to digital asset trading platforms; order matching services; market making functions to offer buy and sell prices; or escrow or escrow-like services to ensure both parties to an exchange act in accordance with their obligations. Because some persons providing these services or products may not be in a position to know the identity of the parties making a sale and the nature of the transaction, proposed § 1.6045–1(a)(21)(iii)(A) specifically excludes from the definition of *facilitative service* persons solely engaged in the business of providing distributed ledger validation services—whether through proof-of-work, proof-of-stake, or any other similar consensus mechanism—without providing other functions or services. For the same reason, proposed § 1.6045–1(a)(21)(iii)(A) also excludes from the definition of *facilitative service* persons solely engaged in the business of selling hardware or licensing software for which the sole function is to permit persons to control private keys which are used for accessing digital assets on a distributed ledger. This latter exclusion does not, therefore, exclude wallet software providers from the definition of *facilitative service* if the software also provides users with direct access to trading platforms from the wallet platform. The Treasury Department and the IRS invite comments regarding whether the provision of connection software by wallet providers to trading platforms

(that customers of the trading platforms can then use to access their wallets from the trading platform) should be considered a facilitative service resulting in the wallet provider being treated as a broker. In addition, the Treasury Department and the IRS invite comments regarding what additional functions wallet providers might provide that would be considered facilitative services. Finally, the definition of *customer* under proposed § 1.6045–1(a)(2) has also been revised to include persons that make sales of digital assets using brokers who act as digital asset middlemen.

Under proposed § 1.6045–1(a)(21)(ii)(A), a person is in a position to know the identity of the party that makes the sale if that person maintains sufficient control or influence over the facilitative services provided so as to have the ability to set or change the terms under which its services are provided to request that the party making the sale provide that party’s name, address, and taxpayer identification number, in advance of the sale. This rule is similar to the standard, recommended by the Financial Action Task Force (FATF), to be used to determine whether a creator, owner, operator, or other person involved in a decentralized application providing financial services should be considered to be a virtual asset service provider and should, thus, be subject to anti-money laundering (AML) and counter-terrorist financing (CFT) requirements. FATF (2021), *Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers*, p. 26–28, FATF, Paris. <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-virtual-assets-2021.html>. Similarly, under proposed § 1.6045–1(a)(21)(ii)(B), a person is in a position to know the nature of the transaction potentially giving rise to gross proceeds from a sale if that person maintains sufficient control or influence over the facilitative services provided so as to have the ability to determine whether and the extent to which the transfer of digital assets involved in a transaction gives rise to gross proceeds. Thus, a person will be considered to be in a position to know the nature of the transaction potentially giving rise to gross proceeds from a sale if the person can determine that the transaction is a sale (and the gross proceeds from that sale) based on the consideration received when a sale transaction is completed. As a result, a person will be considered to be in a position to know the nature of the transaction potentially

giving rise to gross proceeds from a sale if the person has the ability to modify an automatically executing contract or protocol to which that person provides access to ensure that this information is provided upon the execution of a sale. For both of these standards, a person will be considered as maintaining sufficient control or influence over the provided facilitative services so as to have the ability to determine customer identities or the nature of transactions if that person has the ability to change the fees charged for the facilitative services, whether by modifying the existing service arrangement or by substituting a new service arrangement. The fact that a digital asset trading platform operator has modified an automatically executing contract or protocol in the past, or has replaced such a contract with another contract in its protocol, strongly suggests that the operator has sufficient control or influence over the facilitative services provided to obtain the information about either the identity of the party that makes the sale or whether and the extent to which the transfer of digital assets involved in a transaction gives rise to gross proceeds. The Treasury Department and the IRS invite comments regarding what other factors should be considered relevant to determining whether a person maintains sufficient control or influence over provided facilitative services.

The Treasury Department and the IRS understand that in some cases tokens that enable those who hold them to control the ability to change the underlying protocol of a platform described as a decentralized exchange (referred to as governance tokens) may be held in significant part by founders, development teams, or one or more investors and that in other cases those governance tokens may be more widely distributed. There may also be fact patterns in which a holder of a significant amount of governance tokens routinely takes actions that benefit the platform, for example reimbursing users whose tokens have been stolen, which actions are then ratified by or compensated by the broader group of holders of governance tokens. Consequently, there can be a range of effective control that ownership of governance tokens can provide, based on how widely the tokens are disbursed and whether or not a group of persons (normally the founders/development teams/investors) retain enough tokens as a group to make decisions. Some decentralized autonomous organizations (DAOs) are an example of this organizational structure. Even in structures where governance tokens may

be widely distributed, individuals or groups of token holders can have the ability to maintain practical control. In addition, in some cases, so-called “administration keys” exist to allow developers or founders to modify or replace the automatically executing contracts or protocols underpinning digital asset trading platforms without requiring the vote of governance token holders. The Treasury Department and the IRS invite comments regarding the circumstances under which an operator does or does not maintain sufficient control or influence over the facilitative services offered by a digital asset trading platform. Additionally, comments are requested regarding whether, and if so, how should the ability of users of the platform, shareholders or holders of governance tokens to vote on aspects of the platform’s operations be considered. Finally, comments are requested regarding whether this conclusion should be impacted by the existence of full or even partial-access administration keys or the ability of the operator to replace the existing protocol with a new or modified protocol if that replacement does not require holding a vote of governance tokens or complying with these voting restrictions.

As noted, the statutory definition of *broker* under section 6045(c)(1)(C) refers to a person who “for a consideration” regularly acts as a middleman. The revised definition of *broker* under the Infrastructure Act also refers to a person who, “for consideration,” is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person. The definition of *broker* under existing and proposed § 1.6045–1(a)(1) implements this “for consideration” qualification by limiting the definition of *broker* to a person who effects sales made by others “in the ordinary course of a trade or business.” Persons engaged in a trade or business necessarily are “those so engaged for gain or profit.” See *e.g.*, Treas. Reg. § 1.6041–1(b)(1); *Groetzinger v. Commissioner*, 480 U.S. 23 (1987). A business may receive different forms of consideration for its goods and services. The receipt of fees may be a relevant factor in determining whether a person is engaged in the ordinary course of a trade or business. However, there may be persons who facilitate transfers of digital assets for a fee or other consideration, such as individuals who occasionally facilitate transfers but do not do so on a regular basis, who are not engaged in a business activity. It is intended that this “trade or business” requirement will result in a more limited definition of *broker* than that

which would apply under a less restrictive “for consideration” standard. Accordingly, as long as a broker effects the sales made by others in the ordinary course of its trade or business, it will have a reporting obligation under section 6045.

Proposed § 1.6045–1(a)(10)(i)(B) also revises the definition of *effect* to clarify that a person who acts as a principal with respect to a sale is to be treated as effecting a sale only to the extent such person is acting in the sale as a broker. Thus, for example, because an obligor that regularly issues and retires its own debt obligations is a broker, that obligor will be treated as effecting a sale when it retires its own debt as part of those regular activities. Similarly, a corporation that regularly issues and redeems its own stock will be treated as effecting a sale when it redeems its own shares as part of these regular activities. Additionally, an issuer of digital assets that regularly offers to redeem those digital assets will be treated as effecting a sale when it redeems those digital assets as part of these regular activities. Finally, proposed § 1.6045–1(a)(10)(i)(C) has been revised to clarify that a person who acts as a principal in a sale will be treated as effecting sales only if that principal is acting as a dealer with respect to the sale that is subject to reporting under section 6045. Thus, for example, a retailer who accepts digital assets from a customer as payment for the sale of goods is not effecting the sale of digital assets on behalf of that customer if that retailer is not otherwise a dealer of digital assets. Similarly, an artist in the business of creating and selling NFTs that represent interests in the artist’s work is not effecting the sale of digital assets on behalf of purchasers, provided that artist is not otherwise a dealer in digital assets. This result is appropriate regardless of whether the artist regularly sells NFTs to the purchasers directly or through digital asset brokers.

Proposed § 1.6045–1(b)(1)(vi) through (xi) adds examples of persons who are generally considered to be brokers under the above definition. Specifically, digital asset trading platforms that also provide custodial (hosted wallet) services, operators of non-custodial trading platforms (including platforms that effect transactions through automatically executing contracts or protocols), digital asset payment processors, and operators and owners of digital asset kiosks are included as examples of persons who in the ordinary course of their trade or business stand ready to effect sales of digital assets on behalf of customers. These examples also clarify that even if

a person's principal business does not meet the definition of *broker*, the person will be considered a broker under the definition if that person also regularly stands ready to effect sales of digital assets on behalf of customers. Thus, digital asset hosted wallet providers and persons who sell or license software to unhosted wallet users will be considered brokers if they also facilitate or offer services to facilitate the purchase or sale of digital assets.

Conversely, proposed § 1.6045–1(b)(2)(viii) through (x) illustrate that the term *broker* does not extend to merchants who sell goods or services in return for digital assets, persons who are solely engaged in the business of validating distributed ledger transactions through proof-of-work, proof-of-stake, or any other consensus mechanism, without providing other functions or services, and persons who are solely engaged in the business of selling hardware or licensing software, the sole function of which is to permit a person to control private keys which are used for accessing digital assets on a distributed ledger, without providing other functions or services.

#### 1. Digital Asset Broker

Proposed § 1.6045–1(a)(1) provides that a broker means any person that in the ordinary course of a trade or business during the calendar year stands ready to effect sales to be made by others. As applied to brokers standing ready to effect sales for others of digital assets (referred to in the preamble as a digital asset broker) the term includes not only businesses with physical locations, such as digital asset kiosks and other brick and mortar facilities, but also online businesses, such as operators of trading platforms that hold custody of their customers' digital assets and operators with sufficient control or influence over non-custodial trading platforms that effect sales of digital assets made for others by providing access to automatically executing contracts, protocols, or other software programs that automatically effect sales. As noted in the definition of *effect* discussed in Part I.B of this *Explanation of Provisions*, operators of non-custodial trading platforms would know or be in a position to know the identity of their customers and the gross proceeds of their sales, for example, because these operators have the ability to request that new potential customers provide this information and can require that their customers use automatically executing exchange contracts that provide these operators with the gross proceeds information.

As noted, the term *person* generally includes an individual, a legal entity, and an unincorporated group or organization through which any business, financial operation or venture is carried on. Accordingly, an operator of a digital asset trading platform that is an individual or legal entity may be treated as a broker, and an operator of a digital asset trading platform that is comprised of a group that shares fees from the operation of the trading platform, or is otherwise treated as an association or a partnership under § 301.7701–3(b), may also be treated as a broker even though there is no centralized legal entity through which trades are carried out. For example, a DAO may be a person that could be treated as a broker under these proposed regulations. For a discussion of digital asset trading platforms that issue governance tokens providing holders with the power to vote on major platform decisions—such as new features to be offered or revised governance rights, see Part I.B of this *Explanation of Provisions*. The Treasury Department and the IRS request comments regarding the extent to which holders of governance tokens should be treated as operating a digital asset trading platform business as an unincorporated group or organization.

A merchant that accepts digital assets directly from a customer as payment for its provision of goods or services generally is not a broker under these rules. A person is treated as a broker with respect to digital assets only if it effects sales of digital assets for customers. As described in Part I.C of this *Explanation of Provisions*, a sale by a broker generally includes a disposition of digital assets for cash, one or more stored-value cards, broker services, or certain other property (including different digital assets) that are subject to reporting under section 6045. While a merchant who provides goods, services, or other property (rather than digital assets or cash) in exchange for a customer's digital assets may be facilitating the disposition of the customer's digital assets, that merchant generally would not be treated as effecting sales of digital assets for customers as a broker because the customer's digital assets are not being exchanged for cash or the types of assets that cause the transaction to be treated as a sale under the proposed regulations. If the merchant's exchange of goods or services for digital assets is effected through a digital asset payment processor, however, the digital assets payment processor may be treated as a broker.

#### 2. Digital Asset Hosted Wallet Providers

Under existing regulations, a broker includes an agent with respect to a sale in the ordinary course of a trade or business if the nature of the agency is such that the agent ordinarily would know the gross proceeds of the sale. Consequently, under current law, certain securities custodians and other agents are treated as brokers. Under the multiple broker rule of existing § 1.6045–1(c)(3)(iii), which exempts brokers who conduct sales on behalf of other brokers, only the broker that has the closest relationship to the customer is required to report information under section 6045.

In the digital asset industry, some persons stand ready in the ordinary course of a trade or business to take custody of and electronically store the public and private keys to digital assets held on behalf of others. These digital asset hosted wallet providers in some cases also effect sales or possess information regarding the digital asset sales of their customers in much the way a bank custodian or other custodian does for securities. The proposed definition of *broker* includes such a digital asset hosted wallet provider to the extent that the digital asset hosted wallet provider also functions as a principal in the sale of digital assets, acts as an agent for a party in the sale if it would ordinarily know the gross proceeds from the sale, or acts as a digital asset middleman and would ordinarily know or be in a position to know the identity of the party that makes the sale and the gross proceeds from the sale. If a hosted wallet provider solely holds and transfers digital assets on behalf of its customers, without possessing, or having the ability to possess, any knowledge of gross proceeds from sales, the hosted wallet provider would not qualify as a broker.

#### 3. Digital Asset Payment Processors

A number of payment processors permit customers to make payment in digital assets. These transactions may take various forms. In many cases the customer pays in digital assets, and the payment processor exchanges those digital assets for a U.S. dollar amount that is then paid to a merchant, for example, in exchange for goods or services, or to another intermediary recipient as with a payment card purchase. In other cases, the payment processor transfers the digital assets to the merchant or other recipient. In both cases, the customer has disposed of its digital assets in a transaction that ordinarily is a gain (or loss) recognition transaction. These proposed regulations

would require digital asset payment processors to provide information on those dispositions. Payment processors (and in certain circumstances merchant acquiring entities within the same network as payment card issuers) may separately be required to provide information on the merchant transaction under section 6050W, which requires reporting by TPSOs and merchant acquiring entities. Therefore, for example, where a TPSO effects a transaction involving the exchange of merchandise for digital assets, the TPSO will need to report on the disposition of the merchandise under section 6050W and on the digital asset disposition under section 6045, assuming no exceptions apply.

A digital asset payment processor is defined in proposed § 1.6045–1(a)(22)(i)(A) as a person who in the ordinary course of its business regularly stands ready to effect digital sales by facilitating payments from one party to a second party by receiving digital assets from the first party and exchanging them into different digital assets or cash paid to the second party, such as a merchant. In some cases, payment recipients are willing to receive payments in digital assets rather than cash and those payments are facilitated by an intermediary. To facilitate a payment transaction in these circumstances, a digital asset payment processor might provide the payment recipient with a temporarily fixed exchange rate on a digital assets payment that is transferred directly from a customer to that payment recipient. This temporarily fixed exchange rate may also be available to the merchant if it wishes to immediately exchange the digital assets for cash. In a transaction of this kind, similar to other merchant transactions involving intermediaries that provide cash to the merchants in exchange for the merchant's provision of goods or services to the customer, the customer disposes of its digital assets in a transaction that gives rise to gain (or loss) and receives goods or services, while the merchant receives or can choose to receive cash. This customer consequently has the same obligation to determine and report its gain or loss as in the other type of merchant transaction, and similar reporting rules therefore should apply to the digital asset payment processor. To address these transactions, for purposes of the definition of a *digital asset payment processor*, these proposed regulations treat the transfer of digital assets by a customer directly to a second person (such as a vendor of goods or services) pursuant to a processor agreement that

provides for the temporary fixing of the exchange rate to be applied to the digital assets received by the second person as if the digital assets were transferred by the customer to the digital asset payment processor in exchange for different digital assets or cash paid to the second person.

This characterization of the transaction as a transfer of digital assets by the customer to the digital asset payment processor in exchange for the payment of different digital assets or cash to the second person applies solely for purposes of certain definitions in these regulations, to ensure that customer dispositions of digital assets for consideration are subject to reporting regardless of the details of the arrangements made by the merchant for receiving payment. No inference is intended with respect to whether these transactions should or may be treated as dispositions for cash for any other purpose of the Code. The characterization of the transaction as involving a payment of cash to the merchant for purposes of these proposed regulations will apply regardless of whether the merchant subsequently exchanges the digital assets received pursuant to the temporarily fixed exchange rate, because the fixed exchange rate provided by the digital asset payment processor both facilitates the transaction and serves as a foundation to determine the fair market value received by the customer in the exchange. Accordingly, to meet their information reporting obligations in these alternatively structured payment transactions, digital asset payment processors will need to ensure that they obtain the required personal identifying information (that is, name, address, and tax identification number) from the customer (that is, the party making the payment in digital assets) in advance of these transactions. It is anticipated that digital asset payment processors will report gross proceeds from the disposition of digital assets by customers but may not have the information necessary or available to report the basis of the disposed-of digital assets unless they also hold digital assets for those customers.

In addition, because a payment processor knows the gross proceeds with respect to an exchange transaction when it is participating in a transaction that is potentially reportable under existing § 1.6050W–1(a)(1), the definition of a *digital asset payment processor* also includes certain payment settlement entities and certain entities that make payments to payment settlement entities that are potentially subject to reporting under section

6050W. First, proposed § 1.6045–1(a)(22)(i)(B) provides that a digital asset payment processor includes a TPSO (as defined in § 1.6050W–1(c)(2)) that makes (or submits instructions to make) payments using one or more digital assets in settlement of reportable payment transactions as described in § 1.6050W–1(a)(2). This treatment of a TPSO as a digital asset payment processor applies whether or not the TPSO actually makes (or provides the instructions to make) the payment or contracts with a third-party electronic payment facilitator, pursuant to § 1.6050W–1(d)(2), to make (or provide the instructions to make) the payment. In addition, this treatment of a TPSO as a digital asset payment processor applies without regard to whether the payment to the merchant is below the *de minimis* threshold described in section 6050W(e) and, thus, not reportable under section 6050W.

Second, the definition of a *digital asset payment processor* in proposed § 1.6045–1(a)(22)(i)(C) includes a payment card issuer that makes (or submits the instruction to make) payments in one or more digital assets to a merchant acquiring entity, as defined under § 1.6050W–1(b)(2), in a transaction that is associated with a reportable payment transaction under § 1.6050W–1(a)(2) that is effected by the merchant acquiring bank. Whether a transaction is associated with a reportable payment transaction is determined without regard to whether the merchant acquiring bank contracts with an agent to make (or submit the instructions to make) its payments to the merchant.

Proposed § 1.6045–1(a)(2)(ii)(A) clarifies that the customer in a digital assets payment processor transaction includes the person who transfers the digital assets or directs the transfer of the digital assets to the digital asset payment processor to make payment to the second person. Thus, for example, a digital asset payment processor's customer is the person who transfers the digital assets to that processor even if the processor has a contractual arrangement with only the second person, that is, the person who will ultimately receive the cash in the payment transaction.

The Treasury Department and the IRS recognize that some stakeholders may have concerns that providing personal identity information in transactions where the payment processor is an agent of a merchant may raise privacy concerns and request comments on whether there are alternative approaches that would satisfy tax

compliance objectives while reducing privacy concerns.

The Treasury Department and the IRS considered whether a *de minimis* threshold should apply to the reporting of merchant transactions of the kind described above, taking into account that the cost and effort to build a reporting system may increase if numerous small transactions must be reported. Whether there would in fact be an increase in cost and effort is uncertain, as in some other information reporting contexts reporting entities have elected not to take advantage of *de minimis* thresholds in order to avoid the need to monitor the size or amount of the reportable item. Moreover, taxpayers are required to report gain from dispositions of digital assets on their tax returns regardless of the amount disposed of, and a taxpayer that engages in many small dispositions of digital assets may have an aggregate amount of gain for the taxable year that is significant. Because information reporting assists customers in determining the proper amount of gain or loss attributable to such dispositions, these proposed regulations do not include a *de minimis* rule for reporting these merchant transactions.

#### 4. Other Brokers

The definition of *broker* in existing § 1.6045-1(a)(1) is proposed to be modified to include persons that regularly offer to redeem digital assets that were created or issued by that person, such as in an initial coin offering or redemptions by an issuer of a so-called stablecoin. A stablecoin is a form of digital asset that is intended to have a stable value relative to another asset or assets, typically a fiat currency. Some stablecoin issuers effect redemptions on behalf of all, or some, of their customers and know the gross proceeds paid to their customers. Stablecoin issuers that redeem their stablecoins are included in the definition of *broker* because, notwithstanding the nomenclature “stablecoin,” the value of a stablecoin may not always be stable and therefore may give rise to gain or loss. See Additional Definitional Changes in Part I.K of this *Explanation of Provisions*. These proposed regulations apply to persons that regularly offer to redeem digital assets rather than persons who regularly carry out redemptions to ensure reporting on the occasional redemptions by digital asset issuers that may not regularly redeem their issued digital assets. The Treasury Department and the IRS request comments on the frequency with which creators or issuers of digital assets redeem digital assets. In

addition, the Treasury Department and the IRS request comments regarding whether the broker reporting regulations should apply to include initial coin offerings, simple agreements for future tokens, and similar contracts.

#### 5. Real Estate Reporting Persons

Proposed § 1.6045-1(a)(1) was also modified to provide that a real estate reporting person is a broker with respect to digital assets used as consideration in a real estate transaction if the reporting person would be required to make an information return with respect to that real estate transaction under proposed § 1.6045-4(a), without regard to any reporting exceptions provided under section 6045(e)(5) or proposed or existing § 1.6045-4(c) or (d), such as the exception for certain sales of principal residences or the exception for exempt real estate sellers. Thus, for example, a real estate reporting person would be required to report on a real estate buyer’s exchange of digital assets for real estate as a sale of those digital assets even though the real estate reporting person is not required to report on the real estate seller’s exchange of the real estate for digital assets due to the fact that the seller of that real estate is an exempt seller, such as a corporation, under existing § 1.6045-4(d).

#### C. Expansion of the Types of Sales Subject To Reporting

Digital assets are unique among the types of assets that are subject to reporting under section 6045 because it is common for digital assets to be exchanged for different digital assets. In addition, some digital assets can readily function as a payment method as well as an investment asset. Digital assets can be exchanged for cash, stored-value cards, services, or other property (including different digital assets). To avoid gaps in information reporting with respect to this broad range of taxable exchanges, proposed § 1.6045-1(a)(9)(ii) expands the definition of a *sale* subject to reporting. Proposed § 1.6045-1(a)(9)(ii)(A)(1) and (2) provide that a sale includes the disposition of a digital asset in exchange for cash, one or more stored-value cards, or a different digital asset. An exchange for cash for these purposes includes a payment received through the use of a check, credit card, or debit card. Proposed § 1.6045-1(a)(25) defines a stored-value card as a card—whether in physical or digital form—with a prepaid value in U.S. dollars, any convertible foreign currency, or any digital asset. A stored-value card includes a gift card. The Treasury Department and the IRS

request comments on whether the types of consideration for which digital assets may be exchanged in a sale transaction is sufficiently broad to capture current and anticipated transactions in which taxpayers regularly dispose of digital assets for consideration.

In addition, proposed § 1.6045-1(a)(9)(ii)(B) provides that a sale of a digital asset includes the disposition of a digital asset by a customer in exchange for property (including securities and real property) of a type that is subject to reporting under section 6045. Thus, for example, if a stockbroker accepts a digital asset from a customer as payment for the customer’s purchase of stock, that disposition of the digital asset in exchange for stock will be treated as a sale of the digital asset by that customer for purposes of section 6045. Similarly, if a real estate reporting person, as defined in existing § 1.6045-4(e), is involved in a real estate transaction in which the real estate buyer uses digital assets as consideration in the exchange for real property, that disposition of digital assets in exchange for real property will be treated as a sale of the digital assets by that real estate buyer for purposes of section 6045.

Proposed § 1.6045-1(a)(9)(ii)(C) provides that a sale of digital assets also includes a disposition of digital assets by a customer in consideration for the services of a broker as defined in proposed § 1.6045-1(a)(1). Whether a person is a broker for purposes of this rule, however, is determined without regard to whether that person regularly as part of its trade or business accepts digital assets in consideration for its services. Thus, if a stockbroker accepts a digital asset as payment for the commission charged for a stock purchase, the customer’s disposition of the digital asset in exchange for the broker’s services will be treated as a sale of the digital asset for purposes of section 6045 because the stockbroker is a broker due to the fact that it regularly effects sales of stock (not because it regularly accepts digital assets for services). In contrast, if a landscaper accepts a digital asset as payment for landscaping services, the customer’s disposition of the digital asset in exchange for the landscaper’s services will not be treated as a sale of digital assets for purposes of section 6045 because the determination of whether the landscaper is a broker is made without regard to whether that landscaper regularly accepts digital assets in consideration for landscaping services as part of a trade or business. Proposed § 1.6045-1(a)(2)(ii)(B) provides that the customer in these sales is the person who transfers the digital

assets or directs the transfer of the digital assets to the broker regardless of whether the broker is a digital asset broker. Proposed § 1.6045-1(a)(2)(ii)(C) provides that in the case of a broker that is a real estate reporting person with respect to a real estate transaction, the customer is the person who transfers the digital assets or directs the transfer of the digital assets to the seller of the real estate (or the seller's nominee or agent) to acquire the real estate. Finally, to ensure that these sales of digital assets are treated as effected by a broker, proposed § 1.6045-1(a)(21)(iii)(B) provides that the acceptance of digital assets in consideration for the above-described property or services provided by a broker is a facilitative service. As a result, the broker will be treated as effecting these sales of digital assets as a digital asset middleman under proposed § 1.6045-1(a)(10)(i)(D).

In certain circumstances, a digital asset broker (other than a digital asset payment processor discussed earlier in Part I.B.3 of this *Explanation of Provisions*) such as a digital asset broker providing hosted wallet services might transfer digital assets without knowing that the transfer was part of a sale transaction. For example, a customer might direct such a custodial broker to transfer digital assets to the wallet of a merchant in connection with the purchase of goods or services from that merchant. The definition of *effect* in proposed § 1.6045-1(a)(10) limits the sales for which such brokers must make a report to those transactions in which the broker (as agent) would ordinarily know the gross proceeds from the sale or (as digital asset middleman) would ordinarily know or be in a position to know the identity of the party that makes the sale and the gross proceeds from the sale. Although the custodial broker in this example would ordinarily know or be in a position to know the identity of its customer, it is not in a position to know that the transfer was associated with a sale or exchange transaction or the amount that the customer received as gross proceeds from the exchange (that is, the amount the customer received in consideration for the digital assets surrendered). Accordingly, the transfer of digital assets by that custodial broker to the wallet of the merchant does not constitute effecting a sale of digital assets by that broker. In contrast, a digital asset payment processor would typically know whether the transfer was part of a sale transaction because that broker would have a contractual relationship with the payment recipient as well as with the transferor of the

payment. Accordingly, in these cases the transfer of digital assets by the digital asset payment processor (or the direction to the customer by the digital asset payment processor to transfer digital assets) to the wallet of the merchant would constitute effecting a sale.

In view of the increasing use of digital assets to make payments for goods and services or to satisfy other payment obligations through the intermediation of digital asset payment processors, digital asset payment processors (which may also function in other contexts as digital asset trading platforms) are subject to these rules. To achieve this result, proposed § 1.6045-1(a)(9)(ii)(D) provides that a sale includes payments of a digital asset by the customer to a digital asset payment processor in exchange for that processor's payment of a different digital asset or cash to a second person. A sale also includes the transfer of a digital asset by a customer directly to a second person (such as a vendor of goods or services) pursuant to a processor agreement that provides for the temporary fixing of the exchange rate to be applied to the digital asset received by the second person, which is treated (under the rules setting forth the definition of a *digital asset payment processor*) as if the digital asset was paid by the customer to the digital asset payment processor in exchange for a different digital asset or cash paid to that second person.

In the case of a digital asset payment processor that is a TPSO, a sale also includes a customer's payment in digital assets to the digital asset payment processor (or pursuant to instructions provided by that digital asset payment processor or its agent) as part of a transaction in which the digital asset payment processor pays (or is treated as paying) the digital assets to a merchant in settlement of a reportable payment transaction under § 1.6050W-1(a)(2). This payment is a sale of digital assets by the customer under these proposed regulations without regard to whether the amount paid to the merchant during the calendar year exceeds the *de minimis* threshold described in section 6050W(e) or whether the digital asset payment processor contracts with a third party to make (or provide instructions to make) the payment to the merchant pursuant to § 1.6050W-1(d)(2). Finally, to account for payments that are reportable under section 6050W with respect to payment card transactions where a digital asset payment processor is also a payment card issuer, a sale of digital assets also includes a payment made in digital assets by a customer to the payment

card issuer (or pursuant to instructions provided by that card issuer or its agent) in a transaction associated with a reportable payment transaction under § 1.6050W-1(a)(2). This treatment of the customer's payment as a sale in this case is determined without regard to whether the merchant acquiring bank contracts with an agent to make (or submit the instructions to make) payment to the ultimate payee. Thus, under this rule, in the case of a payment card purchase at a merchant, the buyer's payment in a digital asset to the payment card issuer will be a sale even if that payment card issuer pays the merchant acquiring entity in the same type of digital asset because the subsequent payment (whether in cash or in digital assets) by the merchant acquiring entity (or its agent) to the merchant is a reportable payment transaction under § 1.6050W-1(a)(2).

A broker's customer may enter into executory contracts, or other derivative contracts involving the future delivery of a digital asset, where delivery under the contract also should be subject to reporting as a digital asset sale under these proposed regulations. To ensure that these executory or other derivative contracts do not circumvent the proposed information reporting rules for digital assets, proposed § 1.6045-1(a)(9)(ii)(A)(3) defines a sale to include the delivery of a digital asset pursuant to the settlement of a forward contract, option, regulated futures contract, any similar instrument, or any other executory contract that would be treated as a sale of the digital asset under the regulation if the contract had not been executory.<sup>3</sup> The rules in existing § 1.6045-1(a)(9), redesignated in these proposed regulations as proposed § 1.6045-1(a)(9)(i), applicable to making or taking delivery (for example, treating a closing transaction as one or two sales depending on the nature of the contract) are cross-referenced to apply to the delivery of digital assets pursuant to transactions described in proposed § 1.6045-1(a)(9)(ii)(A)(3). Additionally, the rules in existing § 1.6045-1(a)(9) applicable to the circumstances under which a transaction is treated as a sale with respect to certain contracts and options are cross-referenced to apply to determine if similar transactions related to digital assets constitute sales described in proposed § 1.6045-1(a)(9)(ii)(A). Accordingly, the entering into of a digital asset contract that

<sup>3</sup>No inference is intended as to when a sale of a digital asset occurs under any other legal regime, including the Federal securities laws and the Commodity Exchange Act, or to otherwise impact the interpretation or applicability of those laws, which are outside the scope of these regulations.

requires delivery of personal property, the initial grant or purchase of a digital asset option, or the exercise of a purchased digital asset call option for physical delivery (except for a contract described in section 988(c)(5)) is not included in the definition of *sale* under proposed § 1.6045-1(a)(9)(ii)(A).

Thus, for example, the closing of a regulated futures contract that involves making a delivery of digital assets will be treated as two sales, one under redesignated proposed § 1.6045-1(a)(9)(i) with respect to the profit or loss on the contract, and the other under proposed § 1.6045-1(a)(9)(ii)(A)(3) on the delivery of the digital assets. The Treasury Department and the IRS invite comments addressing the extent to which these rules create logistical concerns for the reporting on contracts involving the delivery of digital assets. Additionally, the delivery of a digital asset under an executory contract will be treated as a sale of the digital asset under these rules if the underlying terms of the contract (for example, an exchange of one digital asset for a different digital asset) would have given rise to a sale under these rules if the contract had been executed when made. In contrast, if the underlying terms of the contract would not have been treated as a sale under these rules (for example, the direct payment of a digital asset by a consumer to a merchant in exchange for merchandise without the involvement of a digital asset payment processor), then the delivery of the digital asset pursuant to this type of executory contract will not be treated as a sale. The Treasury Department and the IRS invite comments regarding how frequently forward contracts involving digital assets are traded in practice, and whether there are any additional issues that should be considered to enable brokers to report on these transactions.

Finally, there are several types of transactions that the definition of *sale* under proposed § 1.6045-1(a)(9)(ii) does not include. For example, the definition does not include a transaction in which a customer receives new digital assets without disposing of something else in exchange. Thus, for example, a sale does not include a hard fork transaction, in which a customer receives new digital assets as part of a protocol change in previously held digital assets without disposing of different digital assets in exchange. Similarly, the receipt by a customer of digital assets from an airdrop (or simultaneous distribution of units of digital assets to the distributed ledger addresses of multiple taxpayers) does not constitute the sale of digital assets under proposed § 1.6045-1(a)(9)(ii) even if the customer's

holdings in existing digital assets are the basis on which the new digital assets were received. Additionally, the definition of *sale* under proposed § 1.6045-1(a)(9)(ii) does not include a transaction in which a broker's customer receives digital assets in return for the performance of services. Thus, for example, a sale does not include the receipt by a broker's customer of new digital assets as a reward in return for certain marketing-related services such as taking a survey.

The Treasury Department and the IRS are aware that the transactions described in this Part I.C of this *Explanation of Provisions* do not address every type of transaction involving digital assets that taxpayers engage in through entities defined in these proposed regulations as brokers. For example, these proposed regulations do not specify whether a loan of digital assets is required to be reported. These proposed regulations also do not specifically address whether reporting is required for transactions involving the transfer of digital assets to and from a liquidity pool by a liquidity pool provider, or the wrapping and unwrapping of a digital asset, in light of the absence of guidance on those transactions. Comments are requested on whether the definition of *sale* or other parts of the regulations should be revised to address transactions not described in these proposed regulations.

#### D. Information To Be Reported for Digital Asset Sales

Several new subparagraphs have been added to the rules contained in existing § 1.6045-1(d)(2)(i) to address the information required to be reported with respect to digital asset sales. Much of the information required to be reported is similar to the information that is currently required to be reported on the Form 1099-B with respect to securities. For example, proposed § 1.6045-1(d)(2)(i)(B) requires that for each digital asset sale for which a broker is required to file an information return, the broker must report on the form prescribed by the Secretary the following information:

- The customer's name, address, and taxpayer identification number;
- The name or type of the digital asset sold and the number of units of the digital asset sold;
- The sale date and time;
- The gross proceeds of the sale; and
- Any other information required by the form or instructions in the manner required by the form or instructions.

Additionally, to aid the IRS in verifying valuations provided for reported gross proceeds and in determining whether the basis claimed

by taxpayers in connection with transactions for which adjusted basis information is not reported by the broker, proposed § 1.6045-1(d)(2)(i)(B) also requires that the broker report:

- The transaction identification (transaction ID or transaction hash) associated with the digital asset sale, if any;
- The digital asset address (or digital asset addresses if multiple) from which the digital asset was transferred in connection with the sale, if any; and
- Whether the consideration received was cash, different digital assets, other property, or services.

In addition to these listed items, if the transaction involves the sale of a digital asset that also constitutes a sale of a security, the broker must also provide certain information that is relevant to the sale of securities as required by the form or instructions. It is anticipated that this additional information will be required only for digital assets that are digital representations of other assets that constitute securities.

To the extent the sale is of a digital asset that was held by the broker in a hosted wallet on behalf of the customer and that digital asset was previously transferred into that account (transferred-in digital asset), the broker must also report the date and time of such transfer-in transaction, the transaction ID of such transfer-in transaction, the digital asset address (or digital asset addresses if multiple) from which the transferred-in digital asset was transferred, and the number of units transferred in by the customer as part of that transfer-in transaction. The Treasury Department and the IRS intend to except brokers from reporting this additional information with respect to the sale of transferred-in digital assets once rules have been promulgated under section 6045A with respect to brokers who receive transfer statements under section 6045A for digital assets. Until that time, this information would be used by the IRS to verify the basis claimed by the taxpayer in connection with the sale of the transferred-in digital asset.

For purposes of the above reporting requirements, proposed § 1.6045-1(a)(20) defines a *digital asset address* as the unique set of alphanumeric characters that is generated by the wallet into which the digital asset will be transferred. Some digital asset addresses may be referred to as wallet addresses. Additionally, proposed § 1.6045-1(a)(26) defines a *transaction identification*, or *transaction ID*, as the unique set of alphanumeric identification characters that a digital asset distributed ledger associates with

a transaction involving the transfer of a digital asset from one digital asset address to another. A transaction ID is alternatively referred to as a “Txid” or “transaction hash.”

The Treasury Department and the IRS recognize that the requirement to report transaction ID information and digital asset addresses with respect to digital asset sales and certain digital asset transfer-in transactions may be burdensome under certain circumstances. Accordingly, the Treasury Department and the IRS request comments regarding whether there are other less burdensome alternatives that would allow the IRS the ability to investigate or verify basis information provided by taxpayers. For example, should the Treasury Department and the IRS consider an annual aggregate digital asset sale threshold, above which the broker would report transaction ID information and digital asset addresses? If so, what should that threshold be and why?

When available, drafts of the form prescribed by the Secretary will be posted for comment at [www.irs.gov/draftforms](http://www.irs.gov/draftforms). Brokers will only be required to file the form following approval of the information collection under the Paperwork Reduction Act. The Paperwork Reduction Act approval process requires the IRS to publish a 60-day notice and request for comments in the **Federal Register** and subsequently publish a 30-day notice and request for comments in the **Federal Register** for the Office of Management and Budget’s (OMB) review and clearance. Proposed § 301.6721–1(g)(3)(iii) (failure to file correct information returns) and proposed § 301.6722–1(d)(2)(viii) (failure to furnish correct payee statements) have been modified to include the form prescribed by the Secretary pursuant to proposed § 1.6045–1(d)(2)(i)(B) in the list of forms subject to those penalties.

For sales of digital assets that are effected when recorded on a broker’s internal accounting ledger, proposed § 1.6045–1(d)(4)(ii) provides that the broker must report the sale as of the date and time the sale was recorded on that internal ledger regardless of whether that sale is later recorded on a distributed ledger. Reporting the time of the transaction under a uniform time standard would eliminate any confusion that would be caused by reporting transactions by the same taxpayer in different local time zones. The Treasury Department and the IRS understand that transaction timestamps undertaken on blockchains are generally recorded using Coordinated Universal Time (UTC). Accordingly, proposed § 1.6045–

1(d)(4)(ii) provides that the reported date and time should generally be set forth in hours, minutes, and seconds using UTC unless otherwise directed in the form prescribed by the Secretary pursuant to proposed § 1.6045–1(d)(2)(i)(B) or instructions. It is anticipated that the time standard required by this form prescribed by the Secretary or instructions will correspond to any successor convention for time generally used by the industry. Proposed § 1.6045–1(d)(4)(iii) provides examples of a broker reporting time using the UTC time convention based on a 12-hour clock (designating a.m. and p.m. as appropriate). The Treasury Department and the IRS request comments regarding whether it would be less burdensome to report the time using a 24-hour clock and the extent to which all brokers should be required to use the same 12-hour or 24-hour clock for these purposes. The Treasury Department and the IRS also request comments regarding whether a uniform time standard is overly burdensome and the extent to which there are circumstances under which more flexibility should be provided. For example, if a particular customer’s transactions are carried out only in one time zone, the customer might prefer reporting that is based on that time zone, particularly for transactions for which the exact date and time of acquisition or disposition affect the determination of the customer’s tax liability, such as transactions that take place just before the end of the customer’s taxable year or that relate to the customer’s holding period for the disposed-of digital asset. The Treasury Department and the IRS request comments regarding whether there are alternatives to basing the transaction date on the UTC for customers who are present in a different time zone known to the broker at the time of the transaction.

These information reporting rules will require digital asset brokers to expend resources to develop and implement information reporting systems to comply with the required reporting. Balancing on the other side of that consideration is the concern that limited information reporting by brokers has made it difficult, time-consuming, and expensive for taxpayers to calculate their gains or losses on these transactions and has contributed to significant underreporting by taxpayers of gain generated by digital asset sale and exchange transactions. Accordingly, these changes are proposed to apply to sales and exchanges of digital assets effected on or after January 1, 2025. No

inference should be drawn from these proposed rules concerning the reporting requirements for digital asset sale transactions entered into before the regulations become applicable.

#### E. Gross Proceeds in Digital Asset Transactions

##### 1. Determining the Gross Proceeds in a Sale Transaction

The information reporting rules for determining the gross proceeds in a sale transaction generally follow the substantive rules for computing the amount realized from transactions involving the sale or other disposition of digital assets. These substantive rules are provided under proposed § 1.1001–7(b) and discussed in Part II of this *Explanation of Provisions*. Accordingly, proposed § 1.6045–1(d)(5)(ii)(A) defines *gross proceeds* to be reported by a broker with respect to a customer’s sale of digital assets as the sum of: (i) the total amount in U.S. dollars paid to the customer or credited to the customer’s account as a result of the sale; (ii) the fair market value of any property received or, in the case of a debt instrument issued in exchange for the digital asset and subject to § 1.1001–1(g), the amount realized attributable to the debt instrument as determined under proposed § 1.1001–7(b)(1)(iv) (in general, the issue price of the debt instrument); and (iii) the fair market value of any services received, including services giving rise to digital asset transaction costs; reduced by the amount of the allocable digital asset transaction costs as discussed in Part I.E.3 of this *Explanation of Provisions*. Part I.E.2 of this *Explanation of Provisions* provides the rules applicable to determining the fair market value of property or services received in an exchange transaction.

In the case of a sale effected by a digital asset payment processor on behalf of one party, proposed § 1.6045–1(d)(5)(iii) provides that the amount of gross proceeds to be reported by the digital asset payment processor is equal to the sum of the amount paid in cash, or the fair market value of the amount paid in digital assets by the digital asset payment processor to a second party, plus any digital asset transaction costs withheld (whether withheld from the digital assets transferred by the first party or withheld from the amount due to the second party), reduced by the amount of the allocable digital asset transaction costs as discussed in Part I.E.3 of this *Explanation of Provisions*. For purposes of this calculation, the amount paid by a digital asset payment processor to a second person includes

the amount treated as paid to the second person pursuant to a processor agreement that temporarily fixes the exchange rate between that second person and a digital asset payment processor, which amount is determined by reference to the fixed exchange rate.

## 2. Determining the Fair Market Value of Property or Services Received in an Exchange Transaction

In determining the fair market value of property or services received by the customer in an exchange transaction involving digital assets, the information reporting rules generally follow the substantive rules provided under proposed § 1.1001-7(b) discussed in Part II of this *Explanation of Provisions*. Accordingly, proposed § 1.6045-1(d)(5)(ii)(A) provides that in determining gross proceeds under these rules, the fair market value should be measured as of the date and time the transaction was effected. Additionally, except in the case of services giving rise to digital asset transaction costs, to determine the fair market value of services or property (including different digital assets or real property) paid to the customer in exchange for digital assets, proposed § 1.6045-1(d)(5)(ii)(A) provides that the broker must use a reasonable valuation method that looks to the contemporaneous evidence of value of the services, stored-value cards, or other property. In contrast, because the value of digital assets used to pay for digital asset transaction costs is likely to be significantly easier to determine than any other measure of the value of services giving rise to those costs, the Treasury Department and the IRS have determined for administrability purposes that brokers must look to the fair market value of the digital assets used to pay for digital asset transaction costs in determining the fair market value of services (including the services of any broker or validator involved in executing or validating the transfer) giving rise to those costs. The Treasury Department and the IRS, however, request comments regarding whether there are circumstances under which an alternative valuation rule would be more appropriate.

In the case of one digital asset exchanged for a different digital asset, proposed § 1.6045-1(d)(5)(ii)(A) provides that the broker may rely on valuations performed by a digital asset data aggregator using a reasonable valuation method. For this purpose, a reasonable valuation method looks to the exchange rate and the U.S. dollar valuations generally applied by the broker effecting the exchange as well as other brokers, taking into account the

pricing, trading volumes, market capitalization, and other relevant factors in conducting the valuation. Because taking into account these described factors from small volume exchangers could provide skewed valuations of a digital asset, proposed § 1.6045-1(d)(5)(ii)(C) provides that a valuation method is not a reasonable method if the method over-weighs prices from exchangers that have low trading volumes or if the method under-weighs exchange prices that lie near the median price value. A valuation method also is not a reasonable method if it inappropriately weighs factors associated with a price that would make that price an unreliable indicator of value. For example, if trading prices on a digital asset trading platform are affected by structured trading that tends to increase the price of assets beyond the price that an unrelated purchaser with knowledge of the facts would pay, using the prices from that digital asset trading platform may not be part of a reasonable valuation method.

Consistent with the substantive rules discussed in Part II of this *Explanation of Provisions*, if in a digital asset exchange transaction there is a disparity between the value of the services or property received and the value of the digital asset transferred, proposed § 1.6045-1(d)(5)(ii)(B) provides that the broker must look to the fair market value of the services or property received. If the broker reasonably determines that the value of services or property received cannot be valued with reasonable accuracy, proposed § 1.6045-1(d)(5)(ii)(B) provides that the fair market value of the received services or property must be determined by reference to the fair market value of the transferred digital asset. If the broker reasonably determines that neither the digital asset nor the services or other property exchanged for the digital asset can be valued with reasonable accuracy, proposed § 1.6045-1(d)(5)(ii)(B) provides that the broker must report an undeterminable value for gross proceeds from the transferred digital asset.

## 3. Determining Digital Asset Transaction Costs Allocable to the Sale in an Exchange Transaction

Many digital asset brokers will charge a single transaction fee in the case of an exchange of one digital asset for a different digital asset. In some cases, these fees may be adjusted depending on the type of digital asset acquired or disposed of in the exchange, with transactions involving less commonly traded digital assets carrying higher transaction fees than transactions involving more commonly traded digital

assets. The Treasury Department and the IRS considered various approaches to allocating transaction fees and other digital asset transaction costs that are charged in an exchange of one digital asset for a different digital asset. Ultimately, to avoid the administrative complexities associated with distinguishing between special broker fee allocations that appropriately reflect the economics of the transaction and broker fee allocations that reflect tax-motivated requests, proposed § 1.6045-1(d)(5)(iv) provides that in the case of a sale or disposition of digital assets, the total digital asset transaction costs paid by the customer are generally allocable to the disposition of the digital assets. An exception applies, however, in an exchange of one digital asset for another digital asset differing materially in kind or in extent. In that case, one-half of any digital asset transaction cost paid by the customer in cash or property to effect the exchange should be allocable to the disposition of the transferred digital asset and the other half should be allocable to the acquisition of the received digital asset. These rules are consistent with the substantive rules provided under proposed § 1.1001-7(b) and proposed § 1.1012-1(h) discussed in Part II of this *Explanation of Provisions*. Finally, proposed § 1.6045-1(d)(5)(iv) defines the term *digital asset transaction costs* to mean the amount paid to effect the disposition or acquisition of a digital asset and includes transaction fees paid to a digital asset broker, any transfer taxes that apply, and any other commissions or other costs paid to effect the disposition or acquisition of a digital asset.

## F. Adjusted Basis Reporting for Digital Assets and Certain Financial Contracts on Digital Assets

### 1. Mandatory Broker Reporting

Section 6045(g) requires a broker that is otherwise required to make a return under section 6045(a) with respect to covered securities to report the adjusted basis with respect to those securities. Under section 6045(g)(3)(A), a covered security is any specified security acquired on or after the acquisition applicable date if the security was either acquired through a transaction in the account in which the security is held or was transferred to that account from an account in which the security was a covered security, but only if the broker received a transfer statement under section 6045A with respect to that security. Prior to the amendments made by the Infrastructure Act, the term *specified security* was defined by

section 6045(g)(3)(B) to mean any share of stock in a corporation; any note, bond, debenture, or other evidence of indebtedness; any commodity or commodity derivative if the Secretary determines that adjusted basis reporting is appropriate; and any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate. For stock in a corporation, sections 6045(g)(3)(C)(i) and (ii) provide that the acquisition applicable date is either January 1, 2011, or January 1, 2012, depending on whether the average basis method is permissible under section 1012. Prior to the amendments made by the Infrastructure Act, section 6045(g)(3)(C)(iii) provided the acquisition applicable date for specified securities other than stock, including for any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate, was January 1, 2013, or such later date as determined by the Secretary. Under the existing regulations, reporting of adjusted basis is required only for stock, debt instruments, options on stock and debt and related financial attributes such as interest rates or dividend yields, and securities futures contracts.

The Treasury Department and the IRS intend to issue a separate notice of proposed rulemaking to implement the legislative changes to section 6045A which would require applicable persons, including brokers, to provide transfer statements under section 6045A when digital assets are transferred. These transfer statements are needed for digital assets that are acquired by taxpayers in one account and transferred to another account to provide the brokers who effect sales of digital assets with the information necessary to report the adjusted basis of the sold digital assets. Section 6045A addresses this information shortfall with respect to transferred securities by requiring that the acquiring broker or other applicable person provide the purchase date and basis information for a transferred security to the receiving broker. The legislative changes to section 6045A made in section 80603(b)(2)(A) of the Infrastructure Act not only clarify that transfer statement reporting under section 6045A(a) applies to covered securities that are digital assets, but also add a new reporting provision under section 6045A(d) to provide for broker information reporting to the IRS on transfers of digital assets that are covered securities, provided the transfer is not a sale and is not to an account

maintained by a person that the broker knows or has reason to know is also a broker.

#### a. Digital Assets Acquired by Custodial Brokers and Certain Financial Contracts on Digital Assets

Brokers who acquire digital assets for customers, provide custodial services for these digital assets, and continue to hold those digital assets until sale have the necessary information to determine the customers' adjusted basis in these digital assets. By contrast, brokers who receive a transfer of a customer's digital assets that were acquired for that customer by another broker may not have that information. As a result, the Treasury Department and the IRS have determined that mandatory basis reporting under these proposed regulations should apply only to sales of digital assets that were previously acquired, held until sale, and then sold by a custodial broker for the benefit of a customer. Accordingly, until rulemaking under section 6045A is complete, the definition of a *covered security* for purposes of digital asset basis reporting is limited under proposed § 1.6045-1(a)(15)(i)(J) to digital assets that are acquired in a customer's account by a broker providing hosted wallet services. Therefore, sale transactions effected by custodial brokers of digital assets that were *not* previously acquired in the customer's account and sale transactions effected by non-custodial brokers, such as those that taxpayers may refer to as decentralized exchanges, are not subject to these mandatory basis reporting rules.

In contrast to digital assets, financial contracts (such as options and forward contracts) on digital assets that are not themselves digital assets are not held by brokers on behalf of customers in hosted wallets. Accordingly, the definition of a *covered security* subject to mandatory basis reporting for these non-digital asset options and forward contracts on digital assets is not limited to contracts held by brokers providing hosted wallet services. Instead, basis reporting for these financial contracts is required under these proposed regulations pursuant to the expanded definition of a *covered security* under proposed § 1.6045-1(a)(15)(i)(H) (non-digital asset options) and proposed § 1.6045-1(a)(15)(i)(K) (non-digital asset forward contracts) as long as they are granted, entered into, or acquired in a customer's account at a broker or custodian pursuant to the rules in existing § 1.6045-1(a)(15)(ii).

#### b. Acquisition Applicable Date

The recordkeeping burden for taxpayers transacting in digital assets can be significant. To determine whether a sale or exchange of a digital asset gives rise to gain or loss and the holding period for the asset, the taxpayer must know both the gross proceeds from the transaction as well as the adjusted basis and acquisition date of the digital asset. Determining a taxpayer's adjusted basis in a digital asset or portion of a digital asset sold or exchanged can be a complex endeavor, particularly for taxpayers that carry out frequent acquisitions and sales or exchanges of digital assets, as the taxpayer may need to track every transaction the taxpayer has carried out with respect to that digital asset both in the current taxable year and in prior taxable years. This is particularly true for interchangeable digital asset units for which minute fractions of previously purchased units can be sold on different dates. Complexity is further increased when transaction fees paid in digital assets give rise to separate digital asset sale transactions of the digital assets used to pay the transaction fees. Given these recordkeeping complexities, the Treasury Department and the IRS have determined that adjusted basis reporting by brokers for digital assets would both improve tax administration and assist taxpayers who sell or exchange digital assets to comply with their own basis tracking and reporting requirements, as well as assisting the IRS to determine whether a taxpayer has properly reported its gain or loss. Accordingly, these proposed regulations provide that for each sale of a digital asset that is a covered security for which a broker is required to make a return of information, the broker must also report the adjusted basis of the digital asset sold, the date and time the digital asset was purchased, and whether any gain or loss with respect to the digital asset sold is long-term or short-term (within the meaning of section 1222 of the Code). The remainder of the discussion in this Part I.F.1.b of this *Explanation of Provisions* describes when a digital asset is treated as a covered security under these proposed regulations.

Section 80603(b)(1) of the Infrastructure Act adds digital assets to the list of specified securities for which basis reporting is specifically required, provided that the digital asset is acquired on or after January 1, 2023 (the acquisition applicable date for digital assets). January 1, 2023, is prior to the date on which these proposed regulations may be finalized. Accordingly, the Treasury Department

and the IRS considered whether the acquisition date on or after which brokers should be required to track and report basis for digital assets acquired in a customer's account should be January 1, 2023 or should instead be a date after the finalization of these proposed regulations. In considering that question, the Treasury Department and the IRS have taken into account that while few digital assets have been in existence for more than a few years, the value of some of those digital assets has fluctuated significantly over relatively short periods of time. In addition, unlike the securities industry, in which the oldest records were first created on paper many decades ago and were then often stored physically on paper or microfilm, the oldest records created and stored by digital asset brokers were created and continue to be stored electronically as a matter of business practice. Thus, a digital asset broker has the ability to provide information regarding acquisition date, time, and cost (adjusted basis information) to customers with respect to digital assets previously acquired by that broker on behalf of its customers. The Treasury Department and the IRS understand that some digital asset brokers currently voluntarily provide this information to customers in response to customer requests for that information. Moreover, digital asset platforms have been aware since the enactment of the Infrastructure Act that digital assets would be treated as covered securities if acquired on or after January 1, 2023, and providing basis information for digital assets acquired on or after that date will assist taxpayers to properly prepare their tax returns for future sales of those assets. See section 6045(g)(3)(C)(iii). Accordingly, proposed § 1.6045-1(a)(15)(i)(J) expands the definition of a *covered security* for which adjusted basis reporting will be required under proposed § 1.6045-1(d)(2)(i)(C) to include digital assets acquired in a customer's account on or after January 1, 2023, by a broker providing hosted wallet services.

As discussed in Part I.F.1.a of this *Explanation of Provisions*, these proposed regulations also expand the definition of a *covered security* for which adjusted basis reporting will be required under proposed § 1.6045-1(d)(2)(i)(C) to include certain non-digital asset options on digital assets and non-digital asset forward contracts on digital assets. Proposed § 1.6045-1(a)(15)(i)(H) expands the definition of a *covered security* to include non-digital asset options on digital assets to the extent they are granted or acquired in an

account on or after January 1, 2023, and proposed § 1.6045-1(a)(15)(i)(K) expands the definition of a *covered security* to include non-digital asset forward contracts on digital assets to the extent they are granted or acquired in an account on or after January 1, 2023.

Notwithstanding the proposed use of January 1, 2023 as the acquisition date on or after which brokers should be required to track and report basis for digital assets acquired in a customer's account, proposed § 1.6045-1(d)(2)(i)(C) would require adjusted basis reporting for sales of digital assets treated as covered securities and for non-digital asset options and forward contracts on digital assets only to the extent the sales are effected on or after January 1, 2026, in order to allow brokers additional time to build appropriate reporting and basis retrieval systems. That is, under these proposed regulations a broker providing custodial services for digital asset would be required to provide adjusted basis reporting for sales of digital assets effected on or after January 1, 2026, if the digital asset is acquired and continuously held by that broker in the customer's account on or after January 1, 2023. Additionally, any type of broker effecting sales of non-digital asset options on digital assets and non-digital asset forward contracts on digital assets would be required to provide adjusted basis reporting for sales of these assets if they were granted, entered into, or acquired on or after January 1, 2023.

## 2. Voluntary Broker Reporting

Some brokers may be capable of providing the information required in these regulations with respect to digital asset sales prior to the applicability dates, and some brokers may be capable of providing the information required in these regulations for digital assets that are not covered securities. To encourage reporting by digital asset brokers that are not subject to mandatory basis reporting, these proposed regulations apply the same penalty waiver rule to digital asset brokers that voluntarily report adjusted basis information on noncovered securities as currently applies to securities brokers. Accordingly, under proposed § 1.6045-1(d)(2)(iii)(A), brokers that voluntarily report adjusted basis information with respect to sales of digital asset-related noncovered securities (that is, digital assets acquired prior to January 1, 2023, options on digital assets granted or acquired in an account prior to January 1, 2023, and forward contracts on digital assets entered into or acquired in an account on or prior to January 1, 2023, which assets are not covered securities under proposed § 1.6045-1(a)(15)(i)(H),

(J) or (K)), are not subject to penalties under section 6721 or 6722 for failure to report or furnish the adjusted basis information correctly. Additionally, proposed § 1.6045-1(d)(2)(iii)(B) provides that brokers that choose to report sales of digital assets before the applicability date of these regulations (that is, gross proceeds from the sale of digital assets effected prior to January 1, 2025, or adjusted basis information with respect to sales effected prior to January 1, 2026), will not be subject to penalties under section 6721 or 6722 for failure to report or furnish that information correctly. Brokers that choose to report on sales of digital assets before the applicability date of these regulations can make that report on either the Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*, or, if available in time for this reporting, the form prescribed by the Secretary pursuant to proposed § 1.6045-1(d)(2)(i)(B).

## 3. Determining the Adjusted Basis

To ensure that the rules governing the calculation of adjusted basis apply to digital asset transactions, these proposed regulations modify existing § 1.6045-1(d)(6)(i) and (d)(6)(ii)(A), which provide the general rules for determining the adjusted basis of a security and detail how to calculate the initial basis of a security. First, proposed § 1.6045-1(d)(6)(i) and (d)(6)(ii)(A) clarify that the rules therein apply for determining the adjusted basis of a specified security that is subject to the broker basis reporting rules, whether or not the asset is within the definition of *security* under existing § 1.6045-1(a)(3). Additionally, proposed § 1.6045-1(d)(6)(ii)(A) is modified to add, in the case of a digital asset sale, digital asset transaction costs to the list of costs that are included in calculating the initial basis of a specified security. Accordingly, under proposed § 1.6045-1(d)(6)(ii)(A), the initial basis of a specified security that is a digital asset and that is acquired for cash is the total amount paid by the customer (or credited against the customer's account) for the specified security, increased by any commissions, transfer taxes, and digital asset transaction costs related to its acquisition.

The existing regulations do not permit brokers to adjust the basis of securities acquired to reflect income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements, to the extent the securities were granted or acquired on or after January 1, 2014. This decision was made because compensation

information is not generally accessible to most brokers, and, in many situations, a broker would have to accept customer-provided information to track the compensation-related status of these arrangements. Additionally, requiring basis reporting for securities acquired as part of equity-based compensation arrangements would have required extensive reprogramming of brokers' underlying databases and reporting systems. TD 9616, 78 FR 23116, 23122 (Apr. 18, 2013). For the same reasons, proposed § 1.6045-1(d)(6)(ii)(A) adds digital asset-based compensation arrangements to the types of services arrangements for which brokers are prohibited from adjusting to reflect income recognized.

These proposed regulations provide special rules for determining the initial basis of digital assets acquired in exchange for property, including different digital assets or real property. These rules are provided to avoid discrepancies associated with transactions in which the fair market value of property, including different digital assets, transferred is not equal to the fair market value of the digital assets received. See Proposed §§ 1.1001-7, 1.1012-1(h), and 1.1012-1(j) in Part II of this *Explanation of Provisions* in connection with exchanges of digital assets for different digital assets. In accordance with the principles described there, proposed § 1.6045-1(d)(6)(ii)(C)(1) provides that the initial basis of a digital asset received in an exchange for property that is not a debt instrument described in proposed § 1.1012-1(h)(1)(v) is the fair market value of the digital asset received at the time of the exchange, increased by any digital asset transaction costs allocable to the acquisition of that digital asset. Proposed § 1.6045-1(d)(6)(ii)(C)(2) provides that the total digital asset transaction costs paid by the customer in an acquisition of digital assets are allocable to the digital assets received. An exception is provided, however, in the case of an exchange of one digital asset for a different digital asset differing materially in kind or in extent. Rather, in the case of an exchange of one digital asset for a different digital asset differing materially in kind or in extent, one-half of any digital asset transaction costs paid in cash or property to effect the exchange is allocable to the disposition of the transferred digital asset and one-half is allocable to the acquisition of the received digital asset for the purpose of determining basis under proposed § 1.6045-1(d)(6)(ii)(C)(1). These allocation rules are consistent with the rules provided in

proposed § 1.1012-1(h) discussed in Part II of this *Explanation of Provisions*. Finally, proposed § 1.6045-1(d)(6)(ii)(C)(1) provides that for digital assets acquired in exchange for a debt instrument described in proposed § 1.1012-1(h)(1)(v), the initial basis of the digital asset attributable to the debt instrument is equal to the amount determined under the rules provided in § 1.1012-1(g) (generally equal to the issue price of the debt instrument) plus any allocable digital asset transaction costs.

In determining the initial basis of a digital asset acquired in an exchange, if the broker or digital asset data aggregator reasonably determines that the value of the digital asset received cannot be determined with reasonable accuracy, proposed § 1.6045-1(d)(6)(ii)(C)(1) provides that the fair market value of the digital asset received must be determined by reference to the property transferred at the time of the exchange. If the broker or digital asset data aggregator reasonably determines that neither the value of the digital asset received, nor the value of the property transferred can be determined with reasonable accuracy, proposed § 1.6045-1(d)(6)(ii)(C)(1) provides that the broker must report zero for the initial basis of the received digital asset.

Finally, these proposed regulations reserve two paragraphs at proposed § 1.6045-1(d)(6)(vii) and (ix) to accommodate final regulations implementing safe harbor exceptions for *de minimis* errors on information returns and payee statements, which are expected to be finalized before these proposed regulations are finalized.

#### G. Ordering Rules

Proposed § 1.6045-1(d)(2)(ii)(B) provides ordering rules that are consistent with the ordering rules under proposed § 1.1012-1(j)(3) for a broker to determine which units of the same digital asset should be treated as sold when the customer previously acquired, or had transferred in, multiple units of that same digital asset on different dates or at different prices. Under these rules, a broker must report a sale of less than the customer's entire position in an account in accordance with a customer's identification of the digital assets to be sold. These proposed regulations provide, similar to the rules for identifying lots of stock that are sold when a taxpayer sells less than all of its shares in a particular company, that an adequate identification is made if a customer notifies the broker no later than the date and time of sale which units of a type of digital asset it is

selling. See Proposed §§ 1.1001-7, 1.1012-1(h), and 1.1012-1(j) in Part II of this *Explanation of Provisions*.

In cases where a customer does not provide an adequate identification by the date and time of sale, proposed § 1.6045-1(d)(2)(ii)(B) provides that the units of the digital asset sold are the earliest units of that type of digital asset either purchased within or transferred into the customer's account with the broker. For purposes of this ordering rule, units of a digital asset are treated as transferred into the customer's account as of the date and time of the transfer. Once rules have been promulgated under section 6045A, it is anticipated that brokers who receive transfer statements under section 6045A with respect to transferred-in digital assets would be permitted to use the actual purchase date of these digital assets for purposes of determining which units are the earliest units of that type of digital asset held in the customer's account with the broker.

#### H. Exceptions To Reporting

These proposed regulations leave unchanged for digital asset brokers the exceptions to reporting provided under existing § 1.6045-1(c) for exempt recipients and excepted sales. Thus, for example, no reporting is required for sales of digital assets effected on behalf of certain customers, such as certain corporations, financial institutions, tax exempt organizations, or governments or political subdivisions thereof. The Treasury Department and the IRS considered adding registered money services businesses (MSBs), as defined in 31 CFR 1010.100(ff), to the list of recipients a broker may treat as exempt from reporting under existing § 1.6045-1(c)(3)(i)(B) but did not do so because the Treasury Department and the IRS are not aware of any public method for determining whether a registered MSB is compliant with its obligations under the Bank Secrecy Act. See Part II.4 of this *Explanation of Provisions* for a discussion of some of the obligations of registered MSBs under the Bank Secrecy Act. A registered MSB that is not compliant with its obligations under the Bank Secrecy Act may also fail to comply with its obligations to report information to the IRS.

The special multiple broker rule under existing § 1.6045-1(c)(3)(iii) provides that a broker is not required to file a return of information if it is instructed to initiate a sale on behalf of a customer by a person that is an exempt recipient under existing § 1.6045-1(c)(3)(i)(B)(6) (registered dealer in securities or commodities), existing § 1.6045-1(c)(3)(i)(B)(7)

(registered futures commission merchant), or existing § 1.6045–1(c)(3)(i)(B)(11) (financial institution). This rule is intended to avoid duplicative reporting. Although the avoidance of duplicative reporting is also a desirable goal for digital asset reporting, there are some practical considerations that impede the extension of the multiple broker rule to digital asset brokers that are not exempt recipients under the existing regulations. First, in some cases it may be difficult for a broker to determine whether a particular digital asset platform also qualifies as a broker for purposes of these proposed regulations. Second, even if a digital asset broker can determine that the person that instructed the broker to initiate a sale on behalf of a customer is also a digital asset broker, there is a higher level of risk that the multiple broker rule would result in no reporting of the sale than is the case with traditional financial institutions. Unlike the three types of listed exempt recipients, digital asset brokers are not necessarily subject to the type of prudential or supervisory regulation that would tend to provide assurance to the IRS that the broker will comply with its tax reporting obligations. Accordingly, while the Treasury Department and the IRS considered whether to add digital asset brokers to the list of exempt recipients for which the multiple broker rule would apply, it was decided that it was not appropriate at this time to expand the rule in this way. The Treasury Department and the IRS, however, welcome suggestions that could work to avoid duplicative broker reporting without sacrificing the certainty that at least one of the multiple brokers will report. Specifically, to what extent will a broker know with certainty that another party involved in a transaction is also a broker with a reporting obligation under these rules.

#### I. Sales Effected at an Office Outside the United States or on Behalf of Exempt Foreign Persons

This Part I.I describes the provisions in these proposed regulations relating to when U.S. brokers and, in some cases, non-U.S. brokers may treat a customer as an exempt foreign person and therefore not be required to report on digital asset sales effected for the customer. These rules are based on the rules in the existing regulations that provide that reporting is not required with respect to customers that may be treated as exempt foreign persons.

The Organisation for Economic Development and Co-operation has developed and approved the Crypto-

Asset Reporting Framework (CARF), which is a framework for the reporting and automatic exchange of information on crypto-assets. The Treasury Department and the IRS are currently considering how the United States could implement the CARF, so that the IRS could receive information on sales effected for U.S. taxpayers by non-U.S. brokers through an automatic exchange of information with other countries that have implemented the CARF. It is anticipated that implementation of CARF by the United States would require the modification of the proposed regulations described in this Part I.I to ensure that U.S. brokers collect the information required to be exchanged under the framework, to the extent that the collection of that information is permitted under U.S. law, and to exempt some non-U.S. brokers from collecting certain information required under the proposed regulations. For example, the modifications may require reporting by U.S. brokers of certain information on transactions effected for customers that are treated under these proposed regulations as exempt foreign persons and relieve certain non-U.S. brokers of reporting under section 6045 on sales effected for U.S. customers if the IRS is entitled to receive information on such transactions from a foreign tax administration pursuant to an automatic exchange of information mechanism. Any modified rules would be reissued for notice and comment.

Under existing § 1.6045–1(a)(1), a U.S. payor or middleman is considered a broker (and therefore subject to the reporting rules under section 6045) with respect to sales effected at an office inside the United States and sales effected at an office outside the United States, while a non-U.S. payor or middleman is considered a broker (and therefore subject to the reporting rules under section 6045) only with respect to sales it effects at an office inside the United States. A U.S. payor or middleman includes a U.S. person (including a foreign branch of a U.S. person), a controlled foreign corporation (as defined in § 1.6049–5(c)(5)(i)(C)), certain U.S. branches, a foreign partnership with controlling U.S. partners and a U.S. trade or business, and a foreign person for which 50 percent or more of its gross income is effectively connected with a U.S. trade or business. A non-U.S. payor or middleman is a payor or middleman other than a U.S. payor or middleman.

A sale is treated as effected at an office located outside the United States under existing § 1.6045–1(g)(3)(iii)(A) if the broker completes the acts necessary to effect the sale outside the United

States pursuant to instructions directly transmitted to that office from outside the United States by the broker's customer. If, however, specified indicia of U.S.-based activity are associated with a customer's sale (such as if the customer has transmitted instructions to the foreign office of the broker from within the United States, or gross proceeds are transferred into an account maintained by the customer in the United States), the sale (which would otherwise be treated as effected at an office outside the United States) will be treated as effected at an office inside the United States. See existing § 1.6045–1(g)(3)(iii)(B). Even when a sale is treated as effected at an office inside the United States by a broker that is a non-U.S. payor or middleman, existing § 1.6045–1(c)(3)(ii)(B) excepts the sale from reporting if the broker is a foreign financial institution that reports with respect to the account of the customer for which the sale was effected under the broker's requirements under chapter 4 of the Code or an applicable intergovernmental agreement to implement the provisions commonly known as the Foreign Account Tax Compliance Act (FATCA) of the Hiring Incentives to Restore Employment Act of 2010, Public Law 111–147, 124 Stat. 71 (March 18, 2010).

Regardless of the location of the sale and whether a broker is a U.S. or non-U.S. payor, reporting under section 6045 also does not apply to sales effected for a customer that a broker may treat as an exempt recipient or as an exempt foreign person. See existing § 1.6045–1(c)(3) and (g)(1). Under existing § 1.6045–1(c)(3)(i)(C), a broker may treat a customer as an exempt recipient based on a Form W–9, *Request for Taxpayer Identification Number and Certification*, the broker's actual knowledge that the customer is an exempt recipient, or applicable indicators, depending on the type of exempt recipient status. Except in circumstances under which a broker is permitted to presume a customer is a foreign person, to treat the customer as an exempt foreign person a broker must obtain for a customer a beneficial owner withholding certificate, such as a Form W–8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)*. Alternatively, for a sale effected at an office outside the United States, brokers may use documentary evidence to establish that a customer is an exempt foreign person. Documentary evidence can include a driver's license, other government issued identification, or certain other information supporting the customer's foreign status. See

existing §§ 1.6045–1(g)(1)(i) (referencing the documentation requirements of § 1.6049–5(c)) and 1.6049–5(d)(2) and (3) (presumption rules applicable in absence of reliable documentation). Finally, payments that are reportable under section 6045 may also be subject to backup withholding under section 3406, generally when a broker has failed to obtain a valid Form W–9 for a customer, subject to certain exceptions.

The existing regulations under section 6045 rules were written based on a business model for securities that assumed that brokers would have offices at physical locations where customer transactions may be booked, and that brokers would generally have direct, in-person contact with their customers. In comparison to the business model of securities brokers that existed at the time the existing regulations were promulgated, digital asset brokers typically interact with, and effect sales on behalf of, customers entirely online, without any in-person interactions with the customer. This business model means that brokers can transact with customers across jurisdictional borders, without necessarily having a branch or place of business in the jurisdiction where the customers are located. These proposed regulations therefore provide rules to adapt the concept of effecting a sale at an office outside the United States and the rules relating to exempt foreign persons to the digital asset broker business model.

Under these proposed regulations, the determination of whether a sale is effected at an office inside or outside the United States is generally not based on the physical location where the acts necessary to effect a sale of digital assets are undertaken. Instead, proposed § 1.6045–1(g)(4) classifies a broker as a U.S. digital asset broker, a CFC digital asset broker, or a non-U.S. digital asset broker, and provides rules for determining the location of a digital asset sale for each type of broker. That is, the determination of whether a sale is treated as effected at an office outside the United States begins with reference to the classification of the broker under these proposed regulations, rather than being an independent determination based on the location of the brokers' activities. In general, sales by U.S. digital asset brokers are treated as effected at an office inside the United States, and sales by CFC digital asset brokers and non-U.S. digital asset brokers are treated as effected at an office outside the United States, although there are circumstances under which sales effected by such brokers are treated as effected at an office inside the United States. These proposed

regulations also incorporate certain modifications to the requirements for how each of these three types of brokers determine the foreign status of a customer for purposes of determining when the customer may be treated as an exempt foreign person. For CFC digital asset brokers and non-U.S. digital asset brokers, sales generally are not subject to backup withholding tax under proposed regulations under section 3406, although notable exceptions apply when the broker is considered to be conducting substantial business within the United States or when the broker has actual knowledge that the customer is a U.S. person.

#### 1. Rules for U.S. Digital Asset Brokers

Under proposed § 1.6045–1(g)(4)(i)(A), a U.S. digital asset broker is a U.S. payor or middleman (as defined in § 1.6049–5(c)(5)), other than a controlled foreign corporation within the meaning of § 1.6049–5(c)(5)(i)(C), that effects sales of digital assets for customers. A U.S. payor or middleman that is considered a U.S. digital asset broker for this purpose includes a U.S. person (including a foreign branch of a U.S. person), a U.S. branch of a foreign entity described in § 1.1441–1(b)(2)(iv) that is treated as a U.S. person for purposes of withholding and reporting on specified payments under chapters 3, 4, and 61 of the Code, a foreign partnership with controlling U.S. partners and a U.S. trade or business, and a foreign person for which 50 percent or more of its gross income is effectively connected with a U.S. trade or business. As U.S. payors, U.S. digital asset brokers are treated as brokers under proposed § 1.6045–1(a)(1) with respect to all sales of digital assets they effect for their customers.

Proposed § 1.6045–1(g)(4)(ii) provides rules for a U.S. digital asset broker to determine the location of digital asset sales and the foreign status of its customers. Under these rules, all sales of digital assets effected by a U.S. digital asset broker are considered effected at an office inside the United States. Under these proposed regulations, a U.S. digital asset broker is required to report information with respect to sales effected for its customers unless the broker can treat the customer as an exempt recipient under existing § 1.6045–1(c)(3) or as an exempt foreign person. Finally, a payment by a U.S. digital asset broker that is reportable under section 6045 may also be subject to backup withholding under section 3406 when the broker has failed to obtain a valid Form W–9 for a customer, subject to certain exceptions.

To treat a customer as an exempt foreign person, unless there is an applicable presumption rule that allows that treatment under proposed § 1.6045–1(g)(4)(vi)(A)(2), a U.S. digital asset broker must obtain from the customer a valid beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) and (ii), such as a Form W–8BEN for a customer who is an individual, and must apply the reliance rules under proposed § 1.6045–1(g)(4)(vi) with respect to the beneficial owner withholding certificate. Similar to the existing rules for securities brokers, proposed § 1.6045–1(g)(4)(ii)(B) provides that a broker that obtains a beneficial owner withholding certificate from an individual may rely on the beneficial owner withholding certificate only if it includes a certification that the beneficial owner has not been, and at the time the beneficial owner withholding certificate is furnished reasonably expects not to be, present in the United States for a period aggregating 183 days or more during each calendar year to which the beneficial owner withholding certificate pertains. This certification is incorporated onto Form W–8BEN through the representation on that form that the person signing the form is an exempt foreign person in accordance with the instructions to the form, which instructions reference this requirement. U.S. digital asset brokers may not rely on documentary evidence such as a foreign driver's license or a government identification card to determine whether a customer may be treated as an exempt foreign person.

The rules described in the preceding paragraph are generally similar to those that apply under existing law for securities brokers that are U.S. payors or middlemen, except with respect to sales effected at an office outside the United States. The proposed rules for U.S. digital asset brokers differ from the rules for securities brokers in this case because securities brokers that are U.S. payors may rely on documentary evidence for sales effected at an office outside the United States. This approach was not adopted in these proposed regulations because of the difficulty of determining whether a sale of a digital asset is effected at an office inside or outside the United States. The Treasury Department and the IRS request comments on the approach adopted by these proposed regulations. If a commenter offers suggestions for an alternative approach that could be used to differentiate between a U.S. digital asset broker's U.S. business and non-U.S. business for purposes of allowing

different documentation to be used for the broker's non-U.S. business, the Treasury Department and the IRS request that the commenter explain how the alternative approach could be objectively applied and why the alternative would not be readily subject to manipulation.

See Part I.I.5 of this *Explanation of Provisions* for further discussion of the documentation, reliance, and presumption rules that U.S. digital asset brokers must apply to treat their customers as exempt foreign persons.

## 2. Rules for CFC Digital Asset Brokers Not Conducting Activities as Money Services Businesses

Under proposed § 1.6045-1(g)(4)(i)(B), a CFC digital asset broker is a controlled foreign corporation (as defined in § 1.6049-5(c)(5)(i)(C)) that effects sales of digital assets for customers. Under these proposed regulations, a CFC digital asset broker must use different rules to determine the place of a digital asset sale and the foreign status of its customers based on whether the CFC digital asset broker is considered under these proposed regulations to be conducting activities as an MSB (conducting activities as an MSB), with respect to sales of digital assets. See Part I.I.4 of this *Explanation of Provisions* for discussion of the rules for CFC digital asset brokers conducting activities as MSBs with respect to sales of digital assets as well as the rationale behind those rules.

Under these proposed regulations, a sale effected by a CFC digital asset broker not conducting activities as an MSB is considered a sale effected at an office outside the United States. These CFC digital asset brokers, like U.S. digital asset brokers, report on all sales other than sales effected for an exempt recipient (as defined in existing § 1.6045-1(c)(3)(i)(B)) or an exempt foreign person. See proposed § 1.6045-1(a)(1) (providing that for a sale effected at an office outside the United States, a broker includes only a U.S. payor or U.S. middleman). Requiring CFC digital asset brokers generally to report all sales, like U.S. digital asset brokers, is consistent with the existing regulations for securities brokers, which treat controlled foreign corporations as U.S. payors or middlemen, and which require U.S. payors or middlemen to report both on sales effected at an office inside the United States and on sales effected at an office outside the United States (unless an exception applies).

Under these proposed regulations, a CFC digital asset broker not conducting activities as an MSB is permitted to rely on documentary evidence, rather than a

withholding certificate, to determine whether a customer is an exempt foreign person. This rule is also consistent with the existing regulations for securities brokers, under which a broker may rely on documentary evidence to determine that a customer is an exempt foreign person if the broker effects the sale at an office outside the United States. The existing regulations for traditional brokers determine where a sale is effected by looking to, among other things, the location of the office that completes the acts necessary to effect the sale. A securities broker that is a controlled foreign corporation is likely to effect sales at an office outside the United States and thus may rely on documentary evidence to treat a customer as an exempt foreign person. Therefore, although these proposed regulations have a different framework than the existing regulations, unless the CFC digital asset broker is conducting activities as an MSB (as discussed in Part I.I.4 of this *Explanation of Provisions*), the same basic principles generally apply to controlled foreign corporations under both the proposed and existing regulations. Finally, also unlike a U.S. digital asset broker, a CFC digital asset broker not conducting activities as an MSB is not subject to backup withholding with respect to reportable sales unless it has actual knowledge that the customer is a U.S. person. Thus, if a CFC digital asset broker not conducting activities as an MSB has actual knowledge that a customer is a U.S. person, and the customer does not provide a valid Form W-9 to the broker, the broker must both report a sale or exchange of a digital asset by that customer to the IRS and backup withhold on the gross proceeds of the transaction.

## 3. Rules for Non-U.S. Digital Asset Brokers That Are Not Conducting Activities as Money Services Businesses

A non-U.S. payor or non-U.S. middleman under § 1.6049-5(c)(5) that effects sales of digital assets on behalf of customers is a non-U.S. digital asset broker under proposed § 1.6045-1(g)(4)(i)(C). A non-U.S. digital asset broker must use different rules to determine the location of its digital asset sales and, for sales that are effected within the United States, the foreign status of its customers is based on whether the broker is considered conducting activities as an MSB. See Part I.I.4 of this *Explanation of Provisions* for discussion of the rules for non-U.S. digital asset brokers conducting activities as MSBs as well as the rationale behind those rules.

Under these proposed regulations, a sale effected by a non-U.S. digital asset broker not conducting activities as an MSB is generally treated as effected at an office outside the United States unless the broker collects documentation or information that indicates that the customer has connections to the United States or may be a U.S. person. For a sale effected at an office outside the United States, a non-U.S. digital asset broker not conducting activities as an MSB would not be considered a broker under proposed § 1.6045-1(a)(1) and would not be required to report the sale under proposed § 1.6045-1(c).

These proposed regulations do not require non-U.S. digital asset brokers that are not conducting activities as MSBs to obtain documentation from customers prior to making a payment to the customer. However, these non-U.S. digital asset brokers may be obligated to collect documentation or information from customers under applicable anti-money laundering laws or other applicable laws (referred to as an AML program), or may otherwise collect information on customers under the broker's policies and procedures, and that documentation or information may include information that indicates that a customer has connections to the United States or may be a U.S. person (as described in the following paragraph). In such a case, these proposed regulations treat the sale as effected at an office inside the United States and require the non-U.S. digital asset broker to report a sale effected on behalf of this customer after the broker obtains that documentation or information, unless the broker determines that the customer is an exempt foreign person or an exempt recipient (as defined in existing § 1.6045-1(c)(3)(i)(B)) or the broker closes the account before effecting the sale for the customer. However, these proposed regulations limit the indicators of a connection to the United States to those that are contained in the documentation or information that is part of the broker's account information for the customer. This is intended to limit the efforts that a broker must make to determine if there are U.S. indicia for the customer and to allow brokers to automate their searches for U.S. indicia. Additionally, a non-U.S. digital asset broker not conducting activities as an MSB is not subject to backup withholding with respect to reportable sales unless it has actual knowledge that the customer is a U.S. person. Thus, if a non-U.S. digital asset broker not conducting activities as an MSB has actual knowledge that a customer is a

U.S. person, and the customer does not provide a valid Form W-9 to the broker, the broker must both report a sale or exchange of a digital asset by that customer to the IRS and backup withhold on the gross proceeds of the transaction.

Under proposed § 1.6045-1(g)(4)(iv), a digital asset sale effected by a non-U.S. digital asset broker that is not conducting activities as an MSB will be considered effected at an office inside the United States (and thus potentially subject to reporting and backup withholding as described in the prior paragraph) if, before the payment is made, the broker collects documentation or other information that is part of the broker's account information for the customer and the documentation or information that shows any of the following U.S. indicia: (i) a customer's communication with the broker using a device (such as a computer, smart phone, router, server or similar device) that the broker has associated with an internet Protocol (IP) address or other electronic address indicating a location within the United States; (ii) a U.S. permanent residence or mailing address for the customer, current U.S. telephone number and no non-U.S. telephone number for the customer, or the broker's classification of the customer as a U.S. person in its records; (iii) cash paid to the customer by a transfer of funds into an account maintained by the customer at a bank or financial institution in the United States, cash deposited with the broker by a transfer of funds from such an account, or if the customer's account is linked to a bank or financial account maintained within the United States; (iv) one or more digital asset deposits into the customer's account at the broker were transferred from, or digital asset withdrawals from the customer's account were transferred to, a digital asset broker that the broker knows or has reason to know to be organized within the United States, or the customer's account is linked to a digital asset broker that the broker knows or has reason to know to be organized within the United States; or (v) an unambiguous indication of a U.S. place of birth for the customer.

The U.S. indicia listed in the preceding paragraph differ from the U.S. indicia that apply to traditional brokers under existing regulations under section 6045 because of the digital nature of digital asset brokers and the technological developments that have been made since the issuance of the existing regulations. Unlike traditional brokers, digital asset brokers typically interact with customers primarily

through digital means, and do not usually communicate through the mail with customers. Digital asset brokers also typically do not have a physical office from which business is conducted with the customer. Instead, IP addresses are commonly reviewed by tax and other investigators as possible indicators of a person's physical presence and may be taken into account as part of an AML program. Transfers of cash or digital assets to or from a U.S. bank or digital asset broker also are considered potential indicators of U.S. presence or connections. The Treasury Department and the IRS welcome comments on the appropriateness and sufficiency of the U.S. indicia listed in proposed § 1.6045-1(g)(4)(iv)(B)(1) through (5). The Treasury Department and the IRS also welcome comments on whether the regulations should define when a broker has reason to know that a digital asset broker is organized within the United States, and suggestions for objective indicators that a broker can use to determine if a digital asset broker is organized in the United States.

For a sale considered effected at an office inside the United States (that is, a sale effected for a customer for which the broker has documentation or information prior to the payments indicating U.S. indicia), a non-U.S. digital asset broker not conducting activities as an MSB will nonetheless not be required to report the sale under existing § 1.6045-1(c) if the broker determines that it can treat the customer as an exempt recipient under existing § 1.6045-1(c)(3). Additionally, a non-U.S. digital asset broker not conducting activities as an MSB is not required to report the sale if it obtains certain documentation to treat the customer as an exempt foreign person or if it may presume that the customer is a foreign person, pursuant to the requirements described in Part I.I.5 of this *Explanation of Provisions* (discussing the presumption rules, documentation requirements, and reliance rules that brokers must apply to treat their customers as exempt foreign persons).

The types of documentation on which a broker may rely to treat a customer as an exempt foreign person despite U.S. indicia depends on the particular U.S. indicator contained in the customer's account information. If any of the U.S. indicia described in proposed § 1.6045-1(g)(4)(iv)(B)(1) through (4) (U.S. indicia other than an unambiguous indication of a U.S. place of birth) is present, the broker may treat the customer as an exempt foreign person if the broker, prior to the payment of any proceeds to the customer, obtains either: (i) a beneficial owner withholding

certificate, or (ii) documentary evidence for the customer described in § 1.1471-3(c)(5)(i) (for example, an identification document issued by a foreign government), and also a signed statement from the customer stating that the customer is not a U.S. person, that the customer understands that a false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law, and that the customer agrees to notify the broker within 30 days of a change in the customer's status. If the broker's account information for the customer includes a U.S. indicator described in proposed § 1.6045-1(g)(4)(iv)(B)(5) (an unambiguous indication of a U.S. place of birth), proposed § 1.6045-1(g)(4)(iv)(D)(2) provides that the broker may nevertheless treat the customer as an exempt foreign person if, prior to the payment of any proceeds to the customer, the broker obtains documentary evidence described in § 1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States (for example, a foreign passport) and either (i) a copy of the customer's Certificate of Loss of Nationality of the United States, or (ii) a valid beneficial ownership withholding certificate and either a reasonable written explanation of the customer's renunciation of U.S. citizenship or the reason the customer did not obtain U.S. citizenship at birth. The rules in proposed § 1.6045-1(g)(4)(vi) (described in Part I.I.5 of this *Explanation of Provisions*) also apply to documentation obtained by a non-U.S. digital asset broker not conducting activities as an MSB; however, such a broker is not required to treat documentation as incorrect or unreliable solely as a result of the U.S. indicator that required the broker to obtain this documentation with respect to a customer. Additionally, these brokers are not required to collect additional documentation or to report a sale if they obtain U.S. indicia after a sale has taken place, although the rules described earlier apply with respect to any future sales by that customer.

#### 4. Rules for CFC Digital Asset Brokers and Non-U.S. Digital Asset Brokers Conducting Activities as Money Services Businesses

CFC digital asset brokers and non-U.S. digital asset brokers may be MSBs under the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*). An MSB is defined in regulations issued by the Financial Crimes Enforcement Network (FinCEN) of the Treasury Department as a person, wherever located, that is doing business wholly or in substantial part within the

United States in the capacity of a dealer in foreign exchange; a check casher; an issuer or seller of traveler's checks or money orders; an issuer, seller, or redeemer of stored value; or a money transmitter. 31 CFR 1010.100(ff). This includes, but is not limited to, maintenance of any agent, agency, branch, or office within the United States. Accordingly, a foreign person with no physical operations in the United States may nevertheless be an MSB under FinCEN regulations. An MSB is required under FinCEN regulations to develop, implement, and maintain an effective AML program that is reasonably designed to prevent the MSB from being used to facilitate the financing of terrorist activities and money laundering. 31 CFR 1022.210(a). AML programs generally include, among other things, obtaining customer-related information necessary to determine the risk profile of a customer. MSBs are also required to make certain reports to FinCEN, register with the Treasury Department, and maintain certain records about transmittals of funds. See 31 CFR part 1022.

Because CFC digital asset brokers and non-U.S. digital asset brokers conducting activities as MSBs may conduct business with customers located in the United States, even when the brokers have no branch or other fixed place of business in the United States, proposed § 1.6045-1(g)(4)(v) generally subjects these brokers to the same rules as U.S. digital asset brokers with respect to their sales of digital assets. Accordingly, a CFC digital asset broker conducting activities as an MSB and a non-U.S. digital asset broker conducting activities as an MSB must apply the rules for U.S. digital asset brokers to determine the place of sale of digital assets and the foreign status of its customers. With the exception of sales effected at certain kiosks located outside the United States (described in the next paragraph), the sales of digital assets are treated as effected at an office inside the United States. Therefore, these brokers are treated as brokers under proposed § 1.6045-1(a)(1) with respect to all sales of digital assets and are required to report information with respect to sales effected for their customers unless the broker can treat the customer as an exempt recipient under existing § 1.6045-1(c)(3) or as an exempt foreign person under proposed § 1.6045-1(g)(4)(ii). Unless there is an applicable presumption rule, these brokers conducting activities as MSBs must obtain a beneficial owner withholding certificate to treat a customer as an exempt foreign person and are subject to

the same backup withholding rules with respect to reportable sales as those applicable to U.S. digital asset brokers.

Under proposed § 1.6045-1(g)(4)(i)(D), a CFC digital asset broker or a non-U.S. digital asset broker is conducting activities as an MSB with respect to a sale of digital assets if it is registered with the Treasury Department under 31 CFR 1022.380 as an MSB.<sup>4</sup> An exception applies, however, in the case of a sale that is effected at a digital asset kiosk that is physically located outside the United States and owned or operated by the broker conducting activities as an MSB, unless that broker is required under the Bank Secrecy Act to implement an AML program, file reports, or otherwise comply with the requirements for MSBs under the Bank Secrecy Act with respect to sales effected at that kiosk. See proposed § 1.6045-1(g)(4)(i)(E). With respect to sales effected at a foreign kiosk as described in the preceding sentence, CFC digital asset brokers and non-U.S. digital asset brokers are not treated as conducting activities as MSBs with respect to those sales for purposes of proposed § 1.6045-1(g)(4). This foreign kiosk exception allows CFC digital asset brokers and non-U.S. digital asset brokers that effect sales at foreign kiosks to apply the diligence and documentation rules that are generally applicable to CFC digital asset brokers and non-U.S. digital asset brokers, respectively, to those sales because these sales are less likely to have a connection to the United States.

These proposed regulations adopt this approach for CFC digital asset brokers and non-U.S. digital asset brokers that conduct activities as MSBs because the Treasury Department and the IRS have determined that a broker that is doing business wholly or in substantial part within the United States and is consequently subject to regulation by FinCEN should be subject to the same rules as U.S.-based digital asset brokers with respect to the part of its business that is subject to FinCEN regulation. The Treasury Department and the IRS are not aware of a reliable method for distinguishing the U.S. and non-U.S. parts of such a broker's business for purposes of determining whether the broker should be subject to reporting under section 6045 in light of the fact

<sup>4</sup> No inference is intended as to whether a CFC digital asset broker or a non-U.S. digital asset broker that is not registered with FinCEN as an MSB (and therefore is not conducting activities as an MSB within the meaning of the proposed regulations) may be required to register as an MSB under the Bank Secrecy Act and FinCEN's implementing regulations, which are outside the scope of these regulations.

that almost all or all of a digital asset broker's activities take place electronically. The special rule for sales at foreign kiosks recognizes that in those limited circumstances it is possible to determine that a sale is effected at an office outside the United States because the kiosk and the customer are physically present outside the United States. The overall approach in these proposed regulations is consistent with the principles underlying the existing regulations, which treat a broker as a U.S. payor when it has a substantial nexus with the United States. The Treasury Department and the IRS request comments on administrable rules that would allow CFC digital asset brokers and non-U.S. digital asset brokers that conduct activities as MSBs to apply different rules to their U.S. and non-U.S. business activities while still ensuring that they are reporting on transactions of their U.S. customers.

The Treasury Department and the IRS are considering applying similar rules to CFC digital asset brokers and non-U.S. digital asset brokers that are regulated by other U.S. regulators, such as the Securities and Exchange Commission, the Commodity Futures Trading Commission, and banking regulators such as the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation. As is the case with CFC digital asset brokers and non-U.S. digital asset brokers that are registered as MSBs, such digital asset brokers may have sufficient contacts with the United States and a U.S. customer base that warrants the application of the same diligence and reporting rules as for U.S. digital asset brokers with respect to the U.S. part of their business. The Treasury Department and the IRS request comments on what CFC digital asset brokers and non-U.S. digital asset brokers should be subject to these rules.

Separate from the decision to require that CFC digital asset brokers and non-U.S. digital asset brokers conducting activities as MSBs with respect to sales of digital assets apply the rules applicable to U.S. digital asset brokers, the Treasury Department and the IRS also considered whether to adopt different diligence and documentation rules for these brokers. On the one hand, CFC digital asset brokers and non-U.S. digital asset brokers are foreign persons and may conduct a substantial part of their business with non-U.S. customers. On the other hand, a different rule for these brokers, particularly those with substantial U.S. customer business, might incentivize U.S. customers to move their digital asset transactions to

non-U.S.-based brokers, which might make it more difficult for the IRS to verify that taxpayers are properly reporting those transactions.

Accordingly, the Treasury Department and the IRS determined that the same rules should apply to these brokers as apply for U.S. digital asset brokers, to impose similar obligations on CFC digital asset brokers and non-U.S. digital asset brokers with active U.S. operations regardless of where they are organized and in light of the difficulty referred to earlier in distinguishing between U.S. and non-U.S. business operations. The Treasury Department and the IRS request comments on whether different diligence and documentation rules should apply to CFC digital asset brokers and non-U.S. digital asset brokers conducting activities as MSBs with respect to the non-U.S. part of their business, and if so, on what basis should a determination be made as to when these different diligence and documentation rules would apply.

#### 5. Documentation, Reliance, and Presumption Rules Applicable to Digital Asset Brokers

As described in Parts I.I.1 through I.I.4 of this *Explanation of Provisions*, U.S. digital asset brokers and CFC digital asset brokers generally must report a sale of digital assets unless the broker can treat the customer as an exempt foreign person or another exception applies (for example, the exception for exempt recipients in existing § 1.6045-1(c)(3)). For sales treated as effected at an office inside the United States, a non-U.S. digital asset broker is required to report a sale of digital assets unless the broker can treat the customer as an exempt foreign person (or another exception applies). In all cases, the broker may generally treat a customer as an exempt foreign person based on documentation obtained from the customer or, in some cases, based on a presumption that the customer is a foreign person. For example, if a broker does not have documentation from a customer, the broker is required to presume that the customer is classified in a specified manner (such as an individual or an entity), and then is required to presume that the customer is a U.S. or foreign person under rules that depend on how the customer has been classified. If the customer is presumed to be a foreign person, a broker generally is not required to report information on sales by that customer. In contrast, if the customer is presumed to be a U.S. person that is not an exempt recipient under existing § 1.6045-1(c)(3), the broker must report information on sales by that customer under these proposed

regulations, unless the broker obtains documentation on which it may rely to treat the customer as an exempt foreign person.

As described in Parts I.I.1 through I.I.4 of this *Explanation of Provisions*, the types of documentation on which a broker may rely depends on whether the broker is a U.S. digital asset broker, a CFC digital asset broker, or a non-U.S. digital asset broker, and for a CFC digital asset broker and a non-U.S. digital asset broker, whether the broker is conducting activities as an MSB with respect to sales of digital assets. In general, U.S. digital asset brokers, as well as CFC digital asset brokers and non-U.S. digital asset brokers conducting activities as MSBs, may rely on withholding certificates to treat a customer as an exempt foreign person, while CFC digital asset brokers and non-U.S. digital asset brokers not conducting activities as MSBs (for sales effected at offices inside the United States) may rely on either a withholding certificate or documentary evidence, such as identification document from a foreign government, to establish a customer's foreign status. While the type of documentation on which these brokers may rely differs, all these brokers are subject to similar requirements to ensure that the documentation is reliable.

The existing regulations for securities brokers generally cross-reference to general provisions of regulations under sections 1441 and 6049 for rules on what documentation a broker may obtain to treat a customer as an exempt foreign person and for rules relating to reliance and validity of documentation. As described in Parts I.I.1 through I.I.4 of this *Explanation of Provisions*, these proposed regulations provide explicit rules on the type of documentation on which a broker may rely, rather than referring to regulations under sections 1441 and 6049 as in the existing regulations for securities brokers. However, for rules on reliance, validity, and other matters, these proposed regulations cross-reference in some cases to certain existing regulations under sections 1441 and 6049, with some modifications to take into account the differences between the rules for digital asset brokers in proposed § 1.6045-1(g)(4) and the rules for securities brokers in existing § 1.6045-1(g)(1) through (3). The benefit of referring to rules under section 1441 is that these rules have well-established and understood standards for reliance, validity, and other matters that will already be familiar to many brokers and U.S. tax advisors.

#### a. Valid Documentation of Foreign Status

In general, a broker may rely on documentation if (i) the documentation is valid, (ii) the broker can reliably associate the documentation with a payment, and (iii) the broker does not know or have reason to know that the documentation is incorrect or unreliable. Proposed § 1.6045-1(g)(4)(vi)(A)(1) refers to §§ 1.1441-1(e)(4)(i) through (ix) and 1.6049-5(c)(1)(ii) for documentation requirements that generally apply to digital asset brokers, with certain modifications (as described in this Part I.I.5). Additionally, § 1.1441-1(e)(4)(ii) provides rules regarding the period of time during which a broker may rely on a withholding certificate or documentary evidence. Section 1.1441-1(e)(4) also contains other rules specific to withholding certificates, such as rules on who may sign a withholding certificate (and when the certificate may be electronically signed), when a substitute withholding certificate (rather than an IRS form) may be obtained, when a taxpayer identification number must be included on a withholding certificate, and when a prior version of a withholding certificate may be used.

Section 1.1441-1(e)(4) also contains permissive rules for documentation, such as when documentation may be obtained through electronic transmission or from a third party repository. Some of the rules in § 1.1441-1(e)(4) provide more favorable treatment to a financial institution than to other persons obtaining documentation for a payment because of the high volume of accounts held at withholding agents that are financial institutions. In light of the fact that digital asset brokers, like financial institutions, may have a high volume of customer accounts to document, these proposed regulations allow digital asset brokers to apply § 1.1441-1(e)(4)(viii) (reliance rules for documentation) and (ix) (certificates to be furnished to a withholding agent for each obligation unless exception applies) regardless of whether the digital asset broker is a financial institution. Sections 1.1441-1(e)(4)(iii) and 1.6049-5(c)(1)(ii) are incorporated by cross-reference for the rules regarding the length of time that a broker must retain a withholding certificate and for procedures to obtain, review, and maintain documentary evidence. Finally, § 1.1441-1(e)(4)(viii) provides that documentation may be relied upon without having to inquire into the veracity of the information contained on the documentation unless the person obtaining the documentation

knows or has reason to know that the information is incorrect. These proposed regulations incorporate this rule but provide specific rules for when a broker has reason to know that documentation is incorrect or unreliable.

Proposed § 1.6045–1(g)(4)(vi)(A)(1) cross-references to § 1.1441–1(b)(2)(vii)(A) for when a broker may reliably associate a payment of gross proceeds with documentation. In general, this rule provides that a broker can reliably associate a payment with valid documentation if, prior to the payment, it holds valid documentation (either directly or through an agent), it can reliably determine how much of the payment relates to the valid documentation, and it has no actual knowledge or reason to know that any of the information, certifications, or statements in, or associated with, the documentation are incorrect.

#### b. Presumption Rules

If a broker does not have documentation from a customer, or the documentation it has obtained is not valid or cannot be reliably associated with a payment of gross proceeds, these proposed regulations provide presumption rules. The presumption rules also apply when documentation that the broker possesses has expired or the broker may no longer rely on the documentation because the broker knows or has reason to know that the documentation is incorrect or unreliable.

Proposed § 1.6045–1(g)(4)(vi)(A)(2) provides that a broker may determine the classification of a customer (as an individual, entity, etc.) by applying the presumption rules of § 1.1441–1(b)(3)(ii), with certain modifications. Section 1.1441–1(b)(3)(ii)(B) provides that if there is no reliable indication that a person is an individual, trust, or an estate, the person may be presumed to be an exempt recipient if it can be so treated without the need to furnish documentation. However, § 1.1441–1(b)(3)(ii)(B) cross references to regulations under section 6049 for the definition of an *exempt recipient*. Because the categories of exempt recipients under section 6045 are different from the categories that apply for purposes of section 6049, these proposed regulations provide that § 1.1441–1(b)(3)(ii)(B) is applied by replacing the references to exempt recipients under section 6049 with the exempt recipient categories in existing § 1.6045–1(c)(3).

Proposed § 1.6045–1(g)(4)(vi)(A)(2) also provides presumption rules to determine whether a customer is

presumed to be a U.S. or foreign person in the absence of documentation. Existing regulations under section 6045 for securities brokers cross-reference to § 1.6049–5(d)(2), which generally requires a broker to presume a person classified as an individual to be a U.S. person (by cross-referencing to § 1.1441–1(b)(3)(iii), which presumes a payee to be a U.S. person unless another rule applies). However, for certain amounts paid outside the United States with respect to an offshore obligation, § 1.6049–5(d)(2)(i) provides that an individual payee shall be presumed a U.S. person only when there are certain U.S. indicia for the individual. These proposed regulations do not incorporate the concept of a payment outside the United States or an offshore obligation because digital asset activities overwhelmingly are conducted online and therefore are not located in an identifiable location. Instead, these proposed regulations apply this presumption rule depending on the status of the broker (including whether a broker other than a U.S. digital asset broker is conducting activities as an MSB) rather than the location of the customer's obligation or where the broker makes the payment. Proposed § 1.6045–1(g)(4)(vi)(A)(2) provides that with respect to a customer that the broker has classified as an individual in the absence of documentation, a broker that is a U.S. digital asset broker, or a CFC digital asset broker or a non-U.S. digital asset broker conducting activities as an MSB, must treat the customer as a U.S. person; however, a broker that is a CFC digital asset broker or a non-U.S. digital asset broker not conducting activities as an MSB with respect to a sale of a digital asset is required to presume that a customer that it has classified as an individual is a U.S. person only when the broker has certain U.S. indicia for the customer.

With respect to a customer that may be presumed to be an entity, these proposed regulations provide that a broker may generally determine the status of the customer as U.S. or foreign by applying the presumption rules in §§ 1.1441–1(b)(3)(iii)(A) and 1.1441–5(d) and (e)(6), except that the presumption rule in § 1.1441–1(b)(3)(iii)(A)(1)(iv) (which presumes that a payee is a foreign person if the payment is made with respect to an offshore obligation) does not apply. Under existing regulations, presumption rules for offshore obligations are generally not applicable to payments of gross proceeds by securities brokers. See § 1.6049–5(d)(2)(i) (providing that the presumption rules in § 1.1441–

1(b)(3)(iii)(D) and (b)(3)(vii)(B) for payments with respect to offshore obligations do not apply to a payment of an amount not subject to withholding under chapter 3 of the Code, unless it is a withholdable payment made to an entity payee). These proposed regulations thereby apply a generally similar presumption rule for digital asset brokers as the rule that applies to securities brokers without applying the concept of a payment made with respect to an offshore obligation because digital asset activities overwhelmingly are conducted online and therefore are not located in an identifiable location.

#### c. Grace Period for Obtaining Documentation

These proposed regulations include a grace period to allow a broker time to obtain documentation (or additional documentation when the original documentation relied upon is incorrect or unreliable). Proposed § 1.6045–1(g)(4)(vi)(A)(3) provides that a broker may apply the grace period described in § 1.6049–5(d)(2)(ii), which allows a payor to treat an account as owned by a foreign person until the earlier of (i) 90 days from the date the payor first credits an account (for a new account) or the date the payor first credits the account after the existing documentation can no longer be relied upon (for an existing account), or (ii) the date when the remaining balance in the account is equal to or less than the applicable statutory backup withholding rate (currently 24 percent) of the total amounts credited during the grace period. Also under § 1.6049–5(d)(2)(ii), a payor may use the grace period only if at the beginning of the grace period: (i) the address that the payor has in its records for the account holder is in a foreign country, (ii) the payor has been furnished the information contained in a withholding certificate described in § 1.1441–1(e)(2), or (iii) the payor holds a withholding certificate that is no longer reliable other than because the validity period has expired. By cross-referencing § 1.6049–5(d)(2)(ii), these proposed regulations apply the same grace period to digital asset brokers as the grace period that applies to payors under section 6049 that hold securities in customers' accounts and securities brokers effecting sales of securities under section 6045.

#### d. Standards of Knowledge for Reliance on Withholding Certificates

These proposed regulations provide that a broker may rely on documentation only if it does not know or have reason to know that the documentation is incorrect or

unreliable. Proposed § 1.6045–1(g)(4)(vi)(A)(1)(iii) provides that in applying the reliance rules in § 1.1441–1(e)(4)(viii) for documentation, references to § 1.1441–7(b)(4) through (6) are replaced by the provisions of proposed § 1.6045–1(g)(4)(vi)(B) (relating to beneficial owner withholding certificates) and (C) (relating to documentary evidence), as applicable.

Proposed § 1.6045–1(g)(4)(vi)(B) specifies that a digital asset broker may rely on a beneficial owner withholding certificate to treat a customer as an exempt foreign person, unless the broker has actual knowledge or has reason to know that the beneficial owner withholding certificate is unreliable or incorrect. For this purpose, these proposed regulations limit when a digital asset broker has reason to know that information on a withholding certificate is unreliable or incorrect to when there are specific indicia of U.S. status in the broker's account files. The existing regulations limit when a securities broker has reason to know that information on a withholding certificate is unreliable or incorrect based on specific indicia set forth in § 1.1441–7(b)(3), which contain limitations on reason to know for financial institutions. However, a digital asset broker's reason to know standard is based on the same U.S. indicia set forth in proposed § 1.6045–1(g)(4)(iv)(B)(1) through (5) for determining when a non-U.S. digital asset broker is required to treat a sale as effected at an office inside the United States, rather than the U.S. indicia applicable to traditional brokers (which are in § 1.1441–7(b)(5) and (8)) to take into account the differences between traditional brokers and digital asset brokers.

These proposed regulations also prescribe the additional documentation that a broker may collect to continue to rely on the withholding certificate if there are U.S. indicia. That documentation is similar to the documentation specified for that purpose for securities brokers in § 1.1441–7(b)(5), but with certain modifications to eliminate distinctions in the additional documentation permitted to be collected that are based on whether a payment is made outside the United States with respect to an offshore obligation under § 1.1441–7(b)(5). Proposed § 1.6045–1(g)(4)(vi)(B) provides that if the broker collects documentation or information associated with the customer or the customer's account at the broker that shows U.S. indicia described in proposed § 1.6045–1(g)(4)(iv)(B)(1)

through (4), then the broker may not rely on the beneficial owner withholding certificate unless the broker can obtain documentary evidence establishing foreign status (as described in § 1.1471–3(c)(5)(i) (for example, identification from a foreign government)) that does not contain a U.S. address and the individual customer provides the broker with a reasonable explanation, in writing, supporting the claim of foreign status. However, if the broker previously classified an individual customer as a U.S. person in its account information, the broker may treat the customer as an exempt foreign person only if it has in its possession documentation described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship in a country other than the United States. If the customer is an entity, the broker may treat the customer as an exempt foreign person if it has in its possession documentation that substantiates that the entity is organized or created under the laws of a foreign country. Additionally, and regardless of whether a customer is an individual or entity, a broker that is a non-U.S. person may treat a customer as an exempt foreign person if the broker reports the payment to the customer to the jurisdiction in which the customer is resident under that jurisdiction's tax reporting requirements, provided that the jurisdiction has a tax information exchange agreement or income tax treaty in effect with the United States. If the broker collects information with respect to the customer showing an unambiguous indication of a U.S. place of birth, proposed § 1.6045–1(g)(4)(vi)(B)(2) provides, however, that the broker may treat the customer as an exempt foreign person only if the broker has in its possession documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship (for example, a passport) in a foreign country and either a copy of the customer's Certificate of Loss of Nationality of the United States or a reasonable written explanation of the customer's renunciation of U.S. citizenship or the reason the customer did not obtain U.S. citizenship at birth.

#### e. Standards of Knowledge for Reliance on Documentary Evidence

Proposed § 1.6045–1(g)(4)(vi)(C) provides the rules for when a broker has reason to know that documentary evidence is unreliable or incorrect. As with the rules applicable to when a broker has reason to know that a beneficial owner withholding certificate is unreliable or incorrect, reason to know that documentary evidence is unreliable or incorrect is limited to

when the U.S. indicia in proposed § 1.6045–1(g)(4)(iv)(B)(1) through (5) are present in the broker's account files for a customer. Proposed § 1.6045–1(g)(4)(vi)(C)(1) and (2) specify the additional documentation a broker is required to collect to continue to rely on the documentary evidence notwithstanding the presence of the U.S. indicia (similar to the documentation specified for that purpose in § 1.1441–7(b)(8), but with modifications similar to those that apply to reliance on a withholding certificate under these proposed regulations, except that a broker is permitted to obtain a withholding certificate in certain cases in lieu of obtaining additional documentary evidence).

#### f. Joint Owners

These proposed regulations provide that in the case of amounts paid to customers that are joint account holders for which a certificate or documentation is required as a condition for being exempt from reporting under proposed § 1.6045–1(g)(4)(ii)(B) or (g)(4)(iv)(D), the amounts are presumed paid to U.S. payees who are not exempt recipients when the conditions of existing § 1.6045–1(g)(3)(i) are met. The effect of this rule is to apply to digital asset brokers the same rule that applies to securities brokers for amounts paid to their customers that are joint account holders.

#### g. Foreign Intermediaries, Foreign Flow-Through Entities, and Certain U.S. Branches

Proposed § 1.6045–1(g)(4)(vi)(E) provides rules for a broker to determine whether a customer is a foreign intermediary, foreign flow-through entity, or U.S. branch (other than a U.S. branch that is the beneficial owner of a payment of gross proceeds), and, if so, whether the customer may be treated as an exempt foreign person. The rules in these proposed regulations reach a similar result as those that apply to securities brokers under existing regulations but provide more detail on the procedures for brokers to determine that a customer is a foreign intermediary, foreign flow-through entity, or U.S. branch.

Under proposed § 1.6045–1(g)(4)(vi)(E)(1), a broker may rely on a valid foreign intermediary withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii), with one modification, to determine the classification of a customer as a foreign intermediary. Section 1.1441–1(e)(3)(iii) provides that a foreign intermediary withholding certificate from a nonqualified intermediary is not valid unless the

intermediary has attached the withholding certificates and other appropriate documentation for all persons to whom the certificate relates. Proposed § 1.6045-1(g)(4)(vi)(E)(1) provides that a broker does not need to obtain from the foreign intermediary the withholding certificates or other documentation for the intermediary's account holders. The Treasury Department and the IRS are considering requiring brokers to obtain documentation on account holders of customers that are foreign intermediaries in order to avoid circumvention of these proposed regulations by U.S. persons selling digital assets through a foreign intermediary. The Treasury Department and the IRS request comments on whether the transparency gained by adding this rule would justify the increased burden on brokers, and whether that trade-off would be different for digital asset-only brokers, securities-only brokers, or brokers that effect sales or exchanges in both categories. The Treasury Department and the IRS also request comments on how frequently and in what circumstances securities brokers rely on the existing section 6045 regulations to not document account holders of customers that are foreign intermediaries.

If a broker does not obtain a valid foreign intermediary withholding certificate or valid beneficial owner withholding certificate from the customer, it must determine under presumption rules whether the customer is treated as a beneficial owner or an intermediary, and whether the customer has the status of U.S. or foreign. The applicable presumption rules depend on whether the broker is a U.S. or foreign broker to provide rules similar to those applicable to securities brokers. Under proposed § 1.6045-1(g)(4)(vi)(E)(1), if a broker is a U.S. digital asset broker or a non-U.S. digital asset broker or CFC digital asset broker that in each case is conducting activities as an MSB, then the broker must apply the presumption rules in § 1.1441-1(b)(3)(ii)(B), which would result in a presumption that the entity is not an intermediary. If a broker is a non-U.S. digital asset broker or a CFC digital asset broker that in each case is not conducting activities as an MSB, then the broker may determine the status of a customer as an intermediary by presuming that the entity is an intermediary to the extent permitted by § 1.1441-1(b)(3)(ii)(C) (providing rules treating certain payees as not beneficial owners), with certain modifications.

These modifications (i) allow a broker to apply § 1.1441-1(b)(3)(ii)(C) without regard to the requirement in that section that limits its application to payments on offshore obligations, and (ii) substitute the references in § 1.1441-1(b)(3)(ii)(C) to exempt recipient categories under section 6049 with the exempt recipient categories in existing § 1.6045-1(c)(3)(i). The first modification is made to conform the rule for digital asset brokers to the rule for securities brokers. See § 1.6049-5(d)(2)(i) for the rule applicable to securities brokers. The second modification is needed because § 1.1441-1(b)(3)(ii)(C) cites to regulations under section 6049 for exempt recipients, but the categories of exempt recipients under section 6045 are different from the categories that apply for purposes of section 6049.

If a customer is presumed to be an intermediary, these proposed regulations provide that a broker must determine the intermediary's status as U.S. or foreign by applying the presumption rules in § 1.1441-1(b)(3)(iii). If a broker is required to treat a customer as a foreign intermediary under proposed § 1.6045-1(g)(4)(vi)(E)(1), the broker must treat the foreign intermediary as an exempt foreign person except to the extent required by existing § 1.6045-1(g)(3)(iv) (providing that a broker may not treat a foreign intermediary as an exempt foreign person if the broker has actual knowledge that the person for whom the intermediary acts is a U.S. person who is not an exempt recipient, and providing for reporting that may be required by the foreign intermediary).

Proposed § 1.6045-1(g)(4)(vi)(E)(2) provides the documentation and presumption rules for brokers paying gross proceeds to foreign flow-through entities. Under these proposed regulations, a broker may rely on a valid foreign flow-through withholding certificate described in § 1.1441-5(c)(3)(iii) (relating to nonwithholding foreign partnerships) or (e)(5)(iii) (relating to foreign simple trusts and foreign grantor trusts that are nonwithholding foreign trusts) to determine the status of a customer as a foreign flow-through entity. Proposed § 1.6045-1(g)(4)(vi)(E)(2) provides that a broker does not need to obtain from the foreign flow-through entity the withholding certificates or other documentation for the entity's partners to treat the withholding certificate as valid. The Treasury Department and the IRS are considering requiring brokers to obtain documentation on partners, beneficiaries, or owners (as applicable) of customers that are foreign flow-

through entities in order to avoid circumvention of these proposed regulations by U.S. persons holding interests in foreign flow-through entities selling digital assets. The Treasury Department and the IRS request comments on whether the transparency gained by adding this rule would justify the increased burden on brokers, and whether that trade-off would be different for digital asset-only brokers, securities-only brokers, or brokers that effect sales or exchanges in both categories. The Treasury Department and the IRS also request comments on how frequently and in what circumstances securities brokers rely on the existing section 6045 regulations to not document partners, beneficiaries, or owners (as applicable) of customers that are foreign flow-through entities.

If a broker does not obtain a valid foreign flow-through withholding certificate, the broker may determine the status of a customer as a foreign flow-through entity based on the presumption rules in § 1.1441-1(b)(3)(ii)(B) (relating to entity classification) and § 1.1441-5(d) (relating to partnership status as U.S. or foreign) and (e)(6) (relating to the status of trusts and estates as U.S. or foreign). If a broker is permitted to treat a customer as a foreign flow-through entity, the broker must treat the payment as made to an exempt foreign person except to the extent required by § 1.6049-5(d)(3)(ii) (providing that a broker may not treat a foreign flow-through entity as an exempt foreign person if the broker has actual knowledge that the partner to which the payment is allocated is a U.S. person who is not an exempt recipient and the broker has actual knowledge of the amount allocable to such person).

Proposed § 1.6045-1(g)(4)(vi) provides the documentation, presumptions, and reliance rules applicable to payments to a customer that is a U.S. branch (as described in § 1.1441-1(b)(2)(iv)). When a U.S. branch is the beneficial owner of the payment, the rules in proposed § 1.6045-1(g)(4)(vi) other than paragraph (g)(4)(vi)(E) apply. When a U.S. branch is not the beneficial owner of a payment, proposed § 1.6045-1(g)(4)(vi)(E)(3) provides that a broker may rely on a valid U.S. branch withholding certificate described in § 1.1441-1(e)(3)(v) to determine the status of a customer as a U.S. branch that is not a beneficial owner of a payment, without regard to whether the withholding certificate contains a withholding statement and withholding certificates or other documentation for each person for whom the branch receives the payment. If a U.S. branch

certifies on a valid U.S. branch withholding certificate that it agrees to be treated as a U.S. person under § 1.1441–1(b)(2)(iv)(A), the broker may treat the U.S. branch as an exempt foreign person. If a U.S. branch does not certify on a valid U.S. branch withholding certificate, the broker may treat the U.S. branch as an exempt foreign person except to the extent required by existing § 1.6045–1(g)(3)(iv) (providing that a broker may not treat a U.S. branch as an exempt foreign person if the broker has actual knowledge that the person for whom the U.S. branch receives the payment is a U.S. person who is not an exempt recipient, and providing for reporting that may be required by the U.S. branch).

#### 6. Coordination With Rules Applicable to Sales of Securities

In determining whether a sale is effected at an office inside or outside the United States or whether a broker may treat a customer as an exempt foreign person, brokers that effect sales of both securities and digital assets for customers may find it difficult to apply both the rules in existing § 1.6045–1(g)(1) through (3) for sales of securities and those in proposed § 1.6045–1(g)(4) for sales of digital assets. This fact pattern could arise if a traditional securities broker also effected sales of digital assets for customers. The difficulty of complying both with the reporting and documentation rules for securities and with the reporting and documentation rules for digital assets might be particularly acute when a customer uses the same broker to effect both types of transactions.

The Treasury Department and the IRS considered including a coordination rule that would allow brokers that effect transactions involving both securities and digital assets, as those terms are defined under section 6045, to apply the rules of proposed § 1.6045–1(g)(4) to determine whether sales of both securities and digital assets are effected at an office inside or outside the United States and whether brokers may treat the customers as exempt foreign persons. These proposed regulations do not propose this coordination rule because it was determined that more extensive coordination between the rules for sales of securities and sales of digital assets would be required and because the rules proposed for sales of digital assets have been drafted based on the characteristics of digital asset transactions and may not apply seamlessly to a securities broker. For example, the U.S. indicia applicable to digital asset brokers differ from the U.S. indicia applicable to security brokers.

The Treasury Department and the IRS request comments on whether a coordination provision would be helpful to brokers that effect sales of both securities and digital assets for customers, and if so, which proposed rules applicable to digital asset brokers should apply to securities brokers.

#### 7. Transition Period

To provide digital asset brokers with sufficient time to obtain necessary documentation from existing customers to establish exempt foreign status under these proposed regulations, proposed § 1.6045–1(g)(4)(vi)(F) provides that for sales of digital assets effected before January 1, 2026, that were held in an account established at a broker before January 1, 2025, digital asset brokers may treat a customer as an exempt foreign person provided that the customer has not previously been classified as a U.S. person by the broker, and the information that the broker has for the customer in the account opening files or other files pertaining to the account, including documentation collected for purposes of an AML program, includes a residence address that is not a U.S. address.

#### J. Special Rules for Barter Exchanges That Effect Certain Digital Asset Exchanges

Any person with members or clients that contract with each other or with the organization to trade or barter property or services either directly (member to member) or through the organization is a barter exchange under existing § 1.6045–1(a)(4). A merchant that provides goods or services in exchange for a customer's digital asset is not acting as a barter exchange for purposes of this definition.

Property or services are considered exchanged through a barter exchange if payment is made by means of a credit on the books of the barter exchange or a scrip issued by the barter exchange, or if the barter exchange arranges a direct exchange of property or services between members. Existing regulations provide limited guidance on the application of these rules and do not explicitly address whether the barter exchange rules apply to digital asset exchange transactions under which digital assets are exchanged for property (including different digital assets) or services. Consequently, it is possible that a particular exchange transaction might qualify both as a sale under proposed § 1.6045–1(a)(9)(ii) effected by a broker under these regulations and also as an exchange transaction effected by a barter exchange. Alternatively, a particular exchange transaction could be

considered both a reportable payment transaction facilitated by a TPSO under section 6050W as well as an exchange transaction effected by a barter exchange.

To avoid duplicative reporting, proposed § 1.6045–1(e)(2)(iii) provides coordination rules applicable to a barter exchange that is also a broker subject to reporting under proposed § 1.6045–1(c). Under these rules, exchange transactions involving the exchange of one digital asset held by one customer of a broker for a different digital asset held by a second customer of the same broker are treated as sales under proposed § 1.6045–1(a)(9)(ii) subject to reporting under proposed § 1.6045–1(c) and (d) (reporting by brokers) with respect to both customers and not as an exchange of personal property through a barter exchange subject to reporting under proposed § 1.6045–1(e) and (f) (reporting by barter exchanges).

Additionally, in circumstances involving exchanges of digital assets for personal property or services where the digital asset payment is also a reportable payment transaction subject to reporting by the barter exchange under § 1.6050W–1(a)(1), these proposed regulations provide rules for reporting each member's or client's disposition under rules other than under the barter exchange rules under proposed § 1.6045–1(e) and (f) depending on whether the member is disposing of digital assets on the one hand or personal property or services on the other. For the member or client disposing of personal property or services, proposed § 1.6045–1(e)(2)(iii) provides that the exchange must be treated as a reportable payment transaction that must be reported under proposed § 1.6050W–1(a)(1) and not as an exchange through a barter exchange subject to reporting under proposed § 1.6045–1(e). With respect to the member or client disposing of digital assets in this exchange, proposed § 1.6045–1(e)(2)(iii) provides that the exchange must be treated as a sale under proposed § 1.6045–1(a)(9)(ii)(D) subject to reporting under proposed § 1.6045–1(c) and not as an exchange through a barter exchange subject to reporting under proposed § 1.6045–1(e).

The purpose of these rules is to have brokers report all digital asset exchange transactions that are also subject to reporting under the barter exchange provisions reported under proposed § 1.6045–1(c) and (d). No inference is intended as to whether exchanges involving digital assets do or do not constitute exchanges subject to the reporting under the barter exchange rules under existing § 1.6045–1(e). The

Treasury Department and the IRS request comments on the extent to which there are additional broker-facilitated transactions involving digital assets that would still be subject to reporting under the barter exchange rules after the applicability date of these proposed regulations. For example, are there any broker-mediated transactions that are not reportable payment transactions under § 1.6050W-1(a)(1) with respect to the client that receives the digital assets as payment?

#### K. Additional Definitions and Definitional Changes

As noted in Part I of the *Background*, references in these proposed regulations to an owner holding digital assets generally or holding digital assets in a wallet or account are meant to refer to holding or controlling, whether directly or indirectly through a custodian, the keys to the digital assets. Proposed § 1.6045-1(a)(23) adds this clarification to the regulation by providing a definition for *held in a wallet or account*. Under this provision, a digital asset is considered held in a wallet or account if the wallet, whether hosted or unhosted, or account stores the private keys necessary to transfer access to, or control of, the digital asset. A digital asset associated with a digital asset address that is generated by a wallet, and a digital asset associated with a sub-ledger account of a wallet, are similarly considered held in a wallet. References to variations of held in a wallet or account, such as held at a broker, held with a broker, held by the user of a wallet, held on behalf of another, acquired in a wallet or account, acquired in a customer's wallet or account, or transferred into a wallet or account, each have a similar meaning. Proposed § 1.6045-1(a)(24) provides that a *hosted wallet* is a custodial service provided to a user that electronically stores the private keys to digital assets held on behalf of others. Hosted wallets are sometimes referred to as custodial wallets. Proposed § 1.6045-1(a)(27) provides that an *unhosted wallet* is a non-custodial means of storing, electronically or otherwise, a user's private keys to digital assets held by or for the user. Unhosted wallets can be provided through software that is connected to the internet (a hot wallet) or through hardware or physical media that is disconnected from the internet (a cold wallet).

Proposed § 1.6045-1(a)(12) revises the definition of *cash* to include U.S. dollars and any convertible foreign currency that is issued by a government or a central bank, whether in physical or digital form. Pursuant to that

definition, a central bank digital currency may be treated as cash for purposes of these proposed regulations and not as digital assets. The revised definition is also intended to exclude privately-issued digital assets from the definition of *cash* for purposes of the reporting requirements under existing § 1.6045-1. No inference is intended, however, as to the treatment of a central bank digital currency or other digital asset for other purposes of the Code.

For purposes of these regulations, the definition of *cash* (including the U.S. dollar and foreign currency) does not include so-called stablecoins, which are a form of digital assets in which the underlying value of the coins generally are linked to another asset or assets. Stablecoins are treated as digital assets for purposes of these proposed regulations because stablecoins take multiple forms, may be backed by several different types of assets that are not limited to currencies, may not be fully collateralized or supported fully by reserves by the underlying asset, do not necessarily have a constant value, are frequently used in connection with transactions involving other types of digital assets, are held and transferred in the same manner as other digital assets and, therefore, raise similar tax compliance concerns.

The Treasury Department and the IRS considered whether to exclude transactions involving the disposition of stablecoins that are linked to the U.S. dollar or to other foreign currencies from the definition of a *sale* for which reporting is required, which would parallel the manner in which dispositions of U.S. dollars or other foreign currencies are treated for purposes of section 6045, that is, as dispositions that are generally not subject to reporting. These proposed regulations do not exclude stablecoin transactions from the definition of *sale* because a broker may not be able to identify which stablecoins will perfectly and consistently reflect the value of the currencies to which they are linked, if any. The Treasury Department and the IRS are aware that legislative or regulatory rules are being considered in a number of jurisdictions that might more closely tie the value of a stablecoin to a fiat currency, and request comments on whether stablecoins, or a subset of stablecoins, should not be treated as digital assets for purposes of these rules. Additionally, comments are requested on whether the regulations should exclude from reporting transactions involving the disposition of U.S. dollar related stablecoins that give rise to no gain or loss, and if so, how should those stablecoin transactions be identified.

Finally, comments are requested regarding whether any other changes would need to be made to the regulations or other rules to ensure adequate reporting of transactions involving the receipt or disposition of stablecoins.

The Treasury Department and the IRS also request comments on the structure and use of tokenized deposits or other tokenized assets that are closely linked to cash held in an account.

Additionally, the list of governmental exempt recipients in existing § 1.6045-1(c)(3)(i)(B) is clarified by listing the specific territorial jurisdictions to which the existing exemption for "a possession of the United States" applies, and the definitions for *security*, *barter exchange*, *regulated futures contract*, *closing transaction*, *person*, *debt instrument*, and *securities futures contract*, are republished in proposed § 1.6045-1(a)(3), (4), (6), (8), (13), (17), and (18), respectively, to add headings and, where necessary, to reformat paragraph numbering and make other non-substantive changes.

Finally, where the existing regulations provide rules that do not apply to digital assets, such as existing § 1.6045-1(d)(2)(iv) governing the use by brokers of information furnished on a transfer statement described in § 1.6045A-1, these proposed regulations clarify that those existing rules do not apply to digital assets by limiting the existing rules to securities only or specifically excluding digital assets from the existing rules. These changes are not intended to change the way the proposed regulations apply to assets currently covered by the existing regulations.

#### II. Proposed §§ 1.1001-7, 1.1012-1(h), and 1.1012-1(j)

In general, existing regulations and other guidance under sections 1001 and 1012 provide the tax rules for determining a taxpayer's amount realized on the disposition of digital assets and basis in purchased digital assets. For example, a taxpayer's transfer of digital assets from one of the taxpayer's wallets into a different wallet owned by the same taxpayer is not a sale or other disposition pursuant to section 1001, whereas the payment of a transfer fee with digital assets to effectuate that transfer is a sale or other disposition of the digital assets used to pay the fee resulting in gain or loss pursuant to section 1001. In some fact patterns, however, taxpayers may benefit from additional clarifying guidance. Those fact patterns include exchanges of digital assets for services or other property, including different

digital assets, and dispositions of less than all of a taxpayer's holdings of a particular digital asset if the taxpayer purchased those holdings at different times or for different prices.

#### A. Amount Realized

Proposed § 1.1001-7(b)(1)(i) provides the general rule for determining the amount realized on a sale or disposition of digital assets for cash, other property differing materially either in kind or in extent, or services. Under these rules, the amount realized is the sum of: (i) the cash received; (ii) the fair market value of any property received (including digital assets) or, in the case of a debt instrument issued in exchange for the digital assets and subject to § 1.1001-1(g), the issue price of the debt instrument, as provided under the rules of § 1.1001-1(g); and (iii) the fair market value of any services received; reduced by the allocable digital asset transaction costs. Digital assets are defined in this proposed regulation by cross-reference to the *digital assets* definition contained in proposed § 1.6045-1(a)(19).

Proposed § 1.1001-7(b)(1)(ii) provides that the disposition of digital assets (including digital assets withheld) to pay digital asset transaction costs is a disposition of digital assets for services. Proposed § 1.1001-7(b)(1)(iii) applies the general rule included in proposed § 1.1001-7(b)(1)(i) to different fact patterns depending on whether cash, services, digital assets, or other property is received as consideration for the sale or disposition of the digital assets. Proposed § 1.1001-7(b)(1)(iv) provides the rule for calculating the amount attributable to a debt instrument issued in exchange for digital assets. Under this rule, the amount attributable to a debt instrument issued in exchange for digital assets is determined by cross-reference to the rules in § 1.1001-1(g) (in general the issue price of the debt instrument).

As provided in the general rule set forth in proposed § 1.1001-7(b)(1)(i), in computing the amount realized from the sale or exchange of digital assets, the amount determined to have been received in exchange for the digital assets must be reduced by any digital asset transaction costs allocable to the disposed-of digital asset. Proposed § 1.1001-7(b)(2)(i) defines *digital asset transaction costs* as the amount paid, in cash, or property (including digital assets), to effect the disposition or acquisition of a digital asset and includes transaction fees, transfer taxes, and any other commissions. Proposed § 1.1001-7(b)(2)(ii) provides rules for allocating digital asset transaction costs to the disposition or acquisition of a

digital asset. These allocation rules apply to any digital asset transaction costs paid on the sale or disposition of a digital asset used or withheld to pay other digital asset transaction costs. Proposed § 1.1001-7(b)(2)(ii)(A) provides the general rule for allocating digital asset transaction costs on dispositions of digital assets in exchange for cash, services, debt instruments issued in exchange for the digital assets, or other property (other than digital assets). In these instances, the total digital asset transaction costs paid by the taxpayer are allocated to the disposition of the digital assets. The reference to total digital asset transaction costs in this rule is intended to avoid the further allocation of cascading digital asset transaction costs (that is, a digital asset transaction cost paid with respect to the use of a digital asset to pay for a digital asset transaction cost). The Treasury Department and the IRS request comments regarding whether it is appropriate to treat all such costs as digital asset transaction costs associated with the original transaction.

The Treasury Department and the IRS understand that brokers that effect exchanges of one digital asset for a different digital asset may charge a single digital asset transaction cost for the exchange. In this case, the digital asset transaction cost is associated both with the disposition of one digital asset and the acquisition of a different digital asset. The Treasury Department and the IRS considered whether these regulations should permit taxpayers or brokers to designate how to allocate digital asset transaction costs but determined that a single uniform rule would be easier to administer and less susceptible to manipulation. Consideration was also given to allocating the costs either entirely to reduce the amount realized or entirely to increase basis; however, this allocation would not reflect the economic reality that the costs are allocable to a particular transaction that includes both the purchase of one digital asset and the disposition of a different digital asset. Accordingly, proposed § 1.1001-7(b)(2)(ii)(B) provides that if digital asset transaction costs are paid to effect the exchange of one digital asset for a digital asset differing materially in kind or in extent, any allocation or assignment made by the parties or the entity effecting the exchange is disregarded. Instead, one-half of the total digital asset transaction costs paid by the taxpayer is allocable to the disposition of the transferred digital asset for purposes of determining

the amount realized and one-half is allocable to the acquisition of the received digital asset for purposes of determining the basis of that received digital asset under § 1.1012-1(h). The Treasury Department and the IRS request comments on whether this allocation of digital asset transaction costs to exchanges of one digital asset for a different digital asset is administrable and whether alternative allocations, such as a 100 percent allocation of digital asset transaction costs to the disposed-of digital assets, would be less burdensome.

In some circumstances, taxpayers may incur a transfer fee associated with a transfer of digital assets that does not involve a sale or an exchange. For example, a transfer of digital assets from an unhosted wallet owned by a taxpayer to a hosted wallet in an account that is also owned by the taxpayer may incur a distributed ledger transaction fee that must be paid in digital assets, notwithstanding that the underlying transfer is not a taxable event under section 1001. To the extent that a digital asset is used to pay this fee in exchange for the recordation of the transfer on the distributed ledger, the exchange of the digital asset to pay this fee is a taxable event under section 1001 resulting in gain or loss.

Finally, proposed § 1.1001-7(b)(3) and (4) provide rules for determining the fair market value of digital assets and for determining the fair market value of services or property received in consideration for digital assets. Specifically, under proposed § 1.1001-7(b)(3), the fair market value of a digital asset is determined as of the date and time of the exchange or disposition of the digital asset. Under proposed § 1.1001-7(b)(4), when the fair market value of the property (including digital assets but excluding debt instruments subject to § 1.1001-1(g)) or services received in exchange for digital assets cannot be determined with reasonable accuracy, the fair market value of such property or services must be determined by reference to the fair market value of the digital assets transferred as of the date and time of the exchange.

#### B. Basis

The starting point for determining basis of property is its cost, that is, what is transferred in consideration for what is received, under section 1012. Proposed § 1.1012-1(h) provides the general rules for determining the cost basis of digital assets that are acquired in a purchase for cash, a transfer in connection with the performance of services, an exchange for digital assets or other property differing materially in

kind or extent, an exchange for a debt instrument, or in a part sale and part gift transfer.

Ordinarily, the value of property in exchange for other property received should be equal in value. Under Federal income tax law principles, in an exchange of property, both the amount realized on the property transferred and the basis of the property received in an exchange ordinarily are determined by reference to the fair market value of the property received. See *United States v. Davis*, 370 U.S. 65 (1962); *Philadelphia Park Amusement Co. v. United States*, 126 F. Supp. 184 (Ct. Cl. 1954); Rev. Rul. 55-757, 1955-2 C.B. 557. This rule ensures that the sum of any gain or loss realized by the taxpayer in an exchange transaction in which property is received plus the gain or loss realized by the taxpayer in a subsequent transaction in which the property received in the first transaction is later sold will be equivalent to the customer's economic gain on the combined transactions. Accordingly, proposed § 1.1012-1(h)(1) provides that the basis of digital assets acquired in an exchange is generally equal to the cost of the digital assets received at the date and time of the exchange. Basis also takes into account allocable digital asset transaction costs. Proposed § 1.1012-1(h)(3) provides that if a taxpayer receives digital assets in exchange for property differing materially in kind or in extent (including digital assets and non-digital asset property), the cost of the digital assets received is the same as the fair market value used in determining the amount realized on a sale or disposition of the transferred digital assets for the purposes of section 1001.

Proposed § 1.1012-1(h)(1)(i), (iii), and (iv) apply the general rule included in proposed § 1.1012-1(h)(1) to different fact patterns depending on whether cash or certain other property is used to acquire the digital assets. Specifically, under proposed § 1.1012-1(h)(1)(i), when digital assets are purchased for cash, the basis of the digital assets purchased is the amount of cash paid plus any allocable digital asset transaction costs. Under proposed § 1.1012-1(h)(1)(iii), the basis of digital assets acquired in exchange for property other than digital assets is the cost of the acquired digital assets plus any allocable digital asset transaction costs. Under proposed § 1.1012-1(h)(1)(iv), the basis of digital assets received in exchange for other digital assets differing materially in kind or in extent is the cost of the acquired digital assets, plus one-half of the total allocable digital asset transaction costs pursuant

to the rules provided in proposed § 1.1012-1(h)(2)(ii)(B), discussed later in this section. Proposed § 1.1012-1(h)(3), discussed below, explains how to determine the cost of digital assets received in an exchange described in either proposed § 1.1012-1(h)(1)(iii) or (iv).

Proposed § 1.1012-1(h)(1)(ii), (v), and (vi) apply special rules for determining the basis of digital assets received in other select fact patterns. Proposed § 1.1012-1(h)(1)(ii) provides that when digital assets are received in exchange for the performance of services, taxpayers should follow the rules set forth in §§ 1.61-2(d)(2) and 1.83-4(b) for purposes of determining basis. Proposed § 1.1012-1(h)(1)(v) provides the rule for determining the basis of digital assets acquired in exchange for the issuance of a debt instrument. Under these rules, the cost of the digital asset attributable to the debt instrument is the amount determined under § 1.1012-1(g) (which generally looks to the issue price of the debt instrument as determined under the rules under either section 1273 or section 1274, whichever is applicable) plus any allocable digital asset transaction costs pursuant to the rules in proposed § 1.1012-1(h)(2) described in the next paragraph. Lastly, if digital assets are received in a transfer, which is in part a sale and in part a gift, proposed § 1.1012-1(h)(1)(vi) provides that taxpayers should look to the rules for transfers that are in part a sale and in part a gift under § 1.1012-2.

Proposed § 1.1012-1(h)(2)(ii) provides rules for allocating digital asset transaction costs to acquisitions of digital assets. Except in the case of an exchange of digital assets for other digital assets differing materially in kind or in extent, proposed § 1.1012-1(h)(2)(ii)(A) provides that digital asset transaction costs paid by the taxpayer are entirely allocable to the digital assets received. In contrast, as a corollary to the split digital asset transaction cost rule provided under proposed § 1.1001-7(b)(2)(ii)(B), when digital assets are received in exchange for other digital assets that differ materially in kind or extent, one-half of the total digital asset transaction costs paid by the taxpayer is allocable to the acquisition of the received digital assets for purposes of determining the basis of those received digital assets. Accordingly, if a taxpayer exchanges digital asset DE for digital asset ST and pays digital asset transaction costs, the basis of the digital asset ST is computed using the fair market value of the digital asset ST received, plus one-half of the total digital asset transaction costs.

Finally, proposed § 1.1012-1(h)(3) provides the rules for determining the cost of digital assets received in an exchange described in either proposed § 1.1012-1(h)(1)(iii) or (iv). Under these rules, the cost of the digital assets received equals the fair market value of those digital assets as of the date and time of the exchange. Additionally, when the fair market value of a digital asset received cannot be determined with reasonable accuracy, proposed § 1.1012-1(h)(3) provides that the fair market value of the digital asset received must be determined with reference to the property transferred. This rule is analogous to the rule provided in proposed § 1.1001-7(b)(4) with respect to the determination of the fair market value of property received.

### C. Identification Rules

These proposed regulations provide rules for identifying which units of a particular digital asset held in a single wallet or account as defined in proposed § 1.6045-1(a)(23) are sold, disposed of, or transferred when less than all units of that digital asset are sold, disposed of, or transferred. Proposed § 1.1012-1(j)(1) and (2) provide rules for units of a digital asset that are left in an unhosted wallet and proposed § 1.1012-1(j)(3) provides rules for units of a digital asset left in the custody of a broker.

For units held in unhosted wallets and therefore not left in the custody of a broker, proposed § 1.1012-1(j)(1) provides that if a taxpayer sells, disposes of, or transfers less than all the units of the same digital asset held within a single wallet, the units disposed of for purposes of determining basis and holding period are determined by a specific identification of the units of the particular digital asset in the wallet or account that the taxpayer intends to sell, dispose of, or transfer. For a taxpayer that does not specifically identify the units to be sold, disposed of, or transferred, the units in the wallet or account disposed of are determined in order of time from the earliest purchase date of the units of that same digital asset. For purposes of making this determination, the dates the units were transferred into the taxpayer's wallet or account are disregarded.

Proposed § 1.1012-1(j)(2) provides that a specific identification of the units of a digital asset sold, disposed of, or transferred is made if, no later than the date and time of sale, disposition, or transfer, the taxpayer identifies on its books and records the particular units to be sold, disposed of, or transferred by reference to any identifier, such as purchase date and time or the purchase

price for the unit, that is sufficient to identify the basis and holding period of the units sold, disposed of, or transferred. A specific identification can be made only if adequate records are maintained for all units of a specific digital asset held in a single wallet or account to establish that a unit is removed from the wallet or account for purposes of subsequent transactions.

The Treasury Department and the IRS request comments on methods by which taxpayers using unhosted wallets can more easily track purchase dates, times, and/or basis of specific units of a digital asset upon the transfer of some or all of the units between custodial brokers and unhosted wallets. The Treasury Department and the IRS also request comments on whether the above ordering rules for unhosted wallets should be applied on a wallet-by-wallet basis as proposed, or whether these rules should instead be applied on a digital asset address-by-digital asset address basis or some other basis. Additionally, the Treasury Department and the IRS request comments on alternative proposals for these ordering rules if unhosted wallets have systems that can otherwise account for their customers' transactions.

For multiple units of a type of digital asset that are left in the custody of a broker, proposed § 1.1012-1(j)(3)(ii) provides that the taxpayer can make an adequate identification of the units sold, disposed of, or transferred by specifying to the broker, no later than the date and time of sale, disposition, or transfer, the particular units of the digital asset to be sold, disposed of, or transferred by reference to any identifier (such as purchase date and time or purchase price paid for the units) that the broker designates as sufficiently specific to allow it to determine the basis and holding period of those units. The units so identified are treated as the units of the digital asset sold, disposed of, or transferred to determine the basis and holding period of such units. This identification must also be taken into consideration in identifying the taxpayer's remaining units of the digital asset for purposes of subsequent sales, dispositions, or transfers. Identifying the units sold, disposed of, or transferred solely on the taxpayer's books or records is not an adequate identification of the digital assets if the assets are held in the custody of a broker. The Treasury Department and the IRS request comments on whether this ordering rule for digital assets left in the custody of a broker should apply on an account-by-account basis or whether brokers have systems that can otherwise account for their customers' transactions.

Additionally, comments are also requested regarding whether exceptions should be made to the ordering rule for digital assets left in the custody of a broker to allow brokers to take into account reasonably reliable purchase date information received from outside sources, and if so, what types of purchase date information should be considered reasonably reliable.

For customers that do not provide the broker with an adequate identification of the units sold, disposed of, or transferred, proposed § 1.1012-1(j)(3)(i) provides that the units disposed of for purposes of determining the basis and holding period of such units is determined in order of time from the earliest units of that same digital asset purchased within or transferred into the taxpayer's account with the broker. For this purpose, units of a particular digital asset are treated as transferred into the taxpayer's account as of the date and time of the transfer. Once transfer statement reporting under section 6045A is required, however, the Treasury Department and the IRS anticipate that these rules would be revised to take into account the basis and holding period information provided to the broker on the transfer statement. A rule of that kind would conform the substantive rules applicable to taxpayers to the reporting required from brokers.

Lastly, proposed § 1.1012-1(j)(4) clarifies that the taxpayer's method of specifically identifying the units of a particular digital asset sold, disposed of, or transferred is not a method of accounting. This means that each time a taxpayer sells, disposes of, or transfers units of a particular digital asset, the taxpayer can decide how to specifically identify those units, for example, by the earliest acquired, the latest acquired, or the highest basis. Therefore, a change in the method of specifically identifying the digital asset sold, disposed of, or transferred is not a change in method of accounting to which sections 446 and 481 of the Code apply.

### III. Proposed § 1.6045-4

In addition to reporting on dispositions by real estate buyers of digital assets in exchange for real estate under the proposed § 1.6045-1 rules described earlier, real estate reporting persons should also report on the fair market value of digital assets received by transferors (sellers) of real estate in real estate transactions. Accordingly, these proposed regulations expand the information real estate reporting persons are required to report on information returns filed, and payee statements furnished, with respect to real estate

transactions. Proposed § 1.6045-4(h)(1)(vii) provides that for payments made to a transferor using digital assets, a real estate reporting person should report the name and number of units of the digital asset used to make the payment, the date and time the payment was made, the transaction identification of the digital asset transfer as defined in proposed § 1.6045-1(a)(26), and the digital asset address (or addresses) as defined in proposed § 1.6045-1(a)(20) into which the digital assets are transferred. Additionally, proposed § 1.6045-4(i) expands the definition of *gross proceeds* to be reported to include payments using digital assets received by the real estate transferor. For purposes of proposed § 1.6045-4, a digital asset has the same meaning set forth in proposed § 1.6045-1(a)(19).

Under existing § 1.6045-4(i)(1), the term *gross proceeds* means the total cash received and to be received by or on behalf of the transferor in connection with the real estate transaction. These proposed regulations make three main changes to this definition to ensure all payments using digital assets will be included in the amount reported. First, proposed § 1.6045-4(i)(1) clarifies that the total cash received by, or on behalf of, the transferor in connection with a real estate transaction includes cash received from a digital asset payment processor (as defined in proposed § 1.6045-1(a)(22)(i)) in exchange for the digital assets paid to that processor by the real estate buyer. Thus, if a buyer purchases real estate using a digital asset payment processor that accepts digital assets in return for the payment of cash to the real estate transferor, the cash received by that transferor includes the cash amount received from the digital asset payment processor.

Second, although existing § 1.6045-4(i)(1) uses the phrase "cash . . . to be received," the remainder of the regulation uses the phrase "consideration treated as cash" to refer to what is meant by "cash . . . to be received." To maintain consistency throughout the regulation, proposed § 1.6045-4(i)(1) replaces the "cash . . . to be received" phrase with "consideration treated as cash" in the two places where the former phrase appears in the regulation. The Treasury Department and the IRS intend this change as a clarification and not as a substantive change to any information that is currently required to be reported under the existing regulation.

Finally, proposed § 1.6045-4(i)(1) provides that gross proceeds also include the value of digital assets received by, or on behalf of, the transferor in connection with the real

estate transaction. Proposed § 1.6045–4(i)(1)(ii) provides that the value of digital assets received includes the fair market value of digital assets actually received. In addition, when a transferor receives an obligation to pay digital assets to, or for the benefit of, the transferor in the future, the value of digital assets received includes the fair market value, as of the date and time the obligation is entered into, of the digital assets to be paid as stated principal under the obligation. Digital assets actually received by, or on behalf of, the transferor from or at the direction of a digital asset payment processor are included in digital assets received for purposes of this rule. The fair market value of digital assets received by, or on behalf of, the transferor must be determined by the broker based on the valuation techniques provided in proposed § 1.6045–1(d)(5)(ii). See Parts I.E.2 and II of this *Explanation of Provisions*.

In a change unrelated to transactions involving digital assets, proposed § 1.6045–4 is also updated to reflect the section 6045(e)(5) exception from reporting for gross income up to \$250,000 of gain on the sale or exchange of a principal residence if certain conditions are met. Section 6045(e)(5) was added to the Code by section 312 of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788 (August 5, 1997), as amended by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 805 (July 22, 1998). Proposed § 1.6045–4(c)(2)(iv) provides that no information return is required with respect to a sale or exchange of an interest in a principal residence provided the real estate reporting person obtains from the seller a written certification consistent with guidance designated by the Secretary. This guidance is currently provided in Rev. Proc. 2007–12, 2007–1 C.B. 357. In addition, proposed § 1.6045–4(c)(2)(iv) also provides that if a residence has more than one owner, the real estate reporting person must either obtain a certification from each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification. The certification must be retained by the reporting person for four years after the year of the sale or exchange of the residence to which the certification applies. Finally, proposed § 1.6045–4(c)(2)(iv) provides that a reporting person who relies on a certification made in compliance with paragraph (c)(2)(iv) will not be liable for penalties under section 6721 for failure

to file an information return, or under section 6722 for failure to furnish a payee statement to the seller, unless the reporting person has actual knowledge, or reason to know, that any assurance is incorrect.

Additionally, proposed § 1.6045–4 is updated to reflect the statutory changes made to section 6045(e)(3), which provides that it is unlawful for any real estate reporting person to separately charge any customer for complying with the reporting under section 6045. Section 6045(e)(3) was modified by section 1704(o)(1) of the Small Business Job Protection Act of 1996, Public Law 104–188, 110 Stat. 1755 (August 20, 1996), to provide that notwithstanding the prohibition against real estate reporting persons separately changing customers for complying with section 6045 reporting obligations, real estate reporting persons may take their costs of complying with the requirements of section 6045 into account in establishing their charge for performing services in connection with real estate transactions. Proposed § 1.6045–4(o) has been revised to reflect this statutory change.

Finally, in another change unrelated to transactions involving digital assets, the list of governmental exempt transferors in existing § 1.6045–4(d)(2)(ii)(A) is clarified by listing the specific territorial jurisdictions to which the existing exemption for “a possession of the United States” applies.

#### IV. Proposed §§ 1.6045A–1 and 1.6045B–1

As discussed in the introductory paragraph to this *Explanation of Provisions*, these proposed regulations do not provide guidance or otherwise implement the changes made by the Infrastructure Act that require transfer statement reporting in the case of digital asset transfers under section 6045A(a) or broker information reporting under section 6045A(d) for digital asset transfers that are not sales or are not transfers to accounts maintained by persons that the transferring broker knows or has reason to know are also brokers.

Additionally, as discussed in Part I.A.2. of this *Explanation of Provisions*, because it is unclear whether sections 6045A and 6045B are currently being applied to assets that qualify both as digital assets and specified securities under the existing rules, the Treasury Department and the IRS have decided to delay transfer statement reporting under section 6045A(a) and issuer reporting under section 6045B for these dual classification assets until regulations or other guidance is issued. Accordingly,

proposed § 1.6045A–1(a)(1)(vi) has been added to specifically exempt from transfer statement reporting any specified security that is also a digital asset. Transferors that nonetheless choose to provide a transfer statement reporting some or all of the information described in section 6045A are not subject to penalties under section 6722 for failure to report this information correctly. In addition, proposed § 1.6045B–1(a)(6) similarly exempts issuers from reporting on any specified security that is also a digital asset. Accordingly, under these rules, the transfer of a specified security within the meaning of proposed § 1.6045–1(a)(14)(i) through (iv) or an issuer of a specified security within the meaning of proposed § 1.6045–1(a)(14)(i) through (iv) will not be subject to the section 6045A and section 6045B reporting rules if the specified security also falls within the definition of a *digital asset* under proposed § 1.6045–1(a)(19). Issuers that nonetheless choose to provide this reporting are not subject to penalties under either section 6721 or section 6722 for failure to report or furnish this information correctly.

The Treasury Department and the IRS will consider guidance for these dual classification assets as part of the implementation of more general transfer statement reporting under section 6045A(a), broker information reporting under section 6045A(d), and digital asset issuer reporting under section 6045B as part of a later phase of information reporting guidance. Comments are requested as to whether sections 6045A and 6045B should be made applicable for securities that are also digital assets prior to the implementation of this later phase of the information reporting guidance. Comments are requested regarding who would be the responsible party required to provide the reporting if section 6045B is made applicable to securities that are also digital assets prior to the implementation of this later phase of information reporting guidance.

#### V. Proposed § 1.6050W–1

Some digital asset brokers currently treat payments of cash for digital assets, or exchanges of one digital asset for a different digital asset, as reportable payments under section 6050W. These proposed regulations do not take a position regarding the appropriateness under existing regulations of treating payments of cash for digital assets, or payments of one digital asset in exchange for a different digital asset, as reportable payments under section 6050W. To the extent these transactions are reportable under proposed § 1.6045–

1 after the applicability date of these proposed regulations, however, these transactions must be reported under section 6045. Therefore, to avoid duplicative reporting, proposed § 1.6050W-1(c)(5)(i)(A) provides that in the case of a payor that makes a payment using digital assets as part of a third party network transaction involving the exchange of the payor's digital assets for goods or services, if that payment constitutes a sale of digital assets by the payor under the broker reporting rules under section 6045, the amount paid to that payor in settlement of that exchange will be subject to the broker reporting rules (including any exemptions from these rules) and not section 6050W. Additionally, for goods or services provided by a payee that are digital assets, proposed § 1.6050W-1(c)(5)(i)(B) provides that if the exchange is a sale of digital assets by the payee under the broker reporting rules under section 6045, the payment to the payee in settlement of that exchange will be reportable under the broker reporting rules (including any exemptions from these rules) and not section 6050W. Accordingly, the broker reporting rules (and not the section 6050W rules) will apply to both the payor and the payee in an exchange of digital assets for different digital assets.

Rules avoiding duplication are also provided for certain exchanges involving digital assets for goods or services that could potentially be treated as barter exchanges. As noted, if the purchaser of the goods or services in this type of exchange is subject to reporting under proposed § 1.6045-1 due to the use of digital assets to make payment, proposed § 1.6050W-1(c)(5)(i)(A) provides that reporting is not required under section 6050W. To avoid duplicative reporting under proposed §§ 1.6045-1(e) and 1.6050W-1(a) with respect to the payee who sells goods and services in this type of exchange (that is, in return for digital assets), proposed § 1.6050W-1(c)(5)(i)(B) also provides that any digital asset that is paid to a person (payee) in a third party network transaction that is reportable under proposed § 1.6045-1(e) (without regard to whether the payee is an exempt recipient under proposed § 1.6045-1(f)(2)(ii) or an exempt foreign person under proposed § 1.6045-1(g)) must be reported under section 6050W and not the barter exchange rules under proposed § 1.6045-1(e). As a result, reporting will be required under section 6050W with respect to a payee who sells goods or services (other than digital assets) in exchange for digital assets in

third party network transactions to the extent the fair market value of the aggregate payments made to that payee exceed the *de minimis* exception as provided in section 6050W(e) for reportable payments made on or after January 1, 2023. See Notice 2023-10, 2023-3 I.R.B. 403 (January 17, 2023) (delaying the effective date of the modified *de minimis* exception under section 6050W(e) for payments made during calendar year 2022). The *de minimis* exception under section 6050W is not applicable to the reporting of information required with respect to digital asset sales or exchanges under section 6045.

In certain circumstances, such as when a TPSO functions as a digital asset payment processor as described in proposed § 1.6045-1(a)(22)(i)(B), a payment made with digital assets by a customer directly to a TPSO's participating payee may be a third party network transaction subject to reporting. For example, if a customer makes a payment pursuant to instructions provided by a TPSO that has an agreement with a participating payee to receive digital assets as payment, the payment to that payee should be treated as a payment made in settlement of a reportable payment transaction despite the fact that the payment was not first made to the TPSO. To clarify that reporting under section 6050W is required in this example with respect to the participating payee, proposed § 1.6050W-1(a)(2) provides that in the case of a TPSO that has the contractual obligation to make payments to participating payees, a payment in settlement of a reportable payment transaction includes the submission of an instruction to a purchaser to transfer funds directly to the account of the participating payee for purposes of settling the reportable payment transaction.

#### VI. Proposed §§ 31.3406(b)(3)-2, 31.3406(g)-2, and 31.3406(g)-1

Section 3406 of the Code requires certain payors of reportable payments, including payments required to be reported by a broker or a barter exchange under section 6045, to deduct and withhold a tax on the payment at the statutory backup withholding rate (currently 24 percent) if the payee fails to provide a TIN or provides an incorrect TIN. The existing rules under § 31.3406(b)(3)-2(a) provide generally that any payment made by a broker or barter exchange that is required to be reported under section 6045 is a reportable payment that is subject to backup withholding, and that the amount subject to backup withholding

is the amount of gross proceeds as determined under existing § 1.6045-1(d)(5). Except for the addition of digital assets to the title to proposed § 31.3406(b)(3)-2, these proposed regulations do not make any substantive changes to these general rules under § 31.3406(b)(3)-2 because they are broad enough to cover digital asset transactions that are reportable under section 6045. The remainder of § 31.3406(b)(3)-2 provides the backup withholding rules for specific types of transactions reportable under section 6045. Specifically, § 31.3406(b)(3)-2(b)(2) provides backup withholding rules for brokers reporting on foreign currency contracts and regulated futures contracts subject to section 1256. The text of these existing rules is broad enough to also apply to forward contracts calling for the delivery of digital assets as well as forward contracts that are cryptographically recorded on a distributed ledger. Additionally, § 31.3406(b)(3)-2(b)(3) and (4) provide backup withholding rules for brokers reporting on securities sales made through a margin account and security short sales. Because these rules are limited to securities, they do not apply to most digital assets.<sup>5</sup> Comments are requested as to whether any changes should be made to these rules, either to address digital assets that may also be treated as securities for Federal income tax purposes or to address short sales of digital assets. The Treasury Department and the IRS also request comments regarding whether any additional rules are needed to address how backup withholding should apply to transactions involving digital assets.

Existing § 31.3406(g)-2(e) provides that real estate reporting persons are not required to backup withhold on a payment made with respect to a real estate transaction that is subject to reporting under section 6045(a) and (e) and existing § 1.6045-4. This rule was intended to apply to the reportable payment made to the transferors, or sellers, of real estate. Proposed § 31.3406(g)-2(e) has been revised to clarify that this rule does not apply to reportable payments made with respect to the disposition of digital assets by a real estate buyer to purchase real estate. Rather, sales of digital assets in return for real estate that are effected by brokers should be subject to backup

<sup>5</sup> No inference is intended as to whether a digital asset is treated as a security for any other legal regime, including the Federal securities laws and the Commodity Exchange Act, or to otherwise impact the interpretation or applicability of those laws, which are outside the scope of these regulations.

withholding under proposed § 31.3406(b)(3)–2 to ensure that all customers who exchange digital assets for services or property in transactions effected by a broker are treated consistently without regard to the type of property acquired. Accordingly, proposed § 31.3406(g)–2(e) provides that real estate reporting persons must backup withhold under section 3406 and in accordance with the rules in proposed § 31.3406(b)(3)–2 on reportable payments made with respect to real estate buyers who exchange digital assets for real estate.

Under existing § 31.3406(g)–1(e), an exception provides that a payor is not required to backup withhold on gross proceeds if the sale is effected at an office outside the United States (as defined in existing § 1.6045–1(g)(3)(iii)) unless the payor has actual knowledge that the payee is a U.S. person. These proposed regulations amend § 31.3406(g)–1(e) to apply this exception to a sale of digital assets effected at an office outside the United States by a CFC digital asset broker that is not conducting activities as an MSB with respect to that sale and to a sale of digital assets effected by a non-U.S. digital asset broker that is not conducting activities as an MSB with respect to that sale. These proposed regulations also clarify that, with respect to sales other than sales of digital assets, the reference to existing § 1.6045–1(g)(3)(iii) is intended to encompass sales described in that section without regard to whether the sale is considered effected at an office inside the United States under existing § 1.6045–1(g)(3)(iii)(B).

#### VII. Request for Comments

Comments are requested on all aspects of these proposed regulations, including the following:

##### A. Questions From the Explanation of Provisions

The comments specially requested throughout the discussion in the *Explanation of Provisions* are consolidated here in this Part VII *Request for Comments*. Comments are requested on the following questions:

1. Does the proposed definition of *digital asset* accurately and appropriately define the type of assets to which these regulations should apply? See Part I.A.1 of this *Explanation of Provisions*.

2. Does the definition of *digital asset* or the reporting requirements with respect to digital assets inadvertently capture transactions involving non-digital asset securities that may use distributed ledger technology, shared

ledger, or similar technology to process orders without effecting sales? Should any definitions or reporting rules be modified to address other transactions involving tokenized or digitized financial instruments that are used to facilitate back-office processing of the transaction? See Part I.A.2. of this *Explanation of Provisions*.

3. If an exception is necessary for transactions involving non-digital asset securities that may use distributed ledger technology or similar technology to process orders without effecting sales, how should it be drafted so that it does not sweep in other transactions (such as tokenized securities, or other digital assets that are securities) that should not be exempted from the reporting requirements? For example, should, and if so how should, reporting requirements distinguish between, and thus avoid double-counting of, sales of digital assets from use of distributed ledger technology or similar technology for mere recordkeeping, clearing, or settlement of tokenized securities or other assets? See Part I.A.2. of this *Explanation of Provisions*.

4. How common are digital asset options that are also section 1256 contracts? Are there less burdensome alternatives for reporting these digital asset option transactions? For example, would it be less burdensome to allow brokers to report transactions involving section 1256 contracts that are also digital assets or the delivery of non-digital assets that underlie a digital asset option as a sale under proposed § 1.6045–1(a)(9)(ii)? See Part I.A.3 of this *Explanation of Provisions*.

5. Is there is anything factually unique in the way short sales of digital assets, options on digital assets, and other financial product transactions involving digital assets are undertaken compared to similar transactions involving non-digital assets, and do these transactions raise any additional reporting issues that have not been addressed in these proposed regulations? See Part I.A.3 of this *Explanation of Provisions*.

6. Are there alternative information reporting approaches that could be used by digital asset trading platforms that collect and retain no information or collect and retain limited information about the identity of their customers that would satisfy tax compliance objectives while reducing privacy concerns? See Part I.B of this *Explanation of Provisions*.

7. Are there any technological or other technical issues that might affect the ability of a non-custodial digital asset trading platform that is a person who qualifies as a broker to obtain and transmit the information required under

these proposed regulations, and how might these issues be overcome? See Part I.B of this *Explanation of Provisions*.

8. In light of the fact that digital asset trading platforms operate with varying degrees of centralization and effective control by founders or others, does the application of reporting rules only to “persons” (as described in Part I.B of this *Explanation of Provisions*) adequately limit the scope of reporting obligations to platforms that have one or more individuals or entities that can update, amend, or otherwise cause the platform to carry out the diligence and reporting rules of these proposed regulations? See Part I.B of this *Explanation of Provisions*.

9. Should the provision of connection software by a wallet provider to a trading platform (that customers of the trading platform can then use to access their wallets from the trading platform) be considered a facilitative service resulting in the wallet provider being treated as a broker? See Part I.B of this *Explanation of Provisions*.

10. What additional functions potentially provided by wallet software should be considered sufficient to treat the wallet provider as providing facilitative services? See Part I.B of this *Explanation of Provisions*.

11. What other factors should be considered relevant to determining whether a person maintains sufficient control or influence over provided facilitative services to be considered being in a position to know either the identity of the party that makes a sale or the nature of the transaction potentially giving rise to gross proceeds from a sale? See Part I.B of this *Explanation of Provisions*.

12. Under what circumstances should an operator of a digital asset trading platform be considered to maintain or not to maintain sufficient control or influence over the facilitative services offered by that platform? Should, and if so how should, the ability of users of the platform, shareholders or holders of governance tokens to vote on aspects of the platform’s operation be considered? How are these decentralized organizational and governance structures similar to or different from other existing organizational or governance structures (e.g., shareholder votes, mutual organizations)? Should this conclusion be impacted by the existence of full or even partial-access administration keys or the ability of the operator to replace the existing protocol with a new or modified protocol if that replacement does not require holding a vote of governance token holders or complying with these voting

restrictions? See Part I.B of this *Explanation of Provisions*.

13. To what extent should holders of governance tokens be treated as operating a digital asset trading platform business as an unincorporated group or organization? Please provide examples of fact patterns involving governance tokens and explain any differences in those fact patterns relevant to assessing the degree of control or influence exercisable by holders of those tokens. See Part I.B.1 of this *Explanation of Provisions*.

14. Are there alternative information reporting approaches that could be used by digital asset payment processors effecting payments to merchants on behalf of customers in transactions where the payment processor is an agent of a merchant that would satisfy tax compliance objectives while reducing privacy concerns? See Part I.B.3 of this *Explanation of Provisions*.

15. What is the frequency with which creators or issuers of digital assets redeem digital assets? See Part I.B.4 of this *Explanation of Provisions*.

16. Should the broker reporting regulations apply to initial coin offerings, simple agreements for future tokens, and similar contracts? See Part I.B.4 of this *Explanation of Provisions*.

17. Are the types of consideration for which digital assets may be exchanged in a sale transaction sufficiently broad to capture current and anticipated transactions in which taxpayers regularly dispose of digital assets for consideration? See Part I.C of this *Explanation of Provisions*.

18. Are there any logistical concerns about the reporting on contracts involving the delivery of digital assets created by these proposed regulations? See Part I.C of this *Explanation of Provisions*.

19. What is the frequency with which forward contracts involving digital assets are traded in practice? Are there any additional issues that should be considered to enable brokers to report on these transactions? See Part I.C of this *Explanation of Provisions*.

20. Should the definition of *sale* or other parts of these proposed regulations be revised to address transactions not addressed in these proposed regulations, such as the transfer of digital assets to and from a liquidity pool by a liquidity pool provider, or the wrapping and unwrapping of digital assets? See Part I.C of this *Explanation of Provisions*.

21. Are there other less burdensome alternatives to reporting transaction ID information and digital asset addresses with respect to digital asset sales and certain digital asset transfer-in

transactions that would still ensure the IRS receives the information necessary to determine taxpayers' gains and losses? See Part I.D of this *Explanation of Provisions*.

22. Should an annual digital asset sale threshold, above which the broker would report transaction ID information and digital asset addresses, be used? If so, what should that threshold be? See Part I.D of this *Explanation of Provisions*.

23. Should the time reported using UTC time be reported using a 12-hour clock (designating a.m. or p.m. as appropriate) or a 24-hour clock? To what extent should all brokers be required to use the same 12-hour or 24-hour clock for these purposes? See Part I.D of this *Explanation of Provisions*.

24. Is a uniform time standard overly burdensome, and are there circumstances under which more flexibility should be provided? See Part I.D of this *Explanation of Provisions*.

25. Are there alternatives to basing the transaction date on the UTC for customers who are present in different time zones known to the broker at the time of the transaction? See Part I.D of this *Explanation of Provisions*.

26. Should the fair market value of services giving rise to digital asset transaction costs (including the services of any broker or validator involved in executing or validating the transfer) be determined by looking to the fair market value of the digital assets used to pay for the transaction costs? Are there circumstances under which an alternative valuation rule would be more appropriate? See Part I.E.2 of this *Explanation of Provisions*.

27. Are there any suggestions that could work to avoid duplicative multiple broker reporting for sale transactions involving digital asset brokers without sacrificing the certainty that at least one of the multiple brokers will report? See Part I.H of this *Explanation of Provisions*.

28. Is there an alternative approach that could be objectively applied to differentiate between a U.S. digital asset broker's U.S. business and non-U.S. business for purposes of allowing different documentation to be used for the broker's non-U.S. business, and how could this alternative approach avoid being readily subject to manipulation? See Part I.I.1 of this *Explanation of Provisions*.

29. Are the U.S. indicia listed in proposed § 1.6045-1(g)(4)(iv)(B)(1) through (5) appropriate and sufficient? See Part I.I.3 of this *Explanation of Provisions*.

30. Should the regulations define when a broker has reason to know that

a digital asset broker is organized within the United States, and are there suggestions for objective indicators that a digital asset broker is organized in the United States? See Part I.I.3 of this *Explanation of Provisions*.

31. Are there administrable rules that would allow CFC and non-U.S. digital asset brokers conducting activities as MSBs to apply different rules to their U.S. and non-U.S. business activities while still ensuring that they are reporting on transactions of their U.S. customers? See Part I.I.4 of this *Explanation of Provisions*.

32. Should different diligence and documentation rules apply to CFC and non-U.S. digital asset brokers conducting activities as MSBs with respect to the non-U.S. part of their business, and if so, on what basis should a determination be made as to when these different diligence and documentation rules would apply? See Part I.I.4 of this *Explanation of Provisions*.

33. What U.S. regulatory schemes applicable to a CFC digital asset broker or a non-U.S. digital asset broker other than registration with FinCEN should be sufficient to cause such a digital asset broker to be subject to the same diligence, documentation and reporting rules as a digital asset broker conducting activities as an MSB? How can such digital asset brokers be identified by the IRS? Please also address questions 31 and 32 relating to digital asset brokers conducting activities as an MSB.

34. Would a rule requiring brokers to obtain documentation on account holders or partners, beneficiaries, or owners (as applicable) of customers that are foreign intermediaries or foreign flow-through entities increase transparency sufficiently to justify the increased burden on brokers? Is that trade-off different for digital asset-only brokers, securities-only brokers, or brokers that effect sales or exchanges in both categories? How frequently and in what circumstances do securities brokers rely on the existing section 6045 regulations to not document account holders or partners, beneficiaries, or owners (as applicable) of customers that are foreign intermediaries or foreign flow-through entities? See Part I.I.5.g of this *Explanation of Provisions*.

35. Would a coordination provision for brokers that effect transactions involving both non-digital asset securities and digital assets be helpful to brokers, and if so, which proposed rules applicable to digital asset brokers should apply to non-digital asset securities brokers? See Part I.I.6 of this *Explanation of Provisions*.

36. Are there additional broker-facilitated transactions involving digital assets that would still be subject to reporting under the barter exchange rules after the applicability date of these proposed regulations? For example, are there broker-mediated transactions that are not reportable payment transactions under § 1.6050W-1(a)(1) with respect to the client that receives the digital assets as payment? See Part I.J of this *Explanation of Provisions*.

37. Is it appropriate to treat stablecoins, or a subset of stablecoins, as digital assets for purposes of these regulations? What characteristics should be considered when assessing whether stablecoins, or a subset of stablecoins, should be treated as digital assets under these regulations? See Part I.K of this *Explanation of Provisions*.

38. Should the regulations exclude reporting on transactions involving the disposition of U.S. dollar related stablecoins that give rise to no gain or loss, and if so, how should those stablecoin transactions be identified? See Part I.K of this *Explanation of Provisions*.

39. Should any other changes be made to the regulations or other rules to ensure adequate reporting of transactions involving the receipt or disposition of stablecoins? See Part I.K of this *Explanation of Provisions*.

40. In the case of cascading digital asset transaction costs (that is, a digital asset transaction cost paid with respect to the use of a digital asset to pay for a digital asset transaction cost), should all such costs be treated as digital asset transaction costs associated with the original transaction? See Part II.A of this *Explanation of Provisions*.

41. Is the allocation of one-half of total digital asset transaction costs paid to the disposition of digital assets for purposes of determining the amount realized and the allocation of the other half to the acquisition of the received digital assets for purposes of determining basis administrable? See Part II.A of this *Explanation of Provisions*.

42. Would a 100 percent allocation of digital asset transaction costs to the disposed-of digital asset in an exchange of one digital asset for a different digital asset be less burdensome? See Part II.A of this *Explanation of Provisions*.

43. Are there methods or functionalities that unhosted wallets can provide to assist taxpayers with the tracking of purchase dates, times, and/or basis of specific units of a digital asset upon the transfer of some or all of those units between custodial brokers and unhosted wallets? See Part II.C of this *Explanation of Provisions*.

44. Should the ordering rules for unhosted wallets be applied on a wallet-by-wallet basis as proposed, or should these rules be applied on a digital asset address-by-digital asset address basis or some other basis? See Part II.C of this *Explanation of Provisions*.

45. Are there any alternatives to requiring that the ordering rules for digital assets left in the custody of a broker be followed on an account-by-account basis; for example, if brokers have systems that can otherwise account for their customers' transactions? See Part II.C of this *Explanation of Provisions*.

46. Should exceptions be made to the ordering rule for digital assets left in the custody of a broker to allow brokers to take into account reasonably reliable purchase date information received from outside sources? If so, what types of purchase date information should be considered reasonably reliable? See Part II.C of this *Explanation of Provisions*.

47. Should the current rules under section 6045A applicable to transfers of securities from one broker to another remain applicable for securities that are also digital assets prior to the implementation of a later phase of the information reporting guidance? See Part IV of this *Explanation of Provisions*.

48. Who would be the responsible party required to provide the reporting if section 6045B is made applicable to securities that are also digital assets prior to the implementation of this later phase of information reporting guidance? See Part IV of this *Explanation of Provisions*.

49. Should any changes be made to the backup withholding rules under existing § 31.3406(b)(3)-2(b)(3) or (4) to address digital assets that may also be treated as securities for Federal income tax purposes or to address short sales of digital assets? Are any additional rules needed to address how backup withholding should apply to transactions involving digital assets? See Part VI of this *Explanation of Provisions*.

#### B. Additional Questions

Comments are also requested on any other aspect of these proposed regulations not specifically discussed in these proposed regulations, including on the following questions:

1. Are there any suggestions for what the IRS should consider in planning for the receipt, storage, retrieval, and usage of the information required to be reported under these proposed regulations?

2. These proposed regulations anticipate that reporting brokers may

voluntarily engage with acquiring brokers to obtain basis information with respect to transactions in which the reporting broker does not already have adjusted basis information. What would encourage reporting brokers to voluntarily obtain and provide this information?

#### Applicability Dates

The regulations regarding computation of gain or loss and the basis of digital assets under sections 1001 and 1012 are proposed to apply to taxable years for all sales and acquisitions of digital assets on or after January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Taxpayers, however, may rely on these proposed regulations under sections 1001 and 1012 for dispositions in taxable years ending on or after August 29, 2023, provided the taxpayer consistently follows the proposed regulations under sections 1001 and 1012 in their entirety and in a consistent manner for all taxable years through the applicability date of the final regulations. The proposed § 1.6045-1 regulations require brokers to report the gross proceeds from the sale of digital assets if the sale is effected on or after January 1, 2025. According to the terms of proposed § 1.6045-1(d)(2)(i)(C), brokers are required to report the adjusted basis and the character of any gain or loss with respect to a sale if the sale or exchange is effected on or after January 1, 2026. For assets that are commodities pursuant to the Commodity Futures Trading Commission's certification procedures described in 17 CFR 40.2, these regulations are proposed to apply to sales of such commodities on or after January 1, 2025, without regard to the date such certification procedures were undertaken. The changes made by the proposed § 1.6045-4 regulations, applicable to reporting on real estate transactions, are proposed to apply to real estate transactions with dates of closing occurring on or after January 1, 2025. The changes made by these proposed regulations applicable to transfer statements (proposed § 1.6045A-1) and organizational actions (proposed § 1.6045B-1), applicable to specified securities described in proposed § 1.6045-1(a)(14)(i) through (iv) that are also digital assets as defined in proposed § 1.6045-1(a)(19), are proposed to apply on or following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. The regulations applicable to payments

made in settlement of payment card and third party network transactions (proposed § 1.6050W-1) are proposed to apply to payments made using digital assets on or after January 1, 2025. The regulations applicable to the penalties for failing to file or furnish an information return (proposed §§ 1.6721-1 and 1.6722-2) are proposed to apply to information returns required to be filed with respect to sales effected on or after January 1, 2025. Finally, the regulations applicable to backup withholding (proposed §§ 31.3406(b)(3)-2, 31.3406(g)-1(e), and 31.3406(g)-2(e)) are proposed to apply to sales of digital assets on or after January 1, 2025.

### Special Analyses

These proposed regulations were subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

#### I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

These proposed regulations were designated by the Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) (MOA) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. OIRA designated these regulations as significant under section 1(c) of the MOA. Accordingly, OMB reviewed these regulations.

##### A. Background

A digital asset is a representation of value that uses cryptography to verify transactions and maintain records using a distributed ledger as opposed to a centralized authority. Digital assets have gained popularity in recent years as both a method of payment and as an investment vehicle. Their popularity has grown due to the potential for low

transaction fees, decentralization (that is, a lack of association with a central government and lack of intermediation by financial institutions), and because the distributed ledger record of transactions does not include the identities of the parties involved in the transaction. A “distributed ledger technology” is a decentralized infrastructure used to store and maintain data as opposed to using one centralized server.

One example of distributed ledger technology is a blockchain. A blockchain refers to a cryptographically secured digital ledger that maintains a record of transactions that occur on the network. Transactions are recorded in “blocks” and added to a “chain” that represents the entire history of transactions. This history is then shared and synchronized across many nodes, which then each keep a copy of the blockchain. When transactions are added to the blockchain, they include unique codes called “public keys” that identify the digital asset addresses involved. While a public key is unique to a digital asset owner, it does not reveal personal information such as a name or physical address. In this way, the blockchain preserves a layer of confidentiality that allows digital asset owners to feel their privacy is better protected on the distributed ledger.

The confidentiality which helped digital assets gain popularity presents challenges for tax compliance. Because the distributed ledger does not identify digital asset owners past a public key, compliance currently relies primarily on self-reported information.

##### B. Need for These Proposed Regulations

Information reporting is essential to the integrity of the tax system. The Internal Revenue Service (IRS) estimated in its 2019 tax gap analysis that net misreporting as a percent of income for income with little to no third-party information reporting is 55 percent. In comparison, misreporting for income with some information reporting, such as capital gains, is 17 percent, and for income with substantial information reporting, such as dividend and interest income, is just five percent.

Prior to these proposed regulations, many transactions involving digital assets were outside the scope of information reporting rules. Digital assets are treated as property for Federal income tax purposes. The regulations under section 6045 of the Internal Revenue Code (Code) require brokers to file information returns for customers that sell certain types of property noting gross proceeds and, in some cases, adjusted basis. However, the existing

regulations do not specify digital assets as a type of property for which information reporting is required. Section 6045 also requires information returns for real estate transactions, but the existing regulations do not require reporting of amounts received in digital assets. Section 6050W of the Code requires information reporting by payment settlement entities on certain payments made with respect to payment card and third-party network transactions. However, the existing regulations are silent as to whether certain exchanges involving digital assets are reportable payments under section 6050W.

##### C. Overview

These proposed regulations add digital assets to the list of property for which brokers must file information returns under section 6045. In effect, these proposed regulations would require brokers to report sales of digital assets if, in return, customers receive cash, stored-value cards, different digital assets, services, or other property that is subject to reporting under section 6045. Real estate persons would also be required to file information returns reporting digital assets received in real estate transactions. Finally, to avoid duplicative reporting, a broker who is also a payment settlement entity would be required to report the sale of digital assets used to make a payment associated with a payment card or third party network transaction under section 6050W, to the extent the payment is not subject to reporting under section 6045.

Furthermore, these proposed regulations provide the tax rules for determining a taxpayer’s amount realized on the disposition of digital assets and basis in purchased digital assets. Specifically, the proposed regulations address exchanges of digital assets for services or other property, including different digital assets, and dispositions of less than all of a taxpayer’s holdings of a particular digital asset if the taxpayer purchased those holdings at different times or for different prices. The proposed regulations also provide rules for allocating transaction costs when one digital asset is exchanged for another digital asset.

These provisions are analyzed in Part D of these *Special Analyses*.

##### D. Economic Analysis

###### 1. Baseline

In this analysis, the Treasury Department and the IRS assess the benefits and costs of these proposed regulations compared to a no-action

baseline that reflects anticipated Federal income tax-related behavior in the absence of these regulations.

a. Economic Effects of These Proposed Regulations

The worldwide digital asset market is estimated to be valued at around \$1 trillion as of January 2023.<sup>6</sup> It is currently unknown how much of the global market cap or what share of monthly transactions is held by U.S. taxpayers.

b. Alternatives Considered for the Definition of Digital Assets

A digital asset is defined in the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 (2021) (IIJA) to be any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary of the Treasury. The definition of *digital assets* in these proposed regulations does not include other types of virtual assets, such as those that exist only in a closed system (such as a video game). The proposed definition is not intended to include uses of distributed ledger technology for ordinary commercial purposes that do not create new transferable assets, such as tracking inventory, which may be unlikely to give rise to sales as defined for purposes of the regulations.

These proposed regulations extend the information reporting rules under section 6045 to brokers who, in the ordinary course of a trade or business, act as agents, principals, or digital asset middlemen for others to effect sales or exchanges of digital assets for cash, broker services, or property of a type that is subject to reporting by the brokers (including different digital assets, securities, and real estate) under section 6045 or to effect on behalf of customers payments of digital assets associated with payment card and third party network transactions subject to reporting under section 6050W. These proposed regulations also clarify that the definition of *broker* for purposes of section 6045 includes certain digital asset trading platforms, digital asset payment processors, certain digital asset hosted wallet providers, and persons who regularly offer to redeem digital assets that were created or issued by that person. In addition, these proposed regulations would require real estate reporting persons to report on real estate purchasers who use digital assets to acquire real estate in a reportable real estate transaction and extend the

information that must be reported with respect to sellers of real estate to include the fair market value of digital assets received by sellers in exchange for real estate. Finally, in the case of a transaction involving the exchange of digital assets for goods (other than digital assets) or services, these proposed regulations treat the provision of the goods or services as reportable under section 6050W and the disposition of the digital assets as reportable under section 6045.

The Treasury Department and the IRS considered whether newer forms of digital assets, such as those referred to as stablecoins, should be subject to the section 6045 broker reporting rules. A stablecoin is a form of digital asset that is generally designed to track the value of another asset and is intended to have a stable value. It was determined that broker reporting should be required for stablecoins. However, the principal reporting on stablecoins is likely to come from platforms that facilitate the purchase and sale of other digital assets along with stablecoins. Stablecoin issuers that redeem stablecoins are included in the definition of *broker* because, notwithstanding their nomenclature, the value of a stablecoin is not always stable and therefore may give rise to gain or loss. Stablecoin issuers effect these redemptions on behalf of their customers and know the gross proceeds paid to their customers. The Treasury Department and the IRS considered whether to carve out transactions involving stablecoins that are linked to the U.S. dollar or to other foreign currencies from the definition of a *sale* for which reporting is required. These proposed regulations do not carve out stablecoin transactions from the definition of *sale* because a broker may not be able to identify which stablecoins will perfectly and consistently reflect the value of the currencies to which they are linked.

The Treasury Department and the IRS also considered whether transactions featuring non-fungible tokens (NFTs) should be subject to the proposed regulations. NFTs differ from some other digital assets, including cryptocurrency, due to their non-fungible nature—that is, they are unique and, thus, not directly interchangeable with other NFTs. For purposes of these proposed regulations, NFTs also are digital assets that may represent artwork; antiques; written compositions, articles, or commentaries; music; videos; films; fashion designs; or sports or other entertainment memorabilia, the sale of which is not currently subject to reporting under section 6045. However, there is no indication in the IIJA or its

legislative history that Congress intended to exclude certain digital assets from section 6045 reporting. NFTs are digital assets that are bought, sold, and traded on digital asset trading platforms similar to other digital assets. The disposition of NFTs may give rise to gain or loss, and the reporting of gross proceeds and basis information is equally useful to taxpayers and the IRS as reporting on other digital assets. Ultimately, the Treasury Department and the IRS decided that transactions involving NFTs should be included under the proposed regulations.

b. Alternatives Considered for Allocating Transaction Costs

While the majority of the proposed regulations deal with information reporting rules for brokers, the proposed regulations also deal with operative rules of substantive tax law for customers conducting the underlying transactions being reported, including rules with respect to the allocation of digital asset transaction costs. The term digital asset transaction costs (including transaction fees, transfer taxes, and commissions) means the amount paid in cash or property (including digital assets) to effect the disposition or acquisition of a digital asset. Some digital asset brokers will charge a single transaction fee in the case of an exchange of one digital asset for a different digital asset. In some cases, these transaction fees may be adjusted depending on the type of digital asset acquired or disposed of in the exchange, with transactions involving less commonly traded digital assets carrying higher transaction fees than transactions involving more commonly traded digital assets. The Treasury Department and the IRS considered various approaches to allocating digital asset transaction costs that are charged in an exchange of one digital asset for another. Consideration was given to whether these proposed regulations should permit taxpayers or brokers to designate how to allocate digital asset transaction costs by, for example, entirely reducing the amount realized or entirely increasing basis; however, this allocation would not reflect the economic reality that the costs are allocable to a particular transaction that includes both the purchase of one digital asset and the disposition of a different digital asset. Furthermore, a single uniform rule is easier to administer and less susceptible to manipulation.

Ultimately, to avoid the administrative complexities associated with distinguishing between special broker fee allocations that appropriately

<sup>6</sup> See *CryptoSlate.com* and *CoinMarketCap.com*.

reflect the economics of the transaction and broker fee allocations that reflect tax-motivated requests, these proposed regulations provide that in an exchange of one digital asset for a different digital asset, one-half of any digital asset transaction cost paid in cash or property to effect the exchange is allocable to the disposition of the transferred digital asset for purposes of determining the amount realized and one-half is allocable to the acquisition of the received digital asset for purposes of determining the basis of that received digital asset. To clarify, these proposed regulations provide that in an exchange of two different digital assets where transaction costs are paid or withheld, the amount realized from the exchange is the cash received plus the fair market value of other property (including digital assets), or services received, reduced by one half of the total digital asset transaction costs. Economically, this decision likely has little effect on the market since prices will adjust to reflect the relative elasticities of supply and demand.

#### c. Economic Effects on Brokers

The Treasury Department and the IRS estimate that approximately 600 to 9,500 brokers will be impacted by these proposed regulations. The lower bound of this estimate is derived using Form 1099 issuer data through 2021 and statistics from CoinMarketCap.com. The upper bound of this estimate is based on IRS data for brokers with nonzero revenue who may deal in digital assets. These proposed regulations increase costs for brokers who do not already maintain records of customers' digital asset transactions. These proposed regulations will require brokers to collect and store customers' information, including names, addresses, and tax identification numbers. Brokers will also be required to collect and store information about customers' digital asset transactions. While the ongoing costs of reporting information to the IRS may be small, there will be larger costs associated with the initial setup for brokers. To the extent that they do not have such a system in place, brokers will need to build a system of collecting and storing this information, as well as reporting this information to the IRS and taxpayers, or will need to find a service provider to do so. They will also need to develop and maintain the ability to backup withhold and deposit withheld tax with the IRS for applicable taxpayers. Some of these costs may be curtailed by working with existing third parties that currently assist some brokers with voluntary reporting. These

regulations may also increase costs for those brokers who do voluntarily report under the current rules, since these brokers will need to ensure that their current reporting systems are compliant with the proposed reporting rules.

A reasonable burden estimate for the average time to complete these forms for each customer is between 7.5 minutes and 10.5 minutes, with a mid-point of 9 minutes (or 0.15 hours). The Treasury Department and the IRS estimate that 13 to 16 million customers will be impacted by these proposed regulations. Taking the mid-points of the ranges for the number of taxpayers that are expected to report gain (or loss) from digital asset transactions (*i.e.*, form recipients) and number of brokers expected to be impacted by these regulations (14.5 million recipients and 5,050 brokers, respectively), we expect the average broker to incur 425 hours of time burden and \$27,000 of monetized burden for the ongoing costs per year based on calculations using wage and compensation data from the Bureau of Labor Statistics that capture the wage, benefit, and overhead costs of a typical tax preparer.<sup>7</sup> The total estimated aggregate annual burden is 2,146,250 hours. The total estimated monetized annual burden is \$136,350,000. These estimates are based on survey data collected from filers of similar information returns, such as Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*, and Form 1099-K, *Payment Card and Third Party Network Transactions*. Although these estimates are likely to change once these proposed regulations are effective, the Treasury Department and the IRS do not have data that would allow for an accurate estimate of these changes.

Additionally, start-up costs are estimated to be between three and eight times annual costs. Given that we expect per firm annual estimated burden hours to be 425 hours and \$27,000 of estimated monetized burden, we estimate per firm start-up aggregate burden hours to range from 1,275 to 3,400 hours and \$81,000 to \$216,000 of aggregate monetized burden. Using the mid-points, start-up total estimated aggregate burden hours is 11,804,375 and total estimated monetized burden is \$749,925,000.

However, these proposed regulations also work to mitigate some potential compliance costs for brokers. First, the clarity provided by these proposed regulations on which types of transactions (namely those involving digital assets) are subject to reporting

will allow brokers to create a consistent reporting plan and not collect additional information for other types of transactions that do not otherwise require information reporting. Second, the application of one fixed rule for allocating transaction costs gives brokers a clear rule to follow and resolves any uncertainty with how to treat those transaction costs for reporting purposes.

Prior to these proposed regulations, brokers who chose to report on digital asset transactions took different approaches to collecting information and reporting due to a lack of clear policy guidelines. Any economic inefficiencies created by this uncertainty (such as competition between brokers regarding collecting personal information) would now be resolved.

#### d. Economic Effects on Digital Asset Owners

The Treasury Department and the IRS estimate that 13 to 16 million digital asset owners will be impacted by these proposed regulations. This estimated range may be low, since it relies on information reported on Forms 8949, Sales and Other Dispositions of Capital Assets, by individuals, Forms 1099-B, Forms 1099-K, Forms 1099-MISC, Miscellaneous Income, and Forms 1099-NEC, Nonemployee Compensation, provided by brokers and/or payment settlement entities prior to the passage of IJA and individuals that checked yes on the Form 1040, *U.S. Individual Income Tax Return*, question regarding virtual currency transactions. Because the existing regulations were previously silent as to the information reporting obligations of brokers for many digital asset transactions prior to IJA, these data are likely not complete even for those who did file. Payment settlement entities were also only required to file a Form 1099-K if the payee had more than 200 transactions and \$20,000 in gross proceeds, further limiting the information available. The Treasury Department and the IRS do not have adequate data to estimate the level of noncompliance regarding digital asset reporting by digital asset owners.

These proposed regulations will have different effects on different types of digital asset owners. The majority of digital asset owners will see greatly reduced costs of monitoring and tracking their own digital asset portfolios. These reduced costs and the increased confidence potential digital asset owners will gain as a result of brokers being compliant with Federal tax laws will likely increase the number

<sup>7</sup> See <https://www.bls.gov/oes/tables.htm> and <https://www.bls.gov/news.release/ecec.toc.htm>.

of digital asset owners and may increase existing owners' trade volume.

Due to the volatile nature of digital asset values, and due to the precision allowed for digital asset holdings, digital asset owners currently must closely monitor and maintain records of all their transactions to correctly report their tax liability at the end of the year. This is a complicated and time-consuming task that is prone to error. Those potential digital asset owners who have little experience with accounting for digital assets may have been unwilling to enter the market due to the high learning and record maintenance costs. Eliminating these high entry costs will allow more potential digital asset owners to enter the market.

These proposed regulations also make clear which types of digital assets are subject to reporting requirements and which are not. Without this clarification, digital asset owners may have failed to properly maintain records for some of their transactions, believing them to not be subject to reporting per the existing regulations. Similarly, these digital asset owners may have also overallocated resources to monitoring taxable transactions that are now required to be reported, adding unnecessary costs to using digital assets.

On the other hand, those digital asset owners who prefer to use digital assets due to the pseudonymity of the blockchain will see an additional privacy cost of making transactions with digital assets, since brokers will be required to collect information from them for tax reporting purposes. These digital asset owners may decrease their volume of digital asset trading through brokers.

## II. Paperwork Reduction Act

The collections of information in these proposed regulations are required under section 6045 of the Internal Revenue Code (the Code). The collection of information with respect to dispositions of digital assets in these proposed regulations is set forth in proposed § 1.6045-1 and the collection of information with respect to dispositions of real estate in consideration for digital assets in these proposed regulations is set forth in proposed § 1.6045-4. Responses to these collections of information are mandatory.

Section 1.6045-1(d) of these proposed regulations would generally require brokers to report to the customer and the IRS the gross proceeds paid to the customer or credited to the customer's account upon the broker's sale of digital assets on behalf of the customer, as well

as, in certain circumstances, the customer's adjusted basis in, and date of purchase of, the digital assets sold. This information is necessary to allow the customer and the IRS to determine the amount and character of the customer's gain (or loss) from the sale of digital assets. Section 1.6045-4(i) of these proposed regulations would generally require real estate reporting persons (treated as brokers for purposes of proposed § 1.6045-1) to report to the real estate transferor and to the IRS the fair market value of digital assets paid to the transferor as consideration in a real estate transaction. This information is necessary to allow the transferor and the IRS to determine the total gross proceeds from digital assets paid in the real estate transaction.

The IRS intends that the collection of information pursuant to proposed § 1.6045-1 will be conducted through a form prescribed by the Secretary for digital asset sales, and that the collection of information pursuant to proposed § 1.6045-4 will be conducted through a revised Form 1099-S, *Proceeds From Real Estate Transactions*. For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the reporting burden associated with the collection of information with respect to proposed §§ 1.6045-1 and 1.6045-4 will be reflected in the Paperwork Reduction Act Submissions associated with those Forms. The OMB Control Number for the Form 1099-S is 1545-0997. Currently, there is no OMB Control Number for the form that will be prescribed by the Secretary for the collection of information pursuant to proposed § 1.6045-1.

The form prescribed by the Secretary for digital asset sales will be used by all digital asset brokers, digital asset payment processors, and certain other brokers with a reporting requirement. The revised Form 1099-S will be used by all real estate reporting persons with a reporting requirement. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to these proposed regulations. In addition, when available, drafts of IRS forms will be posted for comment at [www.irs.gov/draftforms](http://www.irs.gov/draftforms).

Regarding the form that will be prescribed by the Secretary for sales of digital assets, the burden estimate must reflect the continuing costs of collecting and reporting the information required by these regulations as well as the upfront or start-up costs associated with creating the systems to collect and report the information. A reasonable burden estimate for the average time to

complete these Forms for each customer is between 7.5 minutes and 10.5 minutes, with a mid-point of 9 minutes (or 0.15 hours). The Treasury Department and the IRS estimate that 13 to 16 million customers will be impacted by these proposed regulations. Taking the mid-points of the ranges for the number of taxpayers that are expected to report gain (or loss) from digital asset transactions (*i.e.*, form recipients) and number of brokers expected to be impacted by these regulations (14.5 million recipients and 5,050 brokers, respectively), we expect the average broker to incur 425 hours of time burden and \$27,000 of monetized burden for the ongoing costs per year. The total estimated aggregate annual burden hours is 2,146,250. The total estimated monetized annual burden is \$136,350,000. These estimates are based on survey data collected from filers of similar information returns, such as Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*, and Form 1099-K, *Payment Card and Third Party Network Transactions*. Although these estimates are likely to increase once these proposed regulations are effective, the Treasury Department and the IRS do not have data that would allow for an accurate estimate of these increases.

Additionally, start-up costs are estimated to be between three to eight times annual costs. Given that we expect per firm annual estimated burden hours to be 425 hours and \$27,000 of estimated monetized burden, we estimate per firm start-up aggregate burden hours to range from 1,275 to 3,400 hours and \$81,000 to \$216,000 of aggregate monetized burden. Using the mid-points, start-up total estimated aggregate burden hours is 11,804,375 and total estimated monetized burden is \$749,925,000.

Based on the most recent OMB burden estimate for the average time to complete Form 1099-S, it was estimated that the IRS received a total number of 2,573,400 Form 1099-S responses with a total estimated time burden for those responses of 411,744 hours (or 9.6 minutes per Form). See [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201806-1545-024](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201806-1545-024). Neither a material change in the average time to complete the revised Form, nor a material increase in the number of Forms that will be filed is expected once these proposed regulations are effective. No material increase is expected in the start-up costs and it is anticipated that less than 1 percent of Form 1099-S issuers will be impacted by this change. There is no available data to predict the increase in the number of Forms to be

filed. The Treasury Department and the IRS request comments on all aspects of these estimates.

Written comments and recommendations for the proposed information collection may be submitted via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-122793-19) by following the online instructions for submitting comments and may also be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 30, 2023.

*Comments are specifically requested concerning:*

Whether the proposed collection of information is necessary for the proper performance of the duties of the IRS, including whether the information will have practical utility (including underlying assumptions and methodology);

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### III. Regulatory Flexibility Act

When the IRS issues a proposed rulemaking imposing a collection of information requirement on small entities, the Regulatory Flexibility Act (RFA) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis,” which will “describe the impact of the proposed rule on small entities.” 5 U.S.C. 603(a). Unless an agency determines that a proposal will

not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule.

As discussed in Part I.D.2.c. of this *Special Analyses*, the expected number of impacted issuers of information returns under these proposed regulations is between 600 and 9,500 (mid-point 5,050). Small Business Administration regulations provide small business size standards by North American Industry Classification System (NAICS) Industry. See 13 CFR 121.201. The NAICS includes virtual currency exchange services in the NAICS code for Commodity Contracts Dealing (523130). According to Small Business Administration regulations, the maximum annual receipts for a concern and its affiliates to be considered small in this NAICS code is \$41.5 million. Based on tax return data, only 150 of the 9,500 firms identified as impacted issuers in the upper bound estimate exceed the \$41.5 million threshold. This implies there could be 450 to 9,350 impacted small business issuers under the Small Business Administration small business size standards. Notwithstanding these estimates and analysis, the Treasury Department and the IRS have not yet determined whether the proposed rule, when finalized, will likely have a significant economic impact on a substantial number of small entities. The determination of whether reporting by small brokers and real estate reporting persons on certain digital asset transactions will have a significant economic impact on a substantial number of these entities requires further study. However, because there is a possibility of significant economic impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis is provided in these proposed regulations. The Treasury Department and the IRS invite comments on both the number of entities affected and the economic impact on small entities.

#### A. Need for and Objectives of the Rule

As discussed earlier in this preamble, the existing information reporting rules do not address how certain transactions involving digital assets must be reported to the party who disposes of the digital assets in exchange for cash, services, stored-value cards, or other property (including different digital assets). Information reporting by brokers and real estate reporting persons under section 6045 of the Code with respect to certain digital asset dispositions and digital asset payments received by real

estate transferors would lead to higher levels of taxpayer compliance because the income earned by taxpayers engaging in transactions involving digital assets would be made transparent to both the IRS and taxpayers. Clear information reporting rules that report gross proceeds and, in some cases, adjusted basis for taxpayers who engage in digital asset transactions will help the IRS to identify taxpayers who have engaged in these transactions, and thereby help to reduce the overall tax gap. The proposed rule is also expected to facilitate the preparation of tax returns (and reduce the number of inadvertent errors or intentional misstatements shown on those returns) by taxpayers who engage in digital asset transactions.

#### B. Affected Small Entities

As discussed above, we anticipate 9,350 of the 9,500 (or 98 percent) impacted issuers in the upper bound estimate could be small businesses.

#### C. Impact of the Rule and Alternatives Considered

##### 1. Proposed Reporting and Compliance Requirements

Section 1.6045-1(d) of these proposed regulations would generally require brokers to report to the IRS and the customer the gross proceeds paid to the customer or credited to the customer's account upon the broker's sale of digital assets on behalf of the customer, as well as, in certain circumstances, the customer's adjusted basis in, and date of purchase of, the digital assets sold. This information is necessary to allow the IRS and the customer to determine the amount and character of the customer's gain (or loss) from the sale of digital assets. Section 1.6045-4(i) of these proposed regulations would also generally require real estate reporting persons (treated as brokers for purposes of proposed § 1.6045-1) to report to the IRS and the real estate transferor the fair market value of digital assets paid to the real estate transferor as consideration in a real estate transaction. This information is necessary to allow the IRS and the real estate transferor to determine the total gross proceeds from digital assets paid in the real estate transaction and assist the IRS and the real estate transferor to determine whether, and to what extent, the gross proceeds are taxable income to the real estate transferor.

As previously stated in the Paperwork Reduction Act section of this preamble, the form prescribed by the Secretary for reporting sales of digital assets pursuant to § 1.6045-1(d) of these proposed

regulations is expected to create an average estimated per customer burden on brokers of between 7.5 minutes and 10.5 minutes, with a mid-point of 9 minutes (or 0.15 hours). In addition, the form is expected to create an average estimated per broker burden of between 1,275 and 3,400 hours in start-up costs to build processes to comply with the information reporting requirements. The revised Form 1099-S prescribed by the Secretary for reporting gross proceeds from the payment of digital assets paid to real estate transferors as consideration in a real estate transaction pursuant to § 1.6045-4(i) of these proposed regulations is not expected to materially change overall costs to complete the revised Form. Because we expect that filers of revised Form 1099-S will already be filers of the form, we do not expect them to incur a material increase in start-up costs associated with the revised form.

Although small businesses may engage tax reporting services to complete, file, and furnish information returns to avoid the start-up costs associated with building an internal information return reporting system for sales of digital assets, it remains difficult to predict whether the economies of scale efficiencies of using these services will offset the somewhat more burdensome ongoing costs associated with using third party contractors.

## 2. Reporting Alternatives Considered for Small Businesses

The Treasury Department and the IRS considered alternatives to these proposed regulations that would have created an exception to reporting, or a delayed applicability date, for small businesses but decided against such alternatives for several reasons. As discussed above, we anticipate 9,350 of the 9,500 (or 98 percent) impacted issuers in the upper bound estimate could be small businesses. First, one purpose of these proposed regulations is to eliminate the overall tax gap. Any exception or delay to the information reporting rules for small business brokers, which may comprise the vast majority of impacted issuers, would reduce the effectiveness of these proposed regulations. In addition, such an exception or delay could have the unintended effect of incentivizing taxpayers to move their business to excepted small businesses, thus thwarting IRS efforts to identify taxpayers engaged in digital asset transactions. Additionally, because the information reported on statements furnished to customers will likely be an aid to tax return preparation by those

customers, small business brokers will be able to offer their customers the same amount of useful information as their larger competitors. Finally, to the extent investors in digital asset transactions are themselves small businesses, these proposed regulations will help these businesses with their own tax return preparation efforts.

## D. Duplicate, Overlapping, or Relevant Federal Rules

The proposed rule would not conflict or overlap with any relevant Federal rules. As discussed above, in certain instances, the proposed rule ensures duplicative reporting is not required.

The Treasury Department and the IRS invite comments on any impact this rule would have on small entities. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small entities.

## IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or by the private sector in excess of that threshold.

## V. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications, does not impose substantial direct compliance costs on State and local governments, and does not preempt State law within the meaning of the Executive order.

## Comments and Requests To Participate in the Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted

timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments that are submitted by the public will be made available at <https://www.regulations.gov>. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for November 7, 2023, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. If the number of requests to speak at the hearing exceed the number that can be accommodated in one day, a second public hearing date for this proposed regulation will be held on November 8, 2023. In this event and to the extent possible, persons requesting to testify in person will be assigned to speak on the first day of the public hearing. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the public hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the public hearing. Persons who wish to present oral comments at the public hearing must submit written or electronic comments and an outline of the topics to be discussed as well as the time to be devoted to each topic by October 30, 2023, as prescribed in the preamble under the **ADDRESSES** section. For those requesting to speak during the public hearing, send an outline of topic submissions electronically via the Federal eRulemaking Portal at [www.regulations.gov](https://www.regulations.gov) (indicate IRS and REG-122793-19). If no outlines are received by October 30, 2023, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to have your name added to the building access list. The subject line of the email must contain the regulation number REG-122793-19 and the language “TESTIFY In Person”. For example, the subject line may say: “Request to TESTIFY In Person at Hearing for REG-122793-19”. Individuals who want to testify by telephone at the public hearing must send an email to

[publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the public hearing. The subject line of the email must contain the regulation number “REG–122793–19” and the language “TESTIFY Telephonically”. For example, the subject line may say: “Request to TESTIFY Telephonically at Hearing for REG–122793–19”.

The email by persons requesting to testify either in person or telephonically should include a copy of the speaker’s public comments and outline of topics. A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda with the order of the speakers will be made available free of charge at the public hearing and will also be uploaded to <https://www.regulations.gov>.

Individuals who want to attend the public hearing in person without testifying must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to have their names added to the building access list. The subject line of the email must contain the regulation number “REG–122793–19” and the words “ATTEND in Person”. For example, the subject line may say: “Request to ATTEND Hearing in Person for REG–122793–19”. Requests to attend the public hearing must be received by 5 p.m. ET on November 3, 2023.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the public hearing. The subject line of the email must contain the regulation number “REG–122793–19” and the words “ATTEND Hearing Telephonically”. For example, the subject line may say: “Request to ATTEND Hearing Telephonically for REG–122793–19”. Requests to attend the public hearing must be received by 5 p.m. ET on November 3, 2023.

Hearings will be made accessible to people with disabilities. To request special assistance during the telephonic hearing, contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred) or by telephone at (202) 317–5306 (not a toll-free number) by November 2, 2023.

#### Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices and other guidance cited in this document are published in

the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

#### Drafting Information

The principal authors of these regulations are Roseann Cutrone, Office of the Associate Chief Counsel (Procedure and Administration) and Kyle Walker and Harith Razaa, Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS, including John Sweeney and Alan Williams, Office of Associate Chief Counsel (International), and Pamela Lew, Office of Associate Chief Counsel (Financial Institutions and Products), participated in their development.

#### List of Subjects

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

##### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR parts 1, 31, and 301 as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.1001–1 is amended by adding a sentence at the end of paragraph (a) to read as follows:

##### § 1.1001–1 Computation of gain or loss.

(a) \* \* \* For rules determining the amount realized for purposes of computing the gain or loss upon the sale, exchange, or other disposition of digital assets, as defined in § 1.6045–1(a)(19), *see* § 1.1001–7.

\* \* \* \* \*

■ **Par. 3.** Section 1.1001–7 is added to read as follows:

##### § 1.1001–7 Computation of gain or loss for digital assets.

(a) *In general.* This section provides rules to determine the amount realized for purposes of computing the gain or loss upon the sale, exchange, or other disposition of digital assets, as defined in § 1.6045–1(a)(19).

(b) *Amount realized in a sale, exchange, or other disposition of digital assets for cash, other property, or services—*(1) *Computation of amount realized—*(i) *In general.* If digital assets are sold or otherwise disposed of for cash, other property differing materially in kind or in extent, or services, the amount realized is the excess of:

(A) The sum of:

(1) Any cash received;

(2) The fair market value of any property received or, in the case of a debt instrument described in paragraph (b)(1)(iv) of this section, the amount determined under paragraph (b)(1)(iv) of this section; and

(3) The fair market value of any services received; over

(B) The amount of digital asset transaction costs, as defined in paragraph (b)(2)(i) of this section, allocable to the sale or disposition of the transferred digital asset, as determined under paragraph (b)(2)(ii) of this section.

(ii) *Digital assets used to pay digital asset transaction costs.* If digital assets are used (including withheld) to pay digital asset transaction costs, as defined in paragraph (b)(2)(i) of this section, such use is a disposition of the digital assets for services.

(iii) *Application of general rule to certain sales, exchanges, or other dispositions of digital assets.* The following paragraphs apply the rules of this section to certain sales, exchanges, or other dispositions of digital assets.

(A) *Sales or other dispositions of digital assets for cash.* The amount realized from the sale of digital assets for cash is the sum of the amount of cash received plus the fair market value of services received described in paragraph (b)(1)(ii) of this section, reduced by the amount of digital asset transaction costs allocable to the disposition of the transferred digital assets, as determined under paragraph (b)(2)(ii) of this section.

(B) *Exchanges or other dispositions of digital assets for services, or certain property.* The amount realized on the exchange or other disposition of digital assets for services or property differing materially in kind or in extent, other than digital assets or debt instruments described in paragraph (b)(1)(iv) of this section, is the sum of the fair market value of such property and services received (including services received

described in paragraph (b)(1)(ii) of this section), reduced by the amount of digital asset transaction costs allocable to the disposition of the transferred digital assets, as determined under paragraph (b)(2)(ii) of this section.

(C) *Exchanges of digital assets.* The amount realized on the exchange of one digital asset for another digital asset differing materially in kind or in extent is the sum of the fair market value of the digital asset received plus the fair market value of services received described in paragraph (b)(1)(ii) of this section, reduced by the amount of digital asset transaction costs allocable to the disposition of the transferred digital asset, as determined under paragraph (b)(2)(ii) of this section.

(iv) *Debt instrument issued in exchange for digital assets.* For purposes of this section, if a debt instrument is issued in exchange for digital assets and the debt instrument is subject to § 1.1001-1(g), the amount attributable to the debt instrument is determined under § 1.1001-1(g) (in general, the issue price of the debt instrument).

(2) *Digital asset transaction costs—(i) Definition.* The term *digital asset transaction costs* means the amount paid in cash or property (including digital assets) to effect the disposition or acquisition of a digital asset. Digital asset transaction costs include transaction fees, transfer taxes, and commissions.

(ii) *Allocation of digital asset transaction costs.* This paragraph (b)(2)(ii) provides the rules for allocating digital asset transaction costs to the disposition or acquisition of a digital asset.

(A) *In general.* Except as provided in paragraph (b)(2)(ii)(B) of this section, in the case of a sale or disposition of digital assets, the total digital asset transaction costs paid by the taxpayer are allocable to the disposition of the digital assets. Such costs include any digital asset transaction costs paid by the taxpayer on the sale or disposition of a digital asset used or withheld to pay other digital asset transaction costs.

(B) *Special rule for certain exchanges.* In the case of an exchange of digital assets described in paragraph (b)(1)(iii)(C) of this section, one-half of the total digital asset transaction costs paid by the taxpayer to effect the exchange are allocable to the disposition of the transferred digital assets, and the other half of such costs are allocable to the acquisition of the received digital assets for purposes of determining basis under § 1.1012-1(a). See § 1.1012-1(h). Such costs include any digital asset transaction costs paid by the taxpayer on the sale or disposition of a digital

asset used or withheld to pay other digital asset transaction costs. Accordingly, any other allocation or specific assignment of digital asset transaction costs is disregarded.

(3) *Time for determining fair market value of digital assets.* Generally, the fair market value of a digital asset is determined as of the date and time of the exchange or disposition of the digital asset.

(4) *Special rule when the fair market value of property or services cannot be determined.* If the fair market value of the property (including digital assets) or services received in exchange for digital assets cannot be determined with reasonable accuracy, the fair market value of such property or services must be determined by reference to the fair market value of the digital assets transferred as of the date and time of the exchange. This paragraph (b)(4), however, does not apply to a debt instrument described in paragraph (b)(1)(iv) of this section.

(5) *Examples.* The following examples illustrate the application of paragraphs (b)(1) through (3) of this section. Unless the facts specifically state otherwise, the transactions described in the following examples occur after the applicability date set forth in paragraph (c) of this section. For purposes of the examples under this paragraph (b)(5), assume that TP is a digital asset investor, and each unit of digital asset A, B, and C is materially different in kind or in extent from the other units. See § 1.1012-1(h)(4) for examples illustrating the determination of basis of digital assets.

(i) *Example 1: Exchange of digital assets for services—(A) Facts.* TP owns a total of 20 units of digital asset A, and each unit has an adjusted basis of \$0.50. X, an unrelated person, agrees to perform cleaning services for TP in exchange for 10 units of digital asset A. The fair market value of the services performed by X equals \$10. X then performs the services, and TP transfers 10 units of digital asset A to X. Additionally, TP pays, in cash, \$1 of transaction fees to dispose of digital asset A.

(B) *Analysis.* Under paragraph (b)(1) of this section, TP has a disposition of 10 units of digital asset A for services received. Under paragraphs (b)(2)(i) and (b)(2)(ii)(A) of this section, TP has digital asset transaction costs of \$1, which must be allocated to the disposition of digital asset A. Under paragraph (b)(1)(i) of this section, TP's amount realized on the disposition of the units of digital asset A is \$9, which is the fair market value of the services received, \$10, reduced by the digital asset transaction costs allocated to the

disposition of digital asset A, \$1. TP recognizes a gain of \$4 on the exchange (\$9 amount realized reduced by \$5 adjusted basis in 10 units).

(ii) *Example 2: Digital asset transaction costs paid in cash in an exchange of digital assets—(A) Facts.* TP owns a total of 10 units of digital asset A, and each unit has an adjusted basis of \$0.50. TP uses BEX, an unrelated third party, to effect the exchange of 10 units of digital asset A for 20 units of digital asset B. At the time of the exchange, each unit of digital asset A has a fair market value of \$2 and each unit of digital asset B has a fair market value of \$1. BEX charges \$2 per transaction, which BEX requires its customers to pay in cash. At the time of the transaction, TP pays BEX \$2 in cash.

(B) *Analysis.* Under paragraph (b)(2)(i) of this section, TP has digital asset transaction costs of \$2. Under paragraph (b)(2)(ii)(B) of this section, TP must allocate one-half of such costs (\$1) to the disposition of the 10 units of digital asset A and must allocate the remaining one-half (\$1) to the acquisition of the 20 units of digital asset B. Under paragraphs (b)(1)(i) and (b)(3) of this section, TP's amount realized from the exchange is \$19, which is the fair market value of the 20 units of digital asset B received (\$20) as of the date and time of the transaction, reduced by the digital asset transaction costs allocated to the disposition of digital asset A (\$1). TP recognizes a gain of \$14 on the exchange (\$19 amount realized reduced by \$5 adjusted basis in the 10 units of digital asset A).

(iii) *Example 3: Digital asset transaction costs paid with digital assets in an exchange of digital assets—(A) Facts.* The facts are the same as in paragraph (b)(5)(ii)(A) of this section (the facts in *Example 2*), except that BEX requires its customers to pay transaction costs using units of digital asset C. TP has an adjusted basis in each unit of digital asset C of \$0.50. TP transfers 2 units of digital asset C to BEX to effect the exchange of digital asset A for digital asset B. TP also pays to BEX an additional unit of digital asset C to effect the disposition of digital asset C for payment of the transaction costs. The fair market value of each unit of digital asset C is \$1.

(B) *Analysis.* TP disposes of 3 units of digital asset C for services described in paragraph (b)(1)(ii) of this section. Therefore, under paragraph (b)(2)(i) of this section, TP has digital asset transaction costs of \$3. Under paragraph (b)(2)(ii)(B) of this section, TP must allocate one-half of such costs (\$1.50) to the disposition of the 10 units of digital

asset A and the remaining one-half (\$1.50) to the acquisition of the 20 units of digital asset B. None of the digital asset transaction costs are allocable to the disposition of digital asset C. Under paragraphs (b)(1)(i) and (b)(3) of this section, TP's amount realized on the disposition of digital asset A is \$18.50, which is the excess of the fair market value of the 20 units of digital asset B received (\$20) as of the date and time of the transaction over the allocated digital asset transaction costs (\$1.50). Under paragraph (b)(1)(i) of this section, TP's amount realized on the disposition of the 3 units of digital asset C is \$3, which is the fair market value of the services received as of the date and time of the transaction. TP recognizes a gain of \$13.50 on the disposition of 10 units of digital asset A (\$18.50 amount realized over \$5 adjusted basis) and a gain of \$1.50 on the disposition of the 3 units of digital asset C (\$3 amount realized over \$1.50 adjusted basis).

(iv) *Example 4: Digital asset transaction costs withheld from the transferred digital assets in an exchange of digital assets—(A) Facts.* The facts are the same as in paragraph (b)(5)(ii)(A) of this section (the facts in *Example 2*), except that BEX requires its payment be withheld from the units of the digital asset transferred. At the time of the transaction, BEX withholds 1 unit of digital asset A. TP exchanges the remaining 9 units of digital asset A for 18 units of digital asset B.

(B) *Analysis.* The withholding of 1 unit of digital asset A is a disposition of a digital asset for services within the meaning of paragraph (b)(1)(ii) of this section. Under paragraph (b)(2)(i) of this section, TP has digital asset transaction costs of \$2. Under paragraph (b)(2)(ii)(B) of this section, TP must allocate one-half of such costs to the disposition of the 10 units of digital asset A and must allocate the other half of such costs to the acquisition of the 18 units of digital asset B. Under paragraphs (b)(1)(i) and (b)(3) of this section, TP's amount realized on the 10 units of digital asset A is \$19, which is the excess of the fair market value of the 18 units of digital asset B received (\$18) and the fair market value of services received (\$2) as of the date and time of the transaction over the allocated digital asset transaction costs (\$1). TP recognizes a gain on the 10 units of digital asset A transferred of \$14 (\$19 amount realized reduced by \$5.00 adjusted basis in the 10 units).

(c) *Applicability date.* This section applies to all sales, exchanges, and dispositions of digital assets on or after January 1 of the calendar year immediately following [date of

publication of final regulations in the **Federal Register**].

■ **Par. 4.** Section 1.1012–1 is amended by:

- 1. Adding paragraph (h);
- 2. Adding reserved paragraph (i); and
- 3. Adding paragraph (j).

The additions read as follows:

**§ 1.1012–1 Basis of property.**

\* \* \* \* \*

(h) *Determination of basis of digital assets—(1) Overview and general rule.* This paragraph (h) provides rules to determine the basis of digital assets, as defined in § 1.6045–1(a)(19), received in a purchase for cash, a transfer in connection with the performance of services, an exchange for digital assets or other property differing materially in kind or in extent, an exchange for a debt instrument described in paragraph (h)(1)(v) of this section, or in a part sale and part gift transfer described in paragraph (h)(1)(vi) of this section. Except as provided in paragraph (h)(1)(ii), (v), or (vi) of this section, the basis of digital assets received in a purchase or exchange is generally equal to the cost thereof at the date and time of the purchase or exchange, plus any allocable digital asset transaction costs as determined under paragraph (h)(2)(ii) of this section.

(i) *Basis of digital assets purchased for cash.* The basis of digital assets purchased for cash is the amount of cash used to purchase the digital assets plus any allocable digital asset transaction costs as determined under paragraph (h)(2)(ii)(A) of this section.

(ii) *Basis of digital assets received in connection with the performance of services.* For rules regarding digital assets received in connection with the performance of services, see §§ 1.61–2(d)(2) and 1.83–4(b).

(iii) *Basis of digital assets received in exchange for property other than digital assets.* The basis of digital assets received in exchange for property differing materially in kind or in extent, other than digital assets, is the cost as described in paragraph (h)(3) of this section of the digital assets received plus any allocable digital asset transaction costs as determined under paragraph (h)(2)(ii)(A) of this section.

(iv) *Basis of digital assets received in exchange for other digital assets.* The basis of digital assets received in an exchange for other digital assets differing materially in kind or in extent is the cost as described in paragraph (h)(3) of this section of the digital assets received plus one-half of the total allocable digital asset transaction costs as determined under paragraph (h)(2)(ii)(B) of this section.

(v) *Basis of digital assets received in exchange for the issuance of a debt instrument.* If a debt instrument is issued in exchange for digital assets, the cost of the digital assets attributable to the debt instrument is the amount determined under paragraph (g) of this section, plus any allocable digital asset transaction costs as determined under paragraph (h)(2)(ii)(A) of this section.

(vi) *Basis of digital assets received in a part sale and part gift transfer.* To the extent digital assets are received in a transfer, which is in part a sale and in part a gift, see § 1.1012–2.

(2) *Digital asset transaction costs—(i) Definition.* The term *digital asset transaction costs* under paragraph (h) of this section has the same meaning as in § 1.1001–7(b)(2)(i).

(ii) *Allocation of digital asset transaction costs.* This paragraph (h)(2)(ii) provides the rules for allocating digital asset transaction costs to the acquisition of digital assets described in paragraph (h)(1) of this section.

(A) *Allocation of digital asset transaction costs on a purchase or exchange for digital assets.* Except for an exchange described in paragraph (h)(2)(ii)(B) of this section, the total digital asset transaction costs paid by the taxpayer are allocable to the digital assets received.

(B) *Special rule for the allocation of digital asset transaction costs on an exchange of digital assets for other digital assets.* In the case of an exchange of digital assets for other digital assets differing materially in kind or in extent, one-half of the total digital asset transaction costs paid by the taxpayer is allocable to the disposition of the transferred digital assets for purposes of determining the amount realized under § 1.1001–7(b)(1). The other half of such costs is allocable to the acquisition of the digital assets for purposes of determining the basis of such digital assets under paragraph (h)(1) of this section. Accordingly, any other allocation or specific assignment of digital asset transaction costs is disregarded.

(3) *Determining the cost of the digital assets received.* In the case of an exchange described in either paragraph (h)(1)(iii) or (iv) of this section, the cost of the digital assets received is the same as the fair market value used in determining the amount realized on the sale or disposition of the transferred property for purposes of section 1001 of the Code. Generally, the cost of a digital asset received is determined at the date and time of the exchange. The special rule in § 1.1001–7(b)(4) also applies in this section for purposes of determining

the fair market value of a received digital asset when it cannot be determined with reasonable accuracy.

(4) *Examples.* The following examples illustrate the application of this section. Unless the facts specifically state otherwise, the transactions described in the following examples occur after the applicability date set forth in paragraph (h)(5) of this section. For purposes of the examples under this paragraph (h)(4), assume that TP is a digital asset investor, and that digital assets A, B, and C are materially different in kind or in extent from each other. See § 1.1001-7(b)(5) for examples illustrating the determination of the amount realized and gain or loss in a sale or disposition of a digital asset for cash, other property differing materially in kind or in extent, or services.

(i) *Example 1: Transaction fee paid in cash—(A) Facts.* TP uses BEX, an unrelated third party, to exchange 10 units of digital asset A for 20 units of digital asset B. At the time of the exchange, a unit of digital asset A has a fair market value of \$2, and a unit of digital asset B has a fair market value of \$1. BEX charges TP a transaction fee of \$2, which TP pays to BEX in cash at the time of the exchange.

(B) *Analysis.* Under paragraph (h)(2)(i) of this section, TP has digital asset transaction costs of \$2. Under paragraph (h)(2)(ii)(B) of this section, TP allocates one-half of the digital asset transaction costs (\$1) to the disposition of the 10 units of digital asset A and allocates the other half of such costs (\$1) to the acquisition of 20 units of digital asset B. Under paragraphs (h)(1)(iv) and (h)(3) of this section, TP's basis in the 20 units of digital asset B received is \$21, which is the sum of the fair market value of the 20 units of digital asset B received (\$20), plus the allocated digital asset transaction costs (\$1).

(ii) *Example 2: Transaction fee paid in other property—(A) Facts.* The facts are the same as in paragraph (h)(4)(i)(A) of this section (the facts in *Example 1*), except that BEX requires its customers to pay transaction fees using units of digital asset C. TP pays the transaction fees using 2 units of digital asset C that TP holds. At the time TP pays the transaction fees, each unit of digital asset C has a fair market value of \$1. TP acquires 20 units of digital asset B with a fair market value of \$20 in the exchange.

(B) *Analysis.* Under paragraph (h)(2)(i) of this section, TP has digital asset transaction costs of \$2. Under paragraph (h)(2)(ii)(B) of this section, TP must allocate one-half of the digital asset transaction costs (\$1) to the disposition of the 10 units of digital asset A and

must allocate the remaining one-half of such costs (\$1) to the acquisition of the 20 units of digital asset B. Under paragraphs (h)(1)(iv) and (h)(3) of this section, TP's basis in the 20 units of digital asset B is \$21, which is the sum of the fair market value of the 20 units of digital asset B received (\$20) plus the allocated digital asset transaction costs (\$1).

(iii) *Example 3: Digital asset transaction costs withheld from the transferred digital assets—(A) Facts.* The facts are the same as in paragraph (h)(4)(i)(A) of this section (the facts in *Example 1*), except that BEX withholds 1 unit of digital asset A in payment of the transaction fees and TP receives 18 units of digital asset B.

(B) *Analysis.* Under paragraph (h)(2)(i) of this section, TP has digital asset transaction costs of \$2. Under paragraph (h)(2)(ii)(B) of this section, TP must allocate one-half of the digital asset transaction costs (\$1) to the disposition of the 10 units of digital asset A and must allocate the remaining one-half of such costs (\$1) to the acquisition of the 18 units of digital asset B received. Under paragraphs (h)(1)(iv) and (h)(3) of this section, TP's total basis in the digital asset B units is \$19, which is the sum of the fair market value of the 18 units of digital asset B received (\$18) plus the allocated digital asset transaction costs (\$1).

(5) *Applicability date.* This paragraph (h) is applicable to all acquisitions and dispositions of digital assets on or after January 1 of the calendar year immediately following [date of publication of final regulations in the **Federal Register**].

\* \* \* \* \*

(j) *Sale, disposition, or transfer of digital assets—(1) In general.* Except as provided in paragraph (j)(3) of this section for digital assets in the custody of a broker, if a taxpayer sells, disposes of, or transfers less than all units of the same digital asset, as defined in § 1.6045-1(a)(19), held in a single wallet or account, as defined in § 1.6045-1(a)(23), the basis and holding period of the disposed units are determined by making a specific identification of the units in the wallet or account that are sold, disposed of, or transferred, as provided in paragraph (j)(2) of this section. If a specific identification is not made, units in the wallet or account are disposed of in order of time from the earliest acquired. For purposes of the preceding sentence, the date the units were transferred into the taxpayer's wallet or account is disregarded.

(2) *Specific identification of digital assets.* A specific identification of the

units of a digital asset sold, disposed of, or transferred is made if, no later than the date and time of the sale, disposition, or transfer, the taxpayer identifies on its books and records the particular units to be sold, disposed of, or transferred by reference to any identifier, such as purchase date and time or the purchase price for the unit, that is sufficient to identify the units sold, disposed of, or transferred in order to determine the basis and holding period of such units. A specific identification can be made only if adequate records are maintained for all units of a specific digital asset held in a single wallet or account to establish that a disposed unit is removed from the wallet or account for purposes of subsequent transactions.

(3) *Digital assets in the custody of a broker—(i) Unit of a digital asset sold, disposed of, or transferred.*

Notwithstanding the general rule set forth in paragraph (j)(1) of this section, where multiple units of the same digital asset are left in the custody of a broker, as defined in § 1.6045-1(a)(1), and, no later than the date and time of sale, disposition, or transfer, the taxpayer does not provide the broker with an adequate identification of which units are sold, disposed of, or transferred, as provided in paragraph (j)(3)(ii) of this section, the basis and holding period of the units disposed of, sold, or transferred must be determined in order of time from the earliest units acquired of that same digital asset in the taxpayer's account with the broker.

(ii) *Identification of units.* Where multiple units of the same digital asset are left in the custody of a broker, an adequate identification occurs if, no later than the date and time of the sale, disposition, or transfer, the taxpayer specifies to the broker having custody of the digital assets the particular units of the digital asset to be sold, disposed of, or transferred by reference to any identifier, such as purchase date and time or purchase price that the broker designates as sufficiently specific to determine the units transferred in order to determine the basis and holding period of such units. The taxpayer is responsible for maintaining records to substantiate the identification.

(4) *Method for specifically identifying units of a digital asset.* A method of specifically identifying the units of a digital asset sold, disposed of, or transferred under this paragraph (j), for example, by the earliest acquired, the latest acquired, or the highest basis, is not a method of accounting. Therefore, a change in the method of specifically identifying the digital asset sold, disposed of, or transferred, for example,

from the earliest acquired to the latest acquired, is not a change in method of accounting to which sections 446 and 481 apply.

(5) *Examples.* The following examples illustrate the application of this section. Unless the facts specifically state otherwise, the transactions described in the following examples occur after the applicability date set forth in paragraph (j)(6) of this section. For purposes of the examples under this paragraph (j)(5), assume that TP is a digital asset investor.

(i) *Example 1: Identification of the digital asset not in the custody of a broker—(A) Facts.* On September 1, Year 2, TP transfers two lots of digital asset DE to a newly opened digital asset wallet that is not in the custody of a broker, as defined in § 1.6045–1(a)(1). The first lot transferred into TP's wallet, with a transaction ID 1114ABC, comes from digital asset address AAA123 and consists of 10 units of digital asset DE, with a purchase date of January 1, Year 1, and a basis of \$2 per unit. The second lot transferred into TP's wallet, with transaction ID 9996XYZ, comes from digital asset address BBB456 and consists of 20 units of digital asset DE, with a purchase date of January 1, Year 2, and a basis of \$5 per unit. On September 2, Year 2, when the DE units have a fair market value of \$10 per unit, TP purchases \$100 worth of consumer goods from Merchant M. To make payment, TP transfers 10 units of digital asset DE from TP's wallet to CPP, a digital asset payment processor that then pays \$100 to M. Prior to making the transfer to CPP, TP keeps a record that the 10 units of DE sold in this transaction were from the second lot of units transferred into TP's wallet, that is, from digital asset address BBB456 and purchased with transaction ID 9996XYZ.

(B) *Analysis.* Under the facts in paragraph (j)(5)(i)(A) of this section, TP's notation in its records on the date of sale, specifying that the 10 units sold were from the 20 units acquired in transaction ID 9996XYZ, is a specific identification within the meaning of paragraph (j)(2) of this section. TP's notation in its records that the 10 units sold were from the 20 units that had previously been at digital asset address BBB456 is also a specific identification within the meaning of paragraph (j)(2) of this section. Either of these notations is sufficient to identify the basis and holding period of the 10 units of digital asset DE sold. Accordingly, TP has identified the units disposed of for purposes of determining the basis (\$5 per unit) and holding period (one year

or less) of the units sold in order to purchase the merchandise.

(ii) *Example 2: Identification of digital assets not in the custody of a broker—*

(A) *Facts.* The facts are the same as in paragraph (j)(5)(i)(A) of this section (the facts in *Example 1*), except in making the transfer to CPP, TP did not keep a record of the specific 10 units of digital asset DE that TP intended to sell.

(B) *Analysis.* TP did not make a specific identification within the meaning of paragraph (j)(2) of this section for the 10 units of digital asset DE that were sold. Pursuant to the ordering rule provided in paragraph (j)(1) of this section, the units disposed of are the earliest acquired. Accordingly, TP must treat the 10 units sold as the 10 units with a purchase date of January 1, Year 1, and a basis of \$2 per unit, transferred into the wallet with transaction ID 1114ABC (that is, the units previously held in digital asset address AAA123).

(iii) *Example 3: Identification of the digital asset sold at broker—(A) Facts.*

On August 1, Year 1, TP opens an account at CRX, a broker within the meaning of § 1.6045–1(a)(1) and purchases through CRX 10 units of digital asset DE for \$9 per unit. On January 1, Year 2, TP opens an account at BEX, an unrelated broker and purchases through BEX 20 units of digital asset DE for \$5 per unit. On August 1, Year 3, TP transfers the digital assets TP holds with CRX into TP's account with BEX. BEX does not account for its customers' digital asset holdings by transaction ID, but rather keeps a centralized account of its customers' holdings. BEX has a policy that purchase or transfer date and time, if necessary, is a sufficiently specific identifier for customers to determine the basis and holding period of units sold, disposed of, or transferred. On September 1, Year 3, TP directs BEX to sell 10 units of digital asset DE for \$10 per unit and specifies that BEX sell the units that were transferred into TP's account with BEX on August 1, Year 3. BEX effects the sale.

(B) *Analysis.* No later than the date and time of the sale, TP specified to BEX the particular units of digital assets to be sold. Accordingly, under paragraph (j)(3)(ii) of this section, TP provided an adequate identification of the 10 units of digital asset DE sold.

(iv) *Example 4: Identification of the digital asset sold at a broker—(A) Facts.* The facts are the same as in paragraph (j)(5)(iii)(A) of this section (the facts in *Example 3*) except that TP directs BEX to sell 10 units of digital asset DE but does not make any identification of which units to sell.

(B) *Analysis.* Because TP did not specify to BEX no later than the date and time of the sale the particular units of digital assets to be sold, TP did not make an adequate identification within the meaning of paragraph (j)(3)(ii) of this section. Thus, TP must use the ordering rule provided in paragraph (j)(3)(i) of this section to determine the units of digital asset DE sold. Pursuant to this rule, the units sold must be attributed to the earliest units of digital asset DE purchased within or transferred into the TP's account with BEX. The 10 units of digital asset DE sold must be attributed to 10 of the 20 units of digital asset DE purchased by TP at BEX on January 1, Year 2, which are the earliest units of digital asset DE acquired in TP's account.

(6) *Applicability date.* This paragraph (j) is applicable to all acquisitions and dispositions of digital assets on or after January 1 of the calendar year immediately following [date of publication of final regulations in the **Federal Register**].

■ **Par. 5.** Section 1.6045–0 is added to read as follows:

**§ 1.6045–0 Table of contents.**

In order to facilitate the use of § 1.6045–1, this section lists the paragraphs contained in § 1.6045–1.

**§ 1.6045–1 Returns of information of brokers and barter exchanges.**

- (a) Definitions.
  - (1) Broker.
  - (2) Customer.
    - (i) In general.
    - (ii) Special rules for payment transactions involving digital assets.
  - (3) Security.
  - (4) Barter exchange.
  - (5) Commodity.
  - (6) Regulated futures contract.
  - (7) Forward contract.
  - (8) Closing transaction.
  - (9) Sale.
    - (i) In general.
    - (ii) Sales with respect to digital assets.
      - (A) In general.
      - (B) Dispositions of digital assets for certain property.
      - (C) Dispositions of digital assets for certain services.
      - (D) Special rule for sales effected by digital asset payment processors.
  - (10) Effect.
    - (i) In general.
    - (ii) Actions relating to certain options and forward contracts.
  - (11) Foreign currency.
  - (12) Cash.
  - (13) Person.
  - (14) Specified security.
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- (v) No adjustments for hedging transactions or offsetting positions.
- (8) Conversion into United States dollars of amounts paid or received in foreign currency.
- (i) Conversion rules.
- (ii) Effect of identification under § 1.988–5(a), (b), or (c) when the taxpayer effects a sale and a hedge through the same broker.
- (iii) Example.
- (9) Coordination with the reporting rules for widely held fixed investment trusts under § 1.671–5.
- (e) Reporting of barter exchanges.
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- (2) Exchanges required to be reported.
- (i) In general.
- (ii) Exemption.
- (iii) Coordination rules for exchanges of digital assets made through barter exchanges.
- (f) Information required.
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- (i) In general.
- (ii) Exception for corporate member or client.
- (iii) Definition.
- (3) Exchange date.
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- (6) Reporting period.
- (g) Exempt foreign persons.
- (1) Brokers.
- (2) Barter exchange.
- (3) Applicable rules.
- (i) Joint owners.
- (ii) Special rules for determining who the customer is.
- (iii) Place of effecting sale.
- (A) Sale outside the United States.
- (B) Sale inside the United States.
- (iv) Special rules where the customer is a foreign intermediary or certain U.S. branches.
- (4) Rules for sales of digital assets.
- (i) Definitions.
- (A) U.S. digital asset broker.
- (B) CFC digital asset broker.
- (C) Non-U.S. digital asset broker.
- (D) Conducting activities as a money services business.
- (E) Foreign kiosk.
- (ii) Rules for U.S. digital asset brokers.
- (A) Place of effecting sale.
- (B) Determination of foreign status.
- (iii) Rules for CFC digital asset brokers not conducting activities as MSBs.
- (A) Place of effecting sale.
- (B) Determination of foreign status.
- (iv) Rules for non-U.S. digital asset brokers not conducting activities as MSBs.
- (A) Sale outside the United States.
- (B) Sale treated as effected at an office inside the United States as a result of U.S. indicia.
- (C) Consequences of treatment as sale effected at an office inside the United States.
- (D) Type of documentation that may be obtained where there are U.S. indicia.
- (1) Collection of U.S. indicia other than U.S. place of birth.
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- (v) Rules for CFC digital asset brokers and non-U.S. digital asset brokers conducting activities as MSBs.
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- (3) Grace period to collect valid documentation in the case of indicia of a foreign customer.
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- (h) Identity of customer.
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- (2) Examples.
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- (2) Scope.
- (i) In general.
- (ii) Delayed effective date for certain options.
- (iii) Compensatory option.
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- (i) In general.
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- (iii) Election to accrue market discount based on a constant yield.
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- (5) Broker assumptions and customer notice to brokers.
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- (ii) Effect of customer notification of an election or revocation.
- (A) Election to amortize bond premium.
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- (6) Reporting of accrued market discount.
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- (ii) Current inclusion election.
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- (i) Original issue discount.
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- (A) Taxable bond.
- (B) Tax-exempt bonds.
- (iii) Acquisition premium.
- (iv) Market discount.
- (v) Principal and certain other payments.
- (8) Accrual period.
- (9) Premium on convertible bond.
- (10) Effect of broker assumptions on customer.
- (11) Additional rules for certain holder elections.
- (i) In general.
- (A) Election to treat all interest as OID.
- (B) Election to accrue market discount based on a constant yield.
- (ii) [Reserved]
- (12) Certain debt instruments treated as noncovered securities.
- (i) In general.
- (ii) Effective/applicability date.
- (o) [Reserved]
- (p) Electronic filing.
- (q) Applicability date.
- (r) Cross-references.

- **Par. 6.** Section 1.6045–1 is amended by:
  - 1. Revising paragraphs (a), (b), (c)(3)(i)(B)(3), and (c)(3)(i)(C)(2) introductory text;
  - 2. In paragraph (c)(3)(xi)(A), removing the language “(d)(2)(i)” and adding the language “(d)(2)(i)(A)” in its place, wherever it appears;
  - 3. Adding paragraph (c)(8);

- 4. Revising paragraphs (d)(2)(i) through (iii);
- 5. In paragraph (d)(2)(iv)(A), revising the heading and the first sentence;
- 6. Revising the heading in paragraph (d)(2)(iv)(B);
- 7. In paragraph (d)(2)(v), revising the heading and the first sentence;
- 8. Revising the heading of paragraph (d)(2)(vi);

- 9. In paragraph (d)(2)(vii), revising the introductory text and designating *Examples 1* and *2* as paragraphs (d)(2)(vii)(A) and (B), respectively;
- 10. In newly designated paragraphs (d)(2)(vii)(A) and (B), redesignating the paragraphs in the first column as the paragraphs in the second column:

Old paragraphs	New paragraphs
(d)(2)(vii)(A)(i) and (ii) .....	(d)(2)(vii)(A)(1) and (2).
(d)(2)(vii)(B)(i) and (ii) .....	(d)(2)(vii)(B)(1) and (2).

- 11. In newly redesignated paragraph (d)(2)(vii)(B)(2), removing the language “(d)(2)(i)” and “(d)(2)(iii)” and adding the language “(d)(2)(i)(A)” and “(d)(2)(iii)(A)” in their places, respectively;
- 12. Adding paragraphs (d)(2)(vii)(C) through (F);
- 13. Revising paragraphs (d)(4) and (5);
- 14. In paragraph (d)(6)(i), revising the first and second sentences;

- 15. In paragraph (d)(6)(ii)(A), revising the heading and the first sentence and removing the language “on or after January 1, 2014,” and adding the language “on or after January 1, 2014, or upon the vesting or exercise of a digital asset-based compensation arrangement granted or acquired on or after January 1, 2025,” in its place;
- 16. Adding paragraph (d)(6)(ii)(C);
- 17. In paragraph (d)(6)(iii)(A), revising the first sentence;

- 18. Redesignating paragraph (d)(6)(vii) as paragraph (d)(6)(viii);
- 19. Adding new reserved paragraph (d)(6)(vii);
- 20. In newly redesignated paragraph (d)(6)(viii), designating *Examples 1* through *4* as paragraphs (d)(6)(viii)(A) through (D), respectively;
- 21. In newly designated paragraphs (d)(6)(viii)(A) and (C), redesignating the paragraphs in the first column as the paragraphs in the second column:

Old paragraphs	New paragraphs
(d)(6)(viii)(A)(i), (ii), and (iii) .....	(d)(6)(viii)(A)(1), (2), and (3).
(d)(6)(viii)(C)(i) and (ii) .....	(d)(6)(viii)(C)(1) and (2).

- 22. In newly redesignated paragraph (d)(6)(viii)(B), removing the language “*Example 1*” and “(d)(2)(iii)” and adding the language “paragraph (d)(6)(viii)(A)(1) of this section (the facts in *Example 1*)” and “(d)(2)(iii)(A)” in their places, respectively;
- 23. Adding reserved paragraph (d)(6)(ix) and paragraph (d)(6)(x);
- 24. In paragraph (d)(7)(ii)(A), removing the language “covered securities” and adding the language “covered securities described in paragraphs (a)(15)(i)(A) through (G) of this section” in its place;
- 25. Adding paragraph (e)(2)(iii);
- 26. Revising paragraph (g)(1) introductory text;
- 27. In the first sentence of paragraphs (g)(1)(i) and (iii), removing the language “With respect to a sale” and adding the language “With respect to a sale as defined in paragraph (a)(9)(i) of this

- section (relating to sales other than sales of digital assets) that is” in its place;
- 28. Revising paragraph (g)(2);
- 29. In paragraph (g)(3)(ii), removing the language “this paragraph (g)” and adding the language “paragraph (g)(1) of this section” in its place;
- 30. In paragraph (g)(3)(iii)(A), revising the first sentence;
- 31. Redesignating paragraph (g)(4) as paragraph (g)(5) and adding a new paragraph (g)(4);
- 32. In newly redesignated paragraph (g)(5):
  - i. Removing the language “this paragraph (g)” in the introductory text and adding the language “paragraphs (g)(1) through (3) of this section” in its place; and
  - ii. Designating *Examples 1* through *8* as paragraphs (g)(5)(i) through (viii), respectively;
- 33. In newly designated paragraph (g)(5)(ii), removing “*Example 1*” and

- adding “paragraph (g)(5)(i) of this section (the facts in *Example 1*)” in its place;
- 34. In newly designated paragraph (g)(5)(iii), removing “*Example 2*” and adding “paragraph (g)(5)(ii) of this section (the facts in *Example 2*)” in its place;
- 35. In newly designated paragraph (g)(5)(iv), removing “*Example 1*” and adding “paragraph (g)(5)(i) of this section (the facts in *Example 1*)” in its place;
- 36. In newly designated paragraphs (g)(5)(v) and (vi), removing “*Example 4*” and adding “paragraph (g)(5)(iv) of this section (the facts in *Example 4*)” in its place;
- 37. In newly designated paragraphs (g)(5)(vii) and (viii), redesignating the paragraphs in the first column as the paragraphs in the second column:

Old paragraphs	New paragraphs
(g)(5)(vii)(i) and (ii) .....	(g)(5)(vii)(A) and (B).
(g)(5)(viii)(i) and (ii) .....	(g)(5)(viii)(A) and (B).

- 38. In newly designated paragraph (g)(5)(viii) introductory text, removing

“*Example 7*” and adding “paragraph

(g)(5)(vii) of this section (the facts in *Example 7*)” in its place;

- 39. Adding paragraph (g)(6);
- 40. Revising paragraphs (j) and (m)(1);
- 41. Adding paragraph (m)(2)(ii)(C);
- 42. In paragraph (n)(6)(i), removing the language “(a)(9)” and adding the language “(a)(9)(i)” in its place;
- 43. Revising paragraph (q); and
- 44. Adding paragraph (r).

The revisions and additions read as follows:

#### § 1.6045–1 Returns of information of brokers and barter exchanges.

(a) *Definitions.* The following definitions apply for purposes of this section and §§ 1.6045–2 and 1.6045–4.

(1) *Broker.* The term *broker* means any person (other than a person who is required to report a transaction under section 6043 of the Code), U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. A broker includes an obligor that regularly issues and retires its own debt obligations, a corporation that regularly redeems its own stock, or a person that regularly offers to redeem digital assets that were created or issued by that person. A broker also includes a real estate reporting person under § 1.6045–4(e) who (without regard to any exceptions provided by § 1.6045–4(c) and (d)) would be required to make an information return with respect to a real estate transaction under § 1.6045–4(a). However, with respect to a sale (including a redemption or retirement) effected at an office outside the United States under paragraph (g)(3)(iii) of this section (relating to sales other than sales of digital assets) or under paragraph (g)(4) of this section (relating to sales of digital assets), a broker includes only a person described as a U.S. payor or U.S. middleman in § 1.6049–5(c)(5). In addition, a broker does not include an international organization described in § 1.6049–4(c)(1)(ii)(G) that redeems or retires an obligation of which it is the issuer.

(2) *Customer*—(i) *In general.* The term *customer* means, with respect to a sale effected by a broker, the person (other than such broker) that makes the sale, if the broker acts as—

(A) An agent for such person in the sale;

(B) A principal in the sale;

(C) The participant in the sale responsible for paying to such person or crediting to such person’s account the gross proceeds on the sale; or

(D) A digital asset middleman, as defined in paragraph (a)(21) of this section, that effects the sale of a digital asset for such person.

(ii) *Special rules for payment transactions involving digital assets.* In

addition to the persons defined as customers in paragraph (a)(2)(i) of this section, the term *customer* includes:

(A) The person who transfers, or is treated under paragraph (a)(22)(ii) of this section as transferring, digital assets to a digital asset payment processor in a sale described in paragraph (a)(9)(ii)(D) of this section;

(B) The person who transfers digital assets or directs the transfer of digital assets—

(1) In exchange for property of a type the later sale of which, if effected by such broker, would constitute a sale of that property under paragraph (a)(9) of this section; or

(2) In exchange for the acquisition of services performed by such broker; and

(C) In the case of a real estate reporting person under § 1.6045–4(e) with respect to a real estate transaction as defined in § 1.6045–4(b)(1), the person who transfers digital assets or directs the transfer of digital assets to the transferor of real estate (or the seller’s nominee or agent) to acquire such real estate.

(3) *Security.* The term *security* means:

(i) A share of stock in a corporation (foreign or domestic);

(ii) An interest in a trust;

(iii) An interest in a partnership;

(iv) A debt obligation;

(v) An interest in or right to purchase any of the foregoing in connection with the issuance thereof from the issuer or an agent of the issuer or from an underwriter that purchases any of the foregoing from the issuer;

(vi) An interest in a security described in paragraph (a)(3)(i) or (iv) of this section (but not including executory contracts that require delivery of such type of security);

(vii) An option described in paragraph (m)(2) of this section; or

(viii) A securities futures contract.

(4) *Barter exchange.* The term *barter exchange* means any person with members or clients that contract either with each other or with such person to trade or barter property or services either directly or through such person. The term does not include arrangements that provide solely for the informal exchange of similar services on a noncommercial basis.

(5) *Commodity.* The term *commodity* means:

(i) Any type of personal property or an interest therein (other than securities as defined in paragraph (a)(3) of this section) the trading of regulated futures contracts in which has been approved by or has been certified to the Commodity Futures Trading Commission (see 17 CFR 40.3 or 40.2);

(ii) Lead, palm oil, rapeseed, tea, tin, or an interest in any of the foregoing; or

(iii) Any other personal property or an interest therein that is of a type the Secretary determines is to be treated as a *commodity* under this section, from and after the date specified in a notice of such determination published in the **Federal Register**.

(6) *Regulated futures contract.* The term *regulated futures contract* means a regulated futures contract within the meaning of section 1256(b) of the Code.

(7) *Forward contract.* The term *forward contract* means:

(i) An executory contract that requires delivery of a commodity in exchange for cash and which contract is not a regulated futures contract;

(ii) An executory contract that requires delivery of personal property or an interest therein in exchange for cash, or a cash settlement contract, if such executory contract or cash settlement contract is of a type the Secretary determines is to be treated as a “forward contract” under this section, from and after the date specified in a notice of such determination published in the **Federal Register**; or

(iii) An executory contract that—

(A) Requires delivery of a digital asset in exchange for cash, stored-value cards, a different digital asset, or any other property or services described in paragraph (a)(9)(ii)(B) or (C) of this section; and

(B) Is not a regulated futures contract.

(8) *Closing transaction.* The term *closing transaction* means a lapse, expiration, settlement, abandonment, or other termination of a position. For purposes of the preceding sentence, a position includes a right or an obligation under a forward contract, a regulated futures contract, a securities futures contract, or an option.

(9) *Sale*—(i) *In general.* The term *sale* means any disposition of securities, commodities, options, regulated futures contracts, securities futures contracts, or forward contracts and includes redemptions of stock, retirements of debt instruments (including a partial retirement attributable to a principal payment received on or after January 1, 2014), and enterings into short sales, but only to the extent any of these actions are conducted for cash. In the case of an option, a regulated futures contract, a securities futures contract, or a forward contract, a sale under this paragraph (a)(9)(i) includes any closing transaction. When a closing transaction for a contract described in section 1256(b)(1)(A) involves making or taking delivery, there are two sales, one resulting in profit or loss on the contract, and a separate sale on the delivery. When a closing transaction for a contract described in section 988(c)(5)

of the Code involves making delivery, there are two sales, one resulting in profit or loss on the contract, and a separate sale on the delivery. For purposes of the preceding sentence, a broker may assume that any customer's functional currency is the U.S. dollar. When a closing transaction in a forward contract involves making or taking delivery, the broker may treat the delivery as a sale without separating the profit or loss on the contract from the profit or loss on the delivery, except that taking delivery for U.S. dollars is not a sale. The term *sale* does not include entering into a contract that requires delivery of personal property or an interest therein, the initial grant or purchase of an option, or the exercise of a purchased call option for physical delivery (except for a contract described in section 988(c)(5)). For purposes of this section only, a constructive sale under section 1259 and a mark to fair market value under section 475 or 1296 are not sales.

(ii) *Sales with respect to digital assets*—(A) *In general*. In addition to the specific rules provided in paragraphs (a)(9)(ii)(B) through (D) of this section, the term *sale* also includes:

(1) Any disposition of a digital asset in exchange for cash or stored-value cards;

(2) Any disposition of a digital asset in exchange for a different digital asset; and

(3) The delivery of a digital asset pursuant to the settlement of a forward contract, option, regulated futures contract, any similar instrument, or any other executory contract which would be treated as a sale of a digital asset under this paragraph (a)(9)(ii) if the contract had not been executory. For transactions involving a contract described in the previous sentence, see paragraph (a)(9)(i) of this section for rules applicable to determining whether a sale has occurred or how to report the making or taking delivery of the underlying asset.

(B) *Dispositions of digital assets for certain property*. Solely in the case of a broker that is a real estate reporting person defined in § 1.6045-4(e) with respect to real property or is in the business of effecting sales of property for others, which sales when effected would constitute sales under paragraph (a)(9)(i) of this section, the term *sale* also includes any disposition of a digital asset in exchange for such property.

(C) *Dispositions of digital assets for certain services*. The term *sale* also includes any disposition of a digital asset in consideration for any services provided by a broker that is a real estate reporting person defined in § 1.6045-

4(e) with respect to real property or is in the business of effecting sales of property described in paragraph (a)(9)(i), paragraphs (a)(9)(ii)(A) and (B), or paragraph (a)(9)(ii)(D) of this section.

(D) *Special rule for sales effected by digital asset payment processors*. In the case of a digital asset payment processor as defined in paragraph (a)(22) of this section, the term *sale* also includes the payment by a party of a digital asset to a digital asset payment processor in return for the payment of cash or a different digital asset to a second party, or the treatment under paragraph (a)(22)(ii) of this section of the digital asset as paid by a party to the digital asset payment processor in exchange for cash or a different digital asset paid to a second party. In the case of a digital asset payment processor defined in either paragraph (a)(22)(i)(B) or (C) of this section, a sale of a digital asset includes any payment by a party of a digital asset to that digital asset payment processor, or to a second party pursuant to instructions provided by that digital asset payment processor or its agent in exchange for goods or services provided to the first party.

(10) *Effect*—(i) *In general*. The term *effect* means, with respect to a sale, to act as—

(A) An agent for a party in the sale wherein the nature of the agency is such that the agent ordinarily would know the gross proceeds from the sale;

(B) In the case of a broker described in the second sentence of paragraph (a)(1) of this section, a person that is an obligor retiring its own debt obligations, a corporation redeeming its own stock, or an issuer of digital assets redeeming those digital assets;

(C) A principal that is a dealer in such sale; or

(D) A digital asset middleman as defined in paragraph (a)(21) of this section for a party in a sale of digital assets.

(ii) *Actions relating to certain options and forward contracts*. For purposes of paragraph (a)(10)(i) of this section, acting as an agent, principal or digital asset middleman with respect to grants or purchases of options, exercises of call options, or enterings into contracts that require delivery of personal property or an interest therein is not of itself effecting a sale. A broker that has on its books a forward contract under which delivery is made effects such delivery.

(11) *Foreign currency*. The term *foreign currency* means currency of a foreign country.

(12) *Cash*. The term *cash* means United States dollars or any convertible foreign currency that is issued by a

government or a central bank, whether in physical or digital form.

(13) *Person*. The term *person* includes any governmental unit and any agency or instrumentality thereof.

(14) *Specified security*. The term *specified security* means:

(i) Any share of stock (or any interest treated as stock, including, for example, an American Depositary Receipt) in an entity organized as, or treated for Federal tax purposes as, a corporation, either foreign or domestic (provided that, solely for purposes of this paragraph (a)(14)(i), a security classified as stock by the issuer is treated as stock, and if the issuer has not classified the security, the security is not treated as stock unless the broker knows that the security is reasonably classified as stock under general Federal tax principles);

(ii) Any debt instrument described in paragraph (a)(17) of this section, other than a debt instrument subject to section 1272(a)(6) of the Code (certain interests in or mortgages held by a real estate mortgage investment conduit (REMIC), certain other debt instruments with payments subject to acceleration, and pools of debt instruments the yield on which may be affected by prepayments) or a short-term obligation described in section 1272(a)(2)(C);

(iii) Any option described in paragraph (m)(2) of this section;

(iv) Any securities futures contract;

(v) Any digital asset as defined in paragraph (a)(19) of this section; or

(vi) Any forward contract described in paragraph (a)(7)(iii) of this section requiring the delivery of a digital asset.

(15) *Covered security*. The term *covered security* means a specified security described in this paragraph (a)(15).

(i) *In general*. Except as provided in paragraph (a)(15)(iv) of this section, the following specified securities are covered securities:

(A) A specified security described in paragraph (a)(14)(i) of this section acquired for cash in an account on or after January 1, 2011, except stock for which the average basis method is available under § 1.1012-1(e).

(B) Stock for which the average basis method is available under § 1.1012-1(e) acquired for cash in an account on or after January 1, 2012.

(C) A specified security described in paragraphs (a)(14)(ii) and (n)(2)(i) of this section (not including the debt instruments described in paragraph (n)(2)(ii) of this section) acquired for cash in an account on or after January 1, 2014.

(D) A specified security described in paragraphs (a)(14)(ii) and (n)(3) of this

section acquired for cash in an account on or after January 1, 2016.

(E) Except for an option described in paragraph (m)(2)(ii)(C) of this section (relating to an option on a digital asset), an option described in paragraph (a)(14)(iii) of this section granted or acquired for cash in an account on or after January 1, 2014.

(F) A securities futures contract described in paragraph (a)(14)(iv) of this section entered into in an account on or after January 1, 2014.

(G) A specified security transferred to an account if the broker or other custodian of the account receives a transfer statement (as described in § 1.6045A-1) reporting the security as a covered security.

(H) An option on a digital asset described in paragraphs (a)(14)(iii) and (m)(2)(ii)(C) of this section (other than an option described in paragraph (a)(14)(v) of this section) granted or acquired in an account on or after January 1, 2023.

(I) [Reserved]

(J) A specified security described in paragraph (a)(14)(v) of this section that is acquired in a customer's account by a broker providing hosted wallet services on or after January 1, 2023, in exchange for cash, stored-value cards, different digital assets, or any other property or services described in paragraph (a)(9)(ii)(B) or (C) of this section, respectively.

(K) A specified security described in paragraph (a)(14)(vi) of this section, not described in paragraph (a)(14)(v) of this section, that is entered into or acquired in an account on or after January 1, 2023.

(ii) *Acquired in an account.* For purposes of this paragraph (a)(15), a security is considered acquired in a customer's account at a broker or custodian if the security is acquired by the customer's broker or custodian or acquired by another broker and delivered to the customer's broker or custodian. Acquiring a security in an account includes granting an option and entering into a forward contract or short sale.

(iii) *Corporate actions and other events.* For purposes of this paragraph (a)(15), a security acquired due to a stock dividend, stock split, reorganization, redemption, stock conversion, recapitalization, corporate division, or other similar action is considered acquired for cash in an account.

(iv) *Exceptions.* Notwithstanding paragraph (a)(15)(i) of this section, the following specified securities are not covered securities:

(A) Stock acquired in 2011 that is transferred to a dividend reinvestment plan (as described in § 1.1012-1(e)(6)) in 2011. However, a covered security acquired in 2011 that is transferred to a dividend reinvestment plan after 2011 remains a covered security.

(B) A specified security, other than a specified security described in paragraph (a)(14)(v) or (vi) of this section, acquired through an event described in paragraph (a)(15)(iii) of this section if the basis of the acquired security is determined from the basis of a noncovered security.

(C) A specified security that is excepted at the time of its acquisition from reporting under paragraph (c)(3) or (g) of this section. However, a broker cannot treat a specified security as acquired by an exempt foreign person under paragraph (g)(1)(i) or paragraphs (g)(4)(ii) through (v) of this section at the time of acquisition if, at that time, the broker knows or should have known (including by reason of information that the broker is required to collect under section 1471 or 1472 of the Code) that the customer is not a foreign person.

(D) A security for which reporting under this section is required by § 1.6049-5(d)(3)(ii) (certain securities owned by a foreign intermediary or flow-through entity).

(E) Digital assets in a sale required to be reported under paragraph (g)(4)(vi)(E) of this section by a broker making a payment of gross proceeds from the sale to a foreign intermediary, flow-through entity, or U.S. branch.

(16) *Noncovered security.* The term *noncovered security* means any specified security that is not a covered security.

(17) *Debt instrument, bond, debt obligation, and obligation.* For purposes of this section, the terms *debt instrument, bond, debt obligation, and obligation* mean a debt instrument as defined in § 1.1275-1(d) and any instrument or position that is treated as a debt instrument under a specific provision of the Internal Revenue Code (Code) (for example, a regular interest in a REMIC as defined in section 860G(a)(1) and § 1.860G-1). Solely for purposes of this section, a security classified as debt by the issuer is treated as debt. If the issuer has not classified the security, the security is not treated as debt unless the broker knows that the security is reasonably classified as debt under general Federal tax principles or that the instrument or position is treated as a debt instrument under a specific provision of the Code.

(18) *Securities futures contract.* For purposes of this section, the term *securities futures contract* means a

contract described in section 1234B(c) whose underlying asset is described in paragraph (a)(14)(i) of this section and which is entered into on or after January 1, 2014.

(19) *Digital asset—(i) In general.* For purposes of this section, the term *digital asset* means any digital representation of value that is recorded on a cryptographically secured distributed ledger (or any similar technology), without regard to whether each individual transaction involving that digital asset is actually recorded on that ledger, and that is not cash.

(ii) *No inference.* Nothing in this paragraph (a)(19) or elsewhere in this section may be construed to mean that a digital asset is or is not properly classified as a security, commodity, option, securities futures contract, regulated futures contract, or forward contract for any other purpose of the Code.

(20) *Digital asset address.* For purposes of this section, the term *digital asset address* means the unique set of alphanumeric characters, in some cases referred to as a quick response or QR Code, that is generated by the wallet into which the digital asset will be transferred.

(21) *Digital asset middleman—(i) In general.* The term *digital asset middleman* means any person who provides a facilitative service as described in paragraph (a)(21)(iii) of this section with respect to a sale of digital assets wherein the nature of the service arrangement is such that the person ordinarily would know or be in a position to know the identity of the party that makes the sale and the nature of the transaction potentially giving rise to gross proceeds from the sale.

(ii) *Position to know—(A) Identity.* A person ordinarily would know or be in a position to know the identity of the party that makes the sale if that person maintains sufficient control or influence over the facilitative services provided to have the ability to set or change the terms under which its services are provided to request that the party making the sale provide that party's name, address, and taxpayer identification number upon request. For purposes of the previous sentence, a person with the ability to change the fees charged for facilitative services is an example of a person that maintains sufficient control or influence over provided facilitative services to have the ability to set or change the terms under which its services are provided to request that the party making the sale provide that party's name, address, and taxpayer identification number upon request.

(B) *Nature of the transaction.* A person ordinarily would know or be in a position to know the nature of the transaction potentially giving rise to gross proceeds from a sale if that person maintains sufficient control or influence over the facilitative services provided to have the ability to determine whether and the extent to which the transfer of digital assets involved in a transaction gives rise to gross proceeds, including by reference to the consideration that the person receives or pursuant to the operations of or modifications to an automatically executing contract or protocol to which the person provides access. For purposes of the previous sentence, a person with the ability to change the fees charged for facilitative services is an example of a person that maintains sufficient control or influence over provided facilitative services to have the ability to determine whether and the extent to which the transfer of digital assets involved in a transaction gives rise to gross proceeds.

(iii) *Facilitative service—(A) In general.* A facilitative service includes the provision of a service that directly or indirectly effectuates a sale of digital assets, such as providing a party in the sale with access to an automatically executing contract or protocol, providing access to digital asset trading platforms, providing an automated market maker system, providing order matching services, providing market making functions, providing services to discover the most competitive buy and sell prices, or providing escrow or escrow-like services to ensure both parties to an exchange act in accordance with their obligations. A facilitative service does not include validating distributed ledger transactions (whether through proof-of-work, proof-of-stake, or any other similar consensus mechanism) without providing other functions or services if provided by a person solely engaged in the business of providing such validating services. A facilitative service also does not include the selling of hardware or the licensing of software for which the sole function is to permit persons to control private keys which are used for accessing digital assets on a distributed ledger if such functions are conducted by a person solely engaged in the business of selling such hardware or licensing such software. Software that provides users with direct access to trading platforms from the wallet platform is not an example of software with the sole function of providing users with the ability to control private keys to send and receive digital assets.

(B) *Special rule involving sales of digital assets under paragraphs*

*(a)(9)(ii)(B) and (C) of this section.* A facilitative service includes the acceptance or processing of digital assets as payment for property of a type which when sold would constitute a sale under paragraph (a)(9)(i) of this section by a broker that is in the business of effecting sales of such property. A facilitative service also includes any service performed by a real estate reporting person as defined in § 1.6045–4(e) with respect to a real estate transaction in which digital assets are paid by the real estate buyer in full or partial consideration for the real estate. Finally, a facilitative service includes the acceptance or processing of digital assets as payment for any service provided by a broker described in paragraph (a)(1) of this section determined without regard to any sales under paragraph (a)(9)(ii)(C) of this section that are effected by such broker.

(22) *Digital asset payment processor—(i) In general.* For purposes of this section, the term *digital asset payment processor* means a person who in the ordinary course of a trade or business stands ready to effect sales of digital assets as defined in paragraph (a)(9)(ii)(D) of this section by:

(A) Regularly facilitating payments from one party to a second party by receiving digital assets from the first party and exchanging those digital assets into cash or different digital assets paid to the second party;

(B) Acting as a third party settlement organization (as defined in § 1.6050W–1(c)(2)) that facilitates payments, either by making or submitting instructions to make payments, using one or more digital assets in settlement of a reportable payment transaction under § 1.6050W–1(a)(2), without regard to whether the third party settlement organization contracts with an agent to make, or to submit the instructions to make, such payments; or

(C) Acting as a payment card issuer that facilitates payments, either by making or submitting the instruction to make payments, in one or more digital assets to a merchant acquiring entity as defined under § 1.6050W–1(b)(2) in a transaction that is associated with a payment made by the merchant acquiring entity, or its agent, in settlement of a reportable payment transaction under § 1.6050W–1(a)(2).

(ii) *Special rule for digital asset transfers pursuant to paragraph (a)(22)(i)(A) of this section.* For purposes of paragraph (a)(22)(i)(A) of this section, the transfer of a digital asset from one party to a second party, such as a vendor of goods or services, pursuant to a processor agreement between that second person and a payment processor

must be treated as if the digital asset was paid by the first party to the payment processor in exchange for cash or a different digital asset paid to the second party.

(iii) *Processor agreement.* For purposes of paragraph (a)(22)(ii) of this section, the term *processor agreement* means an agreement between a payment processor and a second party, such as a vendor of goods or services, that in order to facilitate one party's payment to that second party provides for the temporary fixing of the exchange rate to be applied to the digital asset received by that second party from the first party as payment in a transaction.

(23) *Held in a wallet or account.* For purposes of this section, a digital asset is considered *held in a wallet or account* if the wallet, whether hosted or unhosted, or account stores the private keys necessary to transfer control of the digital asset. A digital asset associated with a digital asset address that is generated by a wallet, and a digital asset associated with a sub-ledger account of a wallet, are similarly considered held in a wallet. References to variations of held in a wallet or account, such as held at a broker, held with a broker, held by the user of a wallet, held on behalf of another, acquired in a wallet or account, or transferred into a wallet or account, each have a similar meaning.

(24) *Hosted wallet.* A *hosted wallet* is a custodial service provided to a user that electronically stores the private keys to digital assets held on behalf of others.

(25) *Stored-value card.* For purposes of this section, the term *stored-value card* means a card, including any gift card, with a prepaid value in U.S. dollars, any convertible foreign currency, or any digital asset, without regard to whether the card is in physical or digital form.

(26) *Transaction identification.* For purposes of this section, the term *transaction identification*, or *transaction ID*, means the unique set of alphanumeric identification characters that a digital asset distributed ledger associates with a transaction involving the transfer of a digital asset from one digital asset address to another. A transaction ID includes terms such as a "Txid" or "transaction hash."

(27) *Unhosted wallet.* An *unhosted wallet* is a non-custodial means of storing, electronically or otherwise, a user's private keys to digital assets held by or for the user. Unhosted wallets, sometimes referred to as self-hosted or self-custodial wallets, can be provided through software that is connected to the internet (a hot wallet) or through hardware or physical media that is

disconnected from the internet (a cold wallet).

(b) *Examples.* The following examples illustrate the definitions in paragraph (a) of this section.

(1) *Example 1.* The following persons generally are brokers within the meaning of paragraph (a)(1) of this section—

(i) A mutual fund, an underwriter of the mutual fund, or an agent for the mutual fund, any of which stands ready to redeem or repurchase shares in such mutual fund.

(ii) A professional custodian (such as a bank) that regularly arranges sales for custodial accounts pursuant to instructions from the owner of the property.

(iii) A depository trust or other person who regularly acts as an escrow agent in corporate acquisitions, if the nature of the activities of the agent is such that the agent ordinarily would know the gross proceeds from sales.

(iv) A stock transfer agent for a corporation, which agent records transfers of stock in such corporation, if the nature of the activities of the agent is such that the agent ordinarily would know the gross proceeds from sales.

(v) A dividend reinvestment agent for a corporation that stands ready to purchase or redeem shares.

(vi) A person who in the ordinary course of a trade or business provides users with hosted wallet services to the extent such person stands ready to effect the sale of digital assets on behalf of its customers, including by acting as an agent for a party in the sale wherein the nature of the agency is as described in paragraph (a)(10)(i)(A) of this section or as a digital asset middleman as defined in paragraph (a)(21) of this section.

(vii) A digital asset payment processor as described in paragraph (a)(22) of this section.

(viii) A person who in the ordinary course of a trade or business either owns or operates one or more physical electronic terminals or kiosks that stand ready to act on behalf of other persons to effect the sale of digital assets for cash stored-value cards, or different digital assets, regardless of whether the other person is the disposer or the acquirer of the digital assets in such an exchange.

(ix) A person who in the ordinary course of a trade or business operates a non-custodial trading platform or website that stands ready to effect sales of digital assets for others by allowing persons to exchange digital assets directly with other persons for cash stored-value cards, or different digital assets, including by providing access to automatically executing contracts,

protocols, or other software programs that automatically effect such sales.

(x) A person who in the ordinary course of a trade or business stands ready at a physical location to effect sales of digital assets on behalf of others.

(xi) A person who sells or licenses software to unhosted wallet users if that person as part of its trade or business also offers services to such wallet users that effect sales of digital assets, provided the person would ordinarily know or be in a position to know the identity of the wallet users that effect the sales and the nature of the transactions potentially giving rise to gross proceeds from the sales as described in paragraphs (a)(21)(ii)(A) and (B) of this section.

(2) *Example 2.* The following persons are not brokers within the meaning of paragraph (a)(1) of this section in the absence of additional facts that indicate the person is a broker—

(i) A stock transfer agent for a corporation, which agent daily records transfers of stock in such corporation, if the nature of the activities of the agent is such that the agent ordinarily would not know the gross proceeds from sales.

(ii) A person (such as a stock exchange) that merely provides facilities in which others effect sales.

(iii) An escrow agent or nominee if such agency is not in the ordinary course of a trade or business.

(iv) An escrow agent, otherwise a broker, which agent effects no sales other than such transactions as are incidental to the purpose of the escrow (such as sales to collect on collateral).

(v) A floor broker on a commodities exchange, which broker maintains no records with respect to the terms of sales.

(vi) A corporation that issues and retires long-term debt on an irregular basis.

(vii) A clearing organization.

(viii) A merchant who is not otherwise required to make a return of information under section 6045 of the Code and who regularly sells goods or other property (other than digital assets) or services in return for digital assets.

(ix) A person solely engaged in the business of validating distributed ledger transactions, through proof-of-work, proof-of-stake, or any other similar consensus mechanism, without providing other functions or services.

(x) A person solely engaged in the business of selling hardware or licensing software, the sole function of which is to permit a person to control private keys which are used for accessing digital assets on a distributed ledger, without providing other functions or services.

(3) *Example 3: Barter exchange.* A, B, and C belong to a carpool in which they commute to and from work. Every third day, each member of the carpool provides transportation for the other two members. Because the carpool arrangement provides solely for the informal exchange of similar services on a noncommercial basis, the carpool is not a barter exchange within the meaning of paragraph (a)(4) of this section.

(4) *Example 4: Barter exchange.* X is an organization whose members include retail merchants, wholesale merchants, and persons in the trade or business of performing services. X's members exchange property and services among themselves using credits on the books of X as a medium of exchange. Each exchange through X is reflected on the books of X by crediting the account of the member providing property or services and debiting the account of the member receiving such property or services. X also provides information to its members concerning property and services available for exchange through X. X charges its members a commission on each transaction in which credits on its books are used as a medium of exchange. X is a barter exchange within the meaning of paragraph (a)(4) of this section.

(5) *Example 5: Commodity, forward contract.* A warehouse receipt is an interest in personal property for purposes of paragraph (a) of this section. Consequently, a warehouse receipt for a quantity of lead is a commodity under paragraph (a)(5)(ii) of this section. Similarly, an executory contract that requires delivery of a warehouse receipt for a quantity of lead is a forward contract under paragraph (a)(7)(ii) of this section.

(6) *Example 6: Customer.* The only customers of a depository trust acting as an escrow agent in corporate acquisitions, which trust is a broker, are shareholders to whom the trust makes payments or shareholders for whom the trust is acting as an agent.

(7) *Example 7: Customer.* The only customers of a stock transfer agent, which agent is a broker, are shareholders to whom the agent makes payments or shareholders for whom the agent is acting as an agent.

(8) *Example 8: Customer.* D, an individual not otherwise exempt from reporting, is the holder of an obligation issued by P, a corporation. R, a broker, acting as an agent for P, retires such obligation held by D. Such obligor payments from R represent obligor payments by P. D, the person to whom the gross proceeds are paid or credited by R, is the customer of R.

(9) *Example 9: Covered security.* E, an individual not otherwise exempt from reporting, maintains an account with S, a broker. On June 1, 2012, E instructs S to purchase stock that is a specified security for cash. S places an order to purchase the stock with T, another broker. E does not maintain an account with T. T executes the purchase. Custody of the purchased stock is transferred to E's account at S. Under paragraph (a)(15)(ii) of this section, the stock is considered acquired for cash in E's account at S. Because the stock is acquired on or after January 1, 2012, under paragraph (a)(15)(i) of this section, it is a covered security.

(10) *Example 10: Covered security.* F, an individual not otherwise exempt from reporting, is granted 100 shares of stock in F's employer by F's employer. Because F does not acquire the stock for cash or through a transfer to an account with a transfer statement (as described in § 1.6045A-1), under paragraph (a)(15) of this section, the stock is not a covered security.

(11) *Example 11: Covered security.* G, an individual not otherwise exempt from reporting, owns 400 shares of stock in Q, a corporation, in an account with U, a broker. Of the 400 shares, 100 are covered securities and 300 are noncovered securities. Q takes a corporate action to split its stock in a 2-for-1 split. After the stock split, G owns 800 shares of stock. Because the adjusted basis of 600 of the 800 shares that G owns is determined from the basis of noncovered securities, under paragraphs (a)(15)(iii) and (a)(15)(iv)(B) of this section, these 600 shares are not covered securities and the remaining 200 shares are covered securities.

(12) *Example 12: Digital asset payment processor, sale, and customer—(i) Facts.* Company Z is an online retailer of merchandise that accepts digital asset DE as a form of payment. To facilitate the use of digital asset DE as payment, Z contracts with CPP, an unrelated party that is in the business of facilitating payments using digital assets. Under Z's contractual agreement with CPP, when purchasers of merchandise initiate payment on Z's website using DE, they are directed to CPP's website to complete the payment part of the transaction. Customer R seeks to purchase merchandise from Z that is priced at \$15 (or 15 units of DE). After R initiates purchase, R is directed to CPP's website where R is directed to transfer 15 units of DE to a digital asset address controlled by CPP. CPP then pays \$15 in cash to Z, who in turn processes R's merchandise order.

(ii) *Analysis.* CPP is a digital asset payment processor within the meaning

of paragraph (a)(22)(i)(A) of this section because CPP, in the ordinary course of its business, effects payments from customers to retailers by receiving digital assets from customers in exchange for cash paid to retailers. CPP is also a broker under paragraph (a)(1) of this section because CPP stands ready to effect sales of digital assets to be made by others. R's payment of 15 units of DE to CPP in return for the payment of \$15 cash to Z is a sale of digital assets under paragraph (a)(9)(ii)(D) of this section. Additionally, because R transferred digital assets to CPP in a sale described in paragraph (a)(9)(ii)(D) of this section, R is CPP's customer under paragraph (a)(2)(ii)(A) of this section. Finally, CPP's payment to Z may also be a third party network transaction under § 1.6050W-1(c) subject to reporting under § 1.6050W-1(a) if CPP is a third party settlement organization under the definition in § 1.6050W-1(c)(2).

(13) *Example 13: Digital asset payment processor, sale, and customer—(i) Facts.* The facts are the same as in paragraph (b)(12)(i) of this section (the facts in *Example 12*), except that under Z's contractual arrangement with CPP, when Z's purchasers seek to make payments using DE and are directed to CPP's website, they are instructed to transfer their units of DE to a digital asset address owned by Z pursuant to a temporarily fixed exchange rate of DE for cash, which CPP communicates to Z and which Z passes along to its purchasers. Additionally, the purchasers are required to provide CPP with the information CPP will need, such as name, address, and taxpayer identification number, to report the purchaser's sale of DE. To effect the purchase of Z's merchandise, R transfers 15 units of DE equal directly to Z's wallet. CPP provides similar services to other retail purchasers and merchants.

(ii) *Analysis.* CPP is a digital asset payment processor within the meaning of paragraph (a)(22) of this section because CPP, in the ordinary course of its business, effects payments from customers (Z's purchasers) in exchange for digital assets paid to a second person (Z) pursuant to a processor agreement that provides for the temporary fixing of the exchange rate to be applied to the digital assets received by the retailer (Z). Such transactions are treated for purposes of paragraph (a)(22)(i) of this section as if R paid the digital assets to CPP in exchange for cash or different digital assets. R's payment of digital assets directly to Z pursuant to a temporarily fixed exchange rate of DE for cash is a sale of the digital assets within the meaning of paragraph

(a)(9)(ii)(D) of this section because the transaction is treated for purposes of paragraph (a)(22)(i) of this section as if R paid the digital assets to CPP in exchange for cash or different digital assets. R's payment of digital assets directly to Z pursuant to the temporarily fixed exchange rate of DE for cash is a sale without regard to whether Z, after the payment is made, decides to exchange the digital assets pursuant to that fixed exchange rate. R is CPP's customer under paragraph (a)(2)(ii)(A) of this section because R is the person who is treated as transferring digital assets to a digital asset payment processor in a sale as defined in paragraph (a)(9)(ii)(D) of this section. Finally, the transfer of DE units by R to Z pursuant to CPP's instructions may also be a third party network transaction under § 1.6050W-1(c) subject to reporting under § 1.6050W-1(a) if CPP is a third party settlement organization under the definition in § 1.6050W-1(c)(2).

(14) *Example 14: Third party settlement organization as digital asset payment processor—(i) Facts.* The facts are the same as in paragraph (b)(12)(i) of this section (the facts in *Example 12*) except that CPP is also a third party settlement organization, as defined in § 1.6050W-1(c)(2), with respect to the payments it makes (or submits instructions for others to make) to Z. To process R's payment and settle the transaction, CPP submits instructions to R to transfer 15 units of digital asset DE to a digital asset address held in a wallet owned by Z. Z, in turn, processes R's merchandise order. Z does not have any arrangement with CPP to temporarily fix the exchange rate of DE for cash.

(ii) *Analysis.* CPP is a digital asset payment processor as defined in paragraph (a)(22)(i)(B) of this section because it is a third party settlement organization that submitted an instruction to R to make payment to Z in settlement of a reportable payment transaction under § 1.6050W-1(a)(2) using digital asset DE. Accordingly, CPP is a broker under paragraph (a)(1) of this section, and the transaction is a sale of R's 15 units of digital asset DE under paragraph (a)(9)(ii)(D) of this section.

(15) *Example 15: Broker.* The facts are the same as in paragraph (b)(12)(i) of this section (the facts in *Example 12*), except that Z accepts digital asset DE from its purchasers directly without the services of CPP or any other digital asset payment processor. To pay for the merchandise R purchases on Z's website, R is directed by Z to transfer 15 units of DE directly to Z's digital asset address. Z is not a broker under the definition of paragraph (a)(1) of this

section because Z does not stand ready as part of its trade or business to effect sales as defined in paragraph (a)(9) of this section made by others. That is, the sales that Z is in the business of conducting are of property that is not subject to reporting under section 6045.

(16) *Example 16: Payment card issuer as digital asset payment processor—(i) Facts.* Customer S purchases goods for 10 units of digital asset DE from merchant M using a digital asset DE credit card issued by Bank X. Merchant M is one of a network of unrelated persons that has agreed to accept credit cards issued by Bank X as payment under an agreement that provides standards and mechanisms for settling the transaction between a merchant acquiring bank and the persons who accept the cards. Under these standards, payments are made by customers, to the issuing bank, and by the issuing bank to the merchant acquiring bank in units of DE. Bank MAB is the merchant acquiring entity within the meaning of § 1.6050W–1(b)(2) with the contractual obligation to make payments to merchant M for goods provided to S in this transaction. The arrangement between merchant M and Bank MAB provides that M may direct Bank MAB to make payment to M in either digital asset DE or cash. To make payment for S's purchase of goods from merchant M, at Bank X's direction, S transfers 10 units of digital asset DE to Bank X. Bank X pays the 10 units of DE, less its processing fee, to Bank MAB, which amount Bank MAB pays, less its processing fee, to M.

(ii) *Analysis.* Bank MAB is a merchant acquiring entity under § 1.6050W–1(b)(2), and the payment made by Bank MAB to merchant M is in settlement of a reportable payment transaction under § 1.6050W–1(a)(2). Accordingly, Bank X is a digital asset payment processor as defined in paragraph (a)(22)(i)(C) of this section because Bank X is a payment card issuer that made payment to Bank MAB in DE in a transaction that is associated with Bank MAB's reportable payment transaction under § 1.6050W–1(a)(2). Additionally, S's payment of DE is a sale transaction under paragraph (a)(9)(ii)(D) of this section because that payment was made pursuant to the instructions provided by Bank X.

(17) *Example 17: Effect, and digital asset middleman—(i) Facts.* P2X, a business that is jointly operated by several individuals, created a website that regularly provides online services to customers in order to match would-be sellers of digital assets with would-be buyers. As part of this business, P2X directs matched buyers and sellers to

settle the desired exchange without any additional services from P2X. The software underlying the automatically executing contracts was originally developed and then open-sourced by Z, a person unrelated to P2X. Z does not maintain the software and does not receive any fee when transactions are settled using the software. Customers undertaking transactions using the automatically executing contracts are charged a small percentage of the transaction value as a fee that is transferred to unrelated persons (miners) who validate transactions on the applicable blockchains. Additionally, P2X has modified the software so that buyers and sellers using P2X's platform are charged an additional 1% transaction fee, which is automatically taken from the accounts of buyers and sellers and transferred to P2X when transactions are executed.

(ii) *Analysis with respect to P2X.* The group of individuals that operate P2X are treated for U.S. Federal income tax purposes as a business entity that is a partnership, or as a sole proprietorship, depending on the facts, and therefore as a person within the meaning of paragraph (a)(13) of this section. P2X provides facilitative services as described in paragraph (a)(21)(iii)(A) of this section because it provides buyers and sellers a digital marketplace for digital asset as well as automatically executing contracts to effectuate sales of digital assets. P2X is in a position to know the identity of the parties that make sales on its platform within the meaning of paragraph (a)(21)(ii)(A) of this section because it can request the name, address, and taxpayer identification number of each digital asset buyer and seller in advance of the sale. P2X is also in a position to know the nature of the transactions potentially giving rise to gross proceeds from sales within the meaning of paragraph (a)(21)(ii)(B) of this section because it can determine that information from the transaction fees P2X collects from each transaction. Accordingly, P2X acts as a digital asset middleman within the meaning of paragraph (a)(21) of this section to effect sales of digital assets on behalf of others on its platform within the meaning of paragraph (a)(10)(i)(D) of this section.

(iii) *Analysis with respect to Z.* Although the software developed by Z that underlies the automatically executing contracts facilitates sales of digital assets on P2X's platform, Z is not in a position to know the identity of the parties that make sales using these contracts within the meaning of paragraph (a)(21)(ii)(A) of this section because Z open-sourced the software

and has no connection to P2X. As a result, Z does not have the power to set or change the terms under which its software can be used. Accordingly, Z is not a digital asset middleman within the meaning of paragraph (a)(21) of this section.

(18) *Example 18: Digital asset middleman—(i) Facts.* The facts are the same as in paragraph (b)(17)(i) of this section (the facts in *Example 17*) except Individual K utilizes P2X's website to find a counterparty and to trade 10 units of digital asset DE, which are held in a personal unhosted wallet, for 50 units of digital asset ST. When the transfer of K's 10 units of DE to the counterparty is validated on the blockchain, a small percentage of the 10 units are withheld from the amount received by K's counterparty and are, instead, transferred to Miner M, who performed the validation of the transaction on the DE blockchain.

(ii) *Analysis.* The validation services provided by M are not facilitative services under paragraph (a)(21)(iii)(A) of this section. Accordingly, M is not a digital asset middleman within the meaning of paragraph (a)(21) of this section and is also not a broker under paragraph (a)(1) of this section.

(19) *Example 19: Digital asset middleman—(i) Facts.* The facts are the same as in paragraph (b)(17)(i) of this section (the facts in *Example 17*), except that P2X's automatically executing contract charges a flat transaction fee (instead of a fee that is contingent on the value of the transaction) that is paid to P2X upon the execution of a trade.

(ii) *Analysis with respect to P2X.* For the same reasons discussed in paragraph (b)(17)(ii) of this section (the analysis in *Example 17*), P2X provides facilitative services and is in a position to know the identity of the parties that make sales on its platform. Although P2X cannot determine the nature of the transactions potentially giving rise to gross proceeds from sales within the meaning of paragraph (a)(21)(ii)(B) of this section that are undertaken on its website from the flat transaction fees P2X collects from each transaction, P2X has the ability to alter the automatically executing contracts to provide that information to P2X. Additionally, because P2X provides facilitative services that matches would-be sellers of digital assets with would-be buyers, P2X is in a position to know the nature of the transactions potentially giving rise to gross proceeds from sales. Accordingly, P2X acts as a digital asset middleman under paragraph (a)(21) of this section to effect transactions on behalf of P2X platform users.

(20) *Example 20: Effect—(i) Facts.* Individual J is an artist in the business of creating non-fungible tokens (NFTs) representing ownership interests in J's artwork for sale. Transfers of J's NFTs are recorded on a cryptographically secured distributed ledger called the DE blockchain. J regularly sells these newly created NFTs to buyers in return for units of digital asset DE. To find buyers and to execute these transactions, J uses the services of P2X, an unrelated digital asset broker that provides a digital marketplace for NFT sellers to find buyers and automatically executing contracts in return for a transaction fee. J does not perform any other services with respect to these transactions. Using P2X's platform, buyer K purchases J's NFT-4 for 1,000 units of DE. At the direction of P2X, J and K execute their exchange using an automatically executing contract, which automatically transfers J's NFT-4 to K and K's 1,000 units of DE to J. The contract also automatically transfers P2X's transaction fee from K's wallet to P2X.

(ii) *Analysis.* NFT-4 is a digital representation of value that is recorded on a cryptographically secured distributed ledger and is not cash. Accordingly, NFT-4 is a digital asset under paragraph (a)(19) of this section. Although J is a principal in the exchange of the NFT-4 for 1,000 units of DE, J is not acting as an obligor retiring its own debt obligations, a corporation redeeming its own stock, or an issuer of digital assets that is redeeming those digital assets, as described in paragraph (a)(10)(i)(B) of this section. Because J creates the NFTs as part of J's business, J is also not acting as a dealer as described in paragraph (a)(10)(i)(C) of this section in these transactions. Accordingly, J is not effecting sales of digital assets on behalf of others under the definition of paragraph (a)(10)(i)(B) or (C) of this section.

(21) *Example 21: Digital asset middleman—(i) Facts.* Corporation H is solely engaged in the business of developing and selling H-brand unhosted hardware wallets. H-brand wallets permit users to store private keys used for accessing digital assets on hardware devices that can either be connected to or disconnected from the internet. Users who seek to transfer digital assets controlled by an H-brand hardware wallet must connect the H-brand wallet to the internet and use connecting software (not licensed by H) to execute the transfer. Once H sells a hardware wallet to a customer, H does not have access to any information about transactions the customer

undertakes using the connecting software not licensed by H.

(ii) *Analysis.* The sale by H of the H-brand wallets is not a facilitative service under paragraph (a)(21)(iii)(A) of this section. Accordingly, H is not acting as a digital asset middleman under paragraph (a)(21) of this section with respect to digital asset sale transactions made by H-brand wallet users.

(22) *Example 22: Digital asset middleman—(i) Facts.* Corporation S is engaged in the business of operating and maintaining a website that licenses S-brand unhosted wallets (or S-Wallets) that are accessible online and allow users to control private keys to digital assets and transfer (and receive) digital assets directly from (into) their S-Wallets. S requests each user's name, address, and tax identification number when first licensing its S-Wallets. S also provides each S-Wallet user a digital asset trading service (S-Trades) that compares pricing at several unrelated non-custodial trading platforms to facilitate access to the most competitive buy and sell prices offered by these unrelated platforms. Sales of digital assets from S-Wallets using S-Trade are automatically executed from digital assets held in S-wallets using contracts that deduct and pay a 1% transaction fee to S from digital assets transferred out of the S-Wallets. This fee is in addition to any fees charged by the unrelated non-custodial trading platforms.

(ii) *Analysis.* The access provided by S to unrelated digital asset brokers and market-making services are facilitative services as described in paragraph (a)(21)(iii)(A) of this section. Because S has the ability to request each wallet user's name, address, and taxpayer identification number, S is in a position to know the identity of the S-Wallet users under paragraph (a)(21)(ii)(A) of this section. S is also in a position to know the nature of the transactions potentially giving rise to gross proceeds of S-Wallet users from digital asset sales using S-Trade under paragraph (a)(21)(ii)(B) of this section because S can determine the gross proceeds from the 1% transaction fee it collects on each transaction by operation of the automatically executing contract to which it provides access. Accordingly, S is acting as a digital asset middleman with respect to the sale transactions made by S-Wallet users using S-Trade.

(23) *Example 23: Digital asset middleman—(i) Facts.* The facts are the same as in paragraph (b)(22)(i) of this section (the facts in *Example 22*), except S does not provide the S-Trade digital asset trading service, with wallet connection services, or with direct

platform access to any digital asset trading platform that facilitates the purchase or sale of digital assets. S-Wallet users seeking to make exchanges of digital assets from their S-Wallets at one of these unrelated non-custodial trading platforms must initiate the trade on the unrelated trading platform, which in turn will provide the functionality for users of S-Wallets to trade digital assets held in their S-Wallets using the services of that unrelated trading platform. Trades using these unrelated trading platforms are completed directly from the users' S-Wallets using automatically executing contracts that deduct and pay a 0.9% transaction fee to the non-custodial trading platforms. The unrelated trading platforms do not pay compensation to S for the wallet connection service these platforms provide to S-Wallet users in making trades on the unrelated trading platforms.

(ii) *Analysis.* Because the software licensed by S provides S-Wallet users solely with the ability to control digital assets directly from their S-Wallets, S does not provide S-Wallet users with a facilitative service as described in paragraph (a)(21)(iii)(A) of this section. Accordingly, S is not acting as a digital asset middleman under paragraph (a)(21) of this section with respect to sale transactions made by S-Wallet users on unrelated trading platforms.

(24) *Example 24: Digital asset middleman and effect—(i) Facts.* SBK is in the business of effecting sales of stock and other securities on behalf of customers. To open an account with SBK, each customer must provide SBK with their name, address, and tax identification number. SBK accepts 20 units of digital asset DE from Customer P as payment for 10 shares of AB stock. Additionally, P pays SBK an additional 1 unit of digital asset DE as a commission for SBK's services.

(ii) *Analysis.* SBK's acceptance of 20 units of DE as payment for the AB stock is a facilitative service under paragraph (a)(21)(iii)(B) of this section because the payment is for property (the AB stock) that when sold would constitute a sale under paragraph (a)(9)(i) of this section by a broker that is in the business of effecting sales of stock and other securities. Because SBK is a broker under paragraph (a)(1) of this section with respect to any type of sale under paragraph (a)(9) of this section, SBK's acceptance of 1 unit of DE as payment for SBK's commission is also a facilitative service under paragraph (a)(21)(iii)(B) of this section. Additionally, SBK is in a position to know, under paragraphs (a)(21)(ii)(A)

and (B) of this section, P's identity and the nature of P's transaction involving the 20 units of DE and the commission payment. Accordingly, SBK is acting as a digital asset middleman to effect P's sale of 10 units of DE in return for the AB stock and P's sale of 1 unit of DE as payment for SBK's commission under paragraphs (a)(10)(i)(D) and (a)(21) of this section.

(25) *Example 25: Digital asset middleman and effect—(i) Facts.* B is an individual that purchases real estate from individual S in exchange for cash and 1,000 units of digital asset DE. The transaction is a real estate transaction under § 1.6045-4(b) and is closed by closing attorney CA, who is a real estate reporting person under § 1.6045-4(e). As part of performing its services as closing attorney, CA requests the name, address, and tax identification number from both B and S.

(ii) *Analysis.* The closing services provided by CA are facilitative services under paragraph (a)(21)(iii)(B) of this section because CA is performing services as a real estate reporting person as defined in § 1.6045-4(e) with respect to a real estate transaction in which the real estate buyer (B) pays digital assets in full or partial consideration for the real estate. As part of its services in closing the real estate transaction, CA is in a position to know B's identity and the nature of B's real estate transaction under paragraphs (a)(21)(ii)(A) and (B) of this section. Accordingly, CA is acting as a digital asset middleman under paragraph (a)(21) of this section to effect B's sale of 1,000 DE units under paragraph (a)(10)(i)(D) of this section. These conclusions are not impacted by whether or not CA is required to report the sale of the real estate by S under § 1.6045-4(a).

(26) *Example 26: Digital asset and cash—(i) Facts.* Y is a privately held corporation that issues DL, a digital representation of value designed to track the value of the U.S. dollar. DL is backed in part or in full by U.S. dollars held by Y, and Y offers to redeem units of DL for U.S. dollars at par at any time. Transactions involving DL utilize cryptography to secure transactions that are digitally recorded on a cryptographically secured distributed ledger called the DL blockchain. CRX is a digital asset broker that also provides hosted wallet services for its customers seeking to made trades of digital assets using CRX. R is a customer of CRX. R exchanges 100 units of DL for \$100 in cash from CRX. CRX does not record this transaction on the DL blockchain, but instead records the transaction on CRX's own centralized private ledger.

(ii) *Analysis.* DL is not cash under paragraph (a)(12) of this section because it is not issued by a government or central bank. DL is a digital asset under paragraph (a)(19) of this section because it is a digital representation of value that is recorded on a cryptographically secured distributed ledger. The fact that CRX recorded R's transaction on its own private ledger and not on the DL blockchain does not change this conclusion.

(27) *Example 27: Digital asset and security.* M owns 10 units of a fund that was formed to invest in digital assets. M's units of the fund are held in a securities brokerage account and are not recorded using cryptographically secured distributed ledger technology. Although the fund's underlying investments are comprised of one or more digital assets, M's investment is in units of the fund, which are not digital assets under paragraph (a)(19) of this section because transactions involving these fund units are not secured using cryptography and are not digitally recorded on a ledger, such as a blockchain.

(28) *Example 28: Forward contract, closing transaction, and sale—(i) Facts.* On February 24, Year 1, J contracts with broker CRX to sell J's 10 units of digital asset DE to CRX at an agreed upon price, with delivery under the contract to occur at 4 p.m. on March 10, Year 1. Pursuant to this agreement, J delivers the 10 units of DE to CRX, and CRX pays J the agreed upon price in cash.

(ii) *Analysis.* Under paragraph (a)(7)(iii) of this section, the contract between J and CRX is a forward contract. J's delivery of digital asset DE pursuant to the forward contract is a closing transaction described in paragraph (a)(8) of this section that is treated as a sale of the underlying digital asset DE under paragraph (a)(9)(ii)(A)(3) of this section. Pursuant to the rules of paragraphs (a)(9)(ii)(A)(3) and (a)(9)(i) of this section, CRX may treat the delivery of DE as a sale without separating the profit or loss on the forward contract from the profit or loss on the delivery.

(29) *Example 29: Digital asset—(i) Facts.* On February 7, Year 1, J purchases a regulated futures contract on digital asset DE through futures commission merchant FCM. The contract is not recorded using cryptographically secured distributed ledger technology. The contract expires on the last Friday in June, Year 1. On May 1, Year 1, J enters into an offsetting closing transaction with respect to the regulated futures contract.

(ii) *Analysis.* Although the regulated futures contract's underlying assets are comprised of digital assets, J's

investment is in the regulated futures contract, which is not a digital asset under paragraph (a)(19) of this section because transactions involving the contract are not secured using cryptography and are not digitally recorded using cryptographically secured distributed ledger technology, such as a blockchain. When J disposes of the contract, the transaction is a sale of a regulated futures contract covered by paragraph (a)(9)(i) of this section.

(30) *Example 30: Closing transaction and sale—(i) Facts.* On January 15, Year 1, J purchases digital asset DE through Broker. On March 1, Year 1, J sells a regulated futures contract on DE through Broker. The contract expires on the last Friday in June, Year 1, at an exercise price of \$5,000 for the contract. On the last Friday in June, Year 1, the fair market value of the DE covered by the regulated futures contract is \$5,050. J delivers the DE in settlement of the regulated futures contract.

(ii) *Analysis.* J's delivery of the DE pursuant to the regulated futures contract is a closing transaction described in paragraph (a)(8) of this section that is treated as a sale of the regulated futures contract under paragraph (a)(9)(i) of this section. In addition, under paragraph (a)(9)(ii)(A)(3) of this section, J's delivery of digital asset DE pursuant to the settlement of the regulated futures contract is a sale of the underlying digital asset DE.

(c) \* \* \*

(3) \* \* \*

(i) \* \* \*

(B) \* \* \*

(3) The United States or a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa, a political subdivision of any of the foregoing, a wholly owned agency or instrumentality of any one or more of the foregoing, or a pool or partnership composed exclusively of any of the foregoing;

\* \* \* \* \*

(C) \* \* \*

(2) *Limitation for corporate customers.* For sales of covered securities acquired on or after January 1, 2012, a broker may not treat a customer as an exempt recipient described in paragraph (c)(3)(i)(B)(1) of this section based on the indicators of corporate status described in § 1.6049-4(c)(1)(ii)(A). However, for sales of all securities and for sales of digital assets, a broker may treat a customer as an exempt recipient if one of the following applies—

\* \* \* \* \*

(8) *Special coordination rules for certain information returns relating to digital assets*—(i) *Digital assets that constitute securities or commodities.* For any sale of a digital asset under paragraph (a)(9)(ii) of this section that also constitutes a sale under paragraph (a)(9)(i) of this section of a security not described in paragraph (c)(8)(iii) of this section or of a commodity, the broker must report the sale only as a sale of a digital asset under paragraph (a)(9)(ii) of this section. See paragraph (d)(2)(i)(B) of this section for the information required to be reported for such a sale.

(ii) *Digital assets that constitute real estate.* For any transaction involving a sale of a digital asset under paragraph (a)(9)(ii) of this section that also constitutes a sale of reportable real estate under § 1.6045-4(b)(2) that is subject to reporting under § 1.6045-4(a), the broker must report the transaction as a sale only of reportable real estate under § 1.6045-4(b)(2).

(iii) *Digital assets that constitute contracts covered by section 1256(b).* For a sale of a digital asset that is also a contract covered by section 1256(b), the broker must report the sale only under paragraph (c)(5) of this section including, as appropriate, the application of the rules in paragraph (m)(3) of this section.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (c)(8):

(A) *Example 1: Digital asset securities*—(1) *Facts.* Digital asset broker CRX effects on behalf of its customers sales of DSK, which is a security within the meaning of paragraph (a)(3) of this section. Transactions involving DSK are recorded on a cryptographically secured distributed ledger called the DSK blockchain. L is an individual customer of CRX that is not otherwise exempt from reporting. Using CRX's services, L exchanges 100 units of DSK for \$200 in cash. CRX does not record this transaction on the DSK blockchain, but instead records the transaction on CRX's private ledger.

(2) *Analysis.* DSK is both a security under paragraph (a)(3) of this section and a digital asset under paragraph (a)(19) of this section. L's sale of 100 units of DSK for \$200 in cash constitutes a sale of securities for cash under paragraph (a)(9)(i) of this section and a sale of digital assets in exchange for cash under paragraph (a)(9)(ii)(A)(1) of this section. Accordingly, pursuant to the coordination rule set forth in paragraph (c)(8)(i) of this section, CRX is required to report this transaction as a sale of digital assets under paragraph (a)(9)(ii) of this section and not as a sale of securities.

(B) *Example 2: Digital asset representing real estate*—(1) *Facts.* Digital asset broker CRX effects on behalf of its customers sales of tokenized real estate interests, including RE, which is a digital representation of value representing a partial ownership interest in a physical building in City X. Transactions involving RE are recorded on a cryptographically secured distributed ledger called the Z blockchain. S is an individual customer of CRX that is not otherwise exempt from reporting. S sells 1 unit of RE for \$20,000 in cash to another customer of CRX, Individual B. The transfer of the RE token from S's digital asset address to B's digital asset address is recorded on the Z blockchain.

(2) *Analysis.* RE is both an interest in reportable real estate under § 1.6045-4(b)(2) and a digital asset under paragraph (a)(19) of this section. Although the sale of the RE unit by L to B for \$20,000 in cash constitutes a sale of a digital asset in exchange for cash under paragraph (a)(9)(ii)(A)(1) of this section, L's sale of the RE unit also constitutes a real estate transaction under § 1.6045-4(b)(1) that is subject to reporting under § 1.6045-4(a). Accordingly, pursuant to the coordination rule set forth in paragraph (c)(8)(ii) of this section, CRX is required to report this transaction as a sale of a reportable real estate interest under § 1.6045-4(a) and not as a sale of a digital asset.

(C) *Example 3: Digital asset representing real estate*—(1) *Facts.* The facts are the same as in paragraph (c)(8)(iv)(B) of this section (the facts in *Example 2*), except that S's sale of the RE token to B is for \$500 instead of \$20,000 in cash.

(2) *Analysis.* Although RE constitutes both an interest in reportable real estate under § 1.6045-4(b)(2) and a digital asset under paragraph (a)(19) of this section, S's sale of RE is for a total consideration of less than \$600. Pursuant to the *de minimis* transaction rule under § 1.6045-4(c)(1)(iii), the sale of RE is not subject to reporting under § 1.6045-4(a). Accordingly, CRX is required to report this transaction as a sale of a digital asset under paragraph (c) of this section.

(d) \* \* \*

(2) \* \* \*

(i) *Required information*—(A) *General rule for sales described in paragraph (a)(9)(i) of this section.* Except as provided in paragraph (c)(5) of this section, for each sale described in paragraph (a)(9)(i) of this section for which a broker is required to make a return of information under this section, the broker must report on Form 1099—

B, "Proceeds From Broker and Barter Exchange Transactions," or any successor form, the name, address, and taxpayer identification number of the customer, the property sold, the Committee on Uniform Security Identification Procedures (CUSIP) number of the security sold (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), the adjusted basis of the security sold, whether any gain or loss with respect to the security sold is long-term or short-term (within the meaning of section 1222 of the Code), the gross proceeds of the sale, the sale date, and other information required by the form in the manner and number of copies required by the form. In addition, for a sale of a covered security on or after January 1, 2014, a broker must report on Form 1099-B whether any gain or loss is ordinary. See paragraph (m) of this section for additional rules related to options and paragraph (n) of this section for additional rules related to debt instruments. See paragraph (c)(8) of this section for rules related to sales of securities or sales of commodities under paragraph (a)(9)(i) of this section that are also sales of digital assets under paragraph (a)(9)(ii) of this section.

(B) *Required information for digital asset transactions.* For each sale of a digital asset described in paragraph (a)(9)(ii) of this section for which a broker is required to make a return of information under this section, the broker must report on the form prescribed by the Secretary the name, address, and taxpayer identification number of the customer; the name and number of units of the digital asset sold; the sale date and time; the gross proceeds amount (after reduction for the allocable digital asset transaction costs as defined and allocated pursuant to paragraph (d)(5)(iv) of this section); the transaction ID as defined in paragraph (a)(26) of this section in connection with the sale, if any; the digital asset address as defined in paragraph (a)(20) of this section (or digital asset addresses if multiple) from which the digital asset was transferred in connection with the sale, if any; whether the sale was for cash stored-value cards, or in exchange for services, or other property; and any other information required by the form in the manner and number of copies required by the form or instructions. In the case of any sale described in the previous sentence that is also described in paragraph (c)(8)(i) of this section, the broker must also report any information

required under paragraph (d)(2)(i)(A) of this section to the extent required by the form or instructions. For each such sale of a digital asset that was held by the broker in a hosted wallet on behalf of a customer and was previously transferred into an account at the broker (transferred-in digital asset), the broker must also report the date and time of such transfer in; the transaction ID of such transfer in, if any; the digital asset address (or digital asset addresses if multiple) from which the digital asset was transferred, if any; and the number of units transferred in by the customer. If a sale of a digital asset gives rise to digital asset transaction costs that are paid using digital assets, the sale of the digital asset to pay for the digital asset transaction costs must also be reported as a sale.

(C) *Acquisition information for sales of certain digital assets.* For each sale described in paragraph (a)(9) of this section on or after January 1, 2026, of a covered security defined in paragraph (a)(15)(i)(H), (J), or (K) of this section, for which a broker is required to make a return of information under paragraph (d)(2)(i) of this section, the broker must also report the adjusted basis of the covered security sold calculated in accordance with paragraph (d)(6) of this section, the date and time such covered security was purchased, and whether any gain or loss with respect to the covered security sold is long-term or short-term (within the meaning of section 1222).

(ii) *Specific identification of specified securities—(A) In general.* Except as provided in § 1.1012–1(e)(7)(ii), for a specified security described in paragraph (a)(14)(i) of this section sold on or after January 1, 2011, or for a specified security described in paragraph (a)(14)(ii) of this section sold on or after January 1, 2014, a broker must report a sale of less than the entire position in an account of a specified security that was acquired on different dates or at different prices consistently with a customer's adequate and timely identification of the security to be sold. See § 1.1012–1(c). If the customer does not provide an adequate and timely identification for the sale, the broker must first report the sale of securities in the account for which the broker does not know the acquisition or purchase date followed by the earliest securities purchased or acquired, whether covered securities or noncovered securities.

(B) *Specific identification of digital assets.* For a specified security described in paragraph (a)(14)(v) of this section, a broker must report a sale of less than the entire position in an account of such specified security that

was acquired on different dates or at different prices consistently with the adequate identification of the digital asset to be sold. See § 1.1012–1(j)(3)(ii) for rules relating to the identification of units sold, exchanged, or transferred. If the customer does not provide an adequate and timely identification for the sale, the broker must first report the sale of the earliest units of the digital asset purchased within or transferred into the customer's account at the broker. Units of a digital asset are transferred into the customer's account as of the date and time of the transfer.

(iii) *Penalty relief for reporting information not subject to reporting—(A) Noncovered securities.* A broker is not required to report adjusted basis and the character of any gain or loss for the sale of a noncovered security if the return identifies the sale as a sale of a noncovered security. A broker that chooses to report this information for a noncovered security is not subject to penalties under section 6721 or 6722 of the Code for failure to report this information correctly if the return identifies the sale as a sale of a noncovered security. For purposes of this paragraph (d)(2)(iii)(A), a broker must treat a security for which a broker makes the single-account election described in § 1.1012–1(e)(11)(i) as a covered security.

(B) *Digital assets sold before applicability date.* A broker is not required to report the gross proceeds from the sale of a digital asset as described in paragraph (a)(9)(ii) of this section if the sale is effected prior to January 1, 2025, or the adjusted basis and the character of any gain or loss with respect to a sale of a covered security described in paragraph (a)(15)(i)(H), (J), or (K) of this section if the sale is effected prior to January 1, 2026. A broker that chooses to report this information on either the Form 1099–B, "Proceeds From Broker and Barter Exchange Transactions," or when available the form prescribed by the Secretary pursuant to paragraph (d)(2)(i)(B) of this section is not subject to penalties under section 6721 or 6722 for failure to report this information correctly.

(iv) \* \* \*

(A) *Transfer and issuer statements for securities.* When reporting a sale of a covered security other than a digital asset described in paragraph (a)(19) of this section, a broker must take into account all information, other than the classification of the security (such as stock), furnished on a transfer statement (as described in § 1.6045A–1) and all information furnished or deemed furnished on an issuer statement (as

described in § 1.6045B–1), unless the statement is incomplete or the broker has actual knowledge that it is incorrect.  
\* \* \*

(B) *Other information with respect to securities.* \* \* \*

(v) *Failure to receive a complete transfer statement for securities.* A broker that has not received a complete transfer statement as required under § 1.6045A–1(a)(3) for a transfer of a specified security described in paragraphs (a)(14)(i) through (iv) of this section must request a complete statement from the applicable person effecting the transfer unless, under § 1.6045A–1(a), the transferor has no duty to furnish a transfer statement for the transfer. \* \* \*

(vi) *Reporting by other parties after a sale of securities—* \* \* \*

(vii) *Examples.* The following examples illustrate the rules of this paragraph (d)(2). Unless otherwise indicated, all events and transactions described in paragraphs (d)(2)(vii)(C) through (F) of this section (*Examples 3 through 6*) occur after the applicability date set forth in paragraph (q) of this section.

\* \* \* \* \*

(C) *Example 3: Reporting required by broker providing hosted wallet services—(1) Facts.* TRX is a digital asset broker that also provides hosted wallet services. As part of TRX's regular operations, TRX does not record customer purchases of DE on the DE blockchain, but instead holds all digital assets in a TRX omnibus account. TRX, in turn, keeps a centralized record on which it allocates digital assets held on behalf of each of its customers. K, an individual not otherwise exempt from reporting, purchases 100 units of digital asset DE in a hosted wallet account at TRX. On March 9, Year 1, K directs TRX to transfer the 100 units to CRX, another digital asset broker that owns and operates a digital asset trading platform and provides hosted wallet services. CRX does not record customer purchases of DE on the DE blockchain, but instead holds all digital assets in a CRX omnibus account and keeps a centralized record on which it allocates digital assets held on behalf of each of its customers. The transaction ID of this transfer to CRX is kbcsj123. The digital asset address from which the units were transferred is 2hh77100. K directs CRX to sell the 100 units of DE on April 1, Year 1. CRX does not record K's sale on the DE blockchain, but instead reallocates the 100 units of DE previously allocated to K back to CRX's omnibus account.

(2) *Analysis.* Under paragraph (d)(2)(i)(B) of this section, CRX is

required to make a return of information with respect to K's sale of 100 units of DE. CRX must report the gross proceeds from the sale, the date (April 1, Year 1) and time of the sale, the name of the digital asset (DE) sold, and the number of units (100) sold, and any other information required by the form prescribed by the Secretary pursuant to paragraph (d)(2)(i)(B) of this section. CRX is not required to report the transaction ID of the sale transaction or the digital asset address from which the units were transferred because CRX did not record K's sale on the DE blockchain (and therefore there is no transaction ID or digital asset address in connection with the sale). Because K previously transferred the DE units treated as sold into K's account at CRX, paragraph (d)(2)(i)(B) of this section requires that CRX also report the transaction ID (kbcjsj123) associated with the transferred-in digital assets, the digital asset address (2hh77100) from which the digital assets were transferred, and the date (March 9, Year 1) and time the units were transferred to CRX.

(D) *Example 4: Reporting required by broker not providing hosted wallet services—(1) Facts.* J, an individual not otherwise exempt from reporting, purchases 500 units of digital asset DE in an unhosted wallet. Of these 500 units purchased, 350 are held at digital asset address 1ss9925 and 150 are held at digital asset address 2tt8875. On April 28, Year 1, J exchanges all 500 units of DE for 500 units of ST using the services of P2X, a digital asset broker that effects sales of digital assets directly between customers by providing customers with access to automatically executing contracts. The transaction ID of J's exchange is ghj789.

(2) *Analysis.* Under paragraph (d)(2)(i)(B) of this section, P2X is required to make a return of information with respect to J's sale of 500 units of DE. P2X must report the gross proceeds from the sale, the date (April 28, Year 1) and time of the sale, the name of the digital asset (DE) sold, the number of units (500) sold, and any other information required by the form prescribed by the Secretary pursuant to paragraph (d)(2)(i)(B) of this section. Additionally, P2X must also report the transaction ID (ghj789) of the sale transaction and the digital asset addresses (350 units from 1ss9925 and 150 units from 2tt8875) from which the digital assets were transferred.

(E) *Example 5: Reporting required by real estate reporting person—(1) Facts.* J, an unmarried individual not otherwise exempt from reporting, agrees to exchange with B, an individual not otherwise exempt from reporting, J's

principal residence, Blackacre, which has a fair market value of \$225,000 for digital assets with a value of \$225,000. Prior to closing, J provides CA with the certifications required under § 1.6045-4(c)(2)(iv) (to exempt the transaction from reporting under § 1.6045-4(a) due to Blackacre being J's principal residence). At closing, B transfers the digital assets directly from B's wallet to J's wallet. CA is the closing attorney and real estate reporting person under § 1.6045-4 with respect to the transaction.

(2) *Analysis.* CA is required to report. Although CA is not required to file an information report with respect to the gross proceeds received by J as a result of the exception to reporting provided under § 1.6045-4(c)(2), CA is required to report on the form prescribed by the Secretary pursuant to paragraph (d)(2)(i)(B) of this section the gross proceeds received by B (\$225,000) in exchange for B's sale of digital assets in this transaction because B's exchange of digital assets for Blackacre is a sale under paragraph (a)(9)(ii)(B) of this section and CA is a broker under paragraph (a)(1) of this section notwithstanding the exception from reporting to J.

(F) *Example 6: Ordering rule—(1) Facts.* On August 1, Year 1, TP opens a hosted wallet account at CRX, a digital asset broker that owns and operates a digital asset trading platform, and purchases within the account 10 units of digital asset DE for \$1 per unit. On January 1, Year 2, TP opens a hosted wallet account at BEX, another digital asset broker that owns and operates a digital asset trading platform, and purchases within this account 20 units of digital asset DE for \$5 per unit. On August 1, Year 3, TP transfers the digital asset units held in TP's hosted wallet account with CRX into TP's hosted wallet account with BEX. On August 3, Year 3, TP directs BEX to sell 10 units of DE but does not specify which units are to be sold. BEX effects the sale on TP's behalf for \$10 per unit.

(2) *Analysis.* TP did not make an adequate identification of the units to be sold in a sale of DE units that was less than TP's entire position in digital asset DE. Therefore, BEX must treat the units of digital asset DE sold according to the ordering rule provided in paragraph (d)(2)(ii)(B) of this section. Pursuant to that rule, the units sold must be attributed to the earliest units of digital asset DE purchased within or transferred into TP's account. Accordingly, the 10 units sold must be attributed to 10 of the 20 DE units purchased by TP on January 1, Year 2, in the BEX account because based on

the information known to BEX these units were purchased prior to the date (August 1, Year 3) when TP transferred the other units purchased at CRX into the account.

\* \* \* \* \*

(4) *Sale date and time—(i) In general.* For sales of property that are reportable under this section other than digital assets, a broker must report a sale as occurring on the date the sale is entered on the books of the broker.

(ii) *Special rules for digital asset sales.* For sales of digital assets that are effected when digitally recorded using cryptographically secured distributed ledger technology, such as a blockchain or similar technology, the broker must report the date and time of sale as the date and time when the transactions are recorded on the ledger. For sales of digital assets that are effected on a system outside of a blockchain, the broker must report the date and time of sale as the date and time when the transactions are recorded on that outside system without regard to the date and time that the transactions may be later recorded on a blockchain. Unless otherwise specified on the form prescribed by the Secretary pursuant to paragraph (d)(2)(i)(B) of this section or its instructions, all dates and times reported with respect to a digital asset transaction should be set forth in hours, minutes, and seconds using Coordinated Universal Time (UTC).

(iii) *Examples.* The following examples illustrate the rules of this paragraph (d)(4). Unless otherwise indicated, all events and transactions in the following examples occur after the applicability date set forth in paragraph (q) of this section.

(A) *Example 1: Digital assets sale date and time—(1) Facts.* J, an individual not otherwise exempt from reporting, purchases 500 units of digital asset DE in an unhosted wallet. On April 28, Year 1, J initiates an exchange of these 500 units of DE for 500 units of ST using the services of P2X, a digital asset broker that effects sales of digital assets by providing customers with access to automatically executing contracts. The completed exchange is recorded on the DE blockchain at 10:00:00 a.m. UTC on April 28, Year 1.

(2) *Analysis.* Under paragraph (d)(4) of this section, the date and time P2X must report with respect to J's sale is April 28, Year 1, at 10:00:00 a.m. UTC because that is the time the sale transaction was recorded on the DE distributed ledger.

(B) *Example 2: Digital assets sale date and time—(1) Facts.* The facts are the same as in paragraph (d)(4)(iii)(A)(1) of

this section (the facts in *Example 1*), except J initiates the exchange on December 31, Year 1, at 10:00:00 p.m. Eastern Standard Time (EST), which is the time zone J was in at the time of the exchange. The completed exchange is recorded on the DE blockchain at 3:00:00 a.m. UTC on January 1, Year 2.

(2) *Analysis.* Under paragraph (d)(4) of this section, P2X must report the date and time of the transaction using UTC time. Because the transaction was recorded at 3:00:00 a.m. UTC on January 1, Year 2, P2X must report J's sale in calendar year of Year2 as of that UTC date and time and not in calendar year of Year 1.

(C) *Example 3: Digital assets sale date and time—(1) Facts.* TRX is a digital asset broker that also provides hosted wallet services. As part of TRX's regular operations, TRX does not record customer purchases of DE on the DE blockchain, but instead holds all digital assets in a TRX omnibus account. TRX, in turn, keeps a centralized record on which it allocates digital assets held on behalf of each of its customers. On January 1, Year 1, K, an individual not otherwise exempt from reporting, purchases 100 units of digital asset DE in a hosted wallet account at TRX. On March 9, Year 4, K directs TRX to sell, and TRX sells, the 100 units of DE. TRX does not record K's sale on the DE blockchain, but instead debits from K's account the 100 units of DE previously allocated to K's account. TRX's records reflect that this debit was recorded on March 9, Year 4, at 10:45:00 a.m. UTC.

(2) *Analysis.* Under paragraph (d)(4) of this section, the date and time TRX must report with respect to K's sale is March 9, Year 4, at 10:45:00 a.m. UTC because that is the time the sale transaction was recorded on TRX's internal records.

(D) *Example 4: Information reporting required—(1) Facts.* The facts are the same as in paragraph (d)(4)(iii)(C)(1) of this section (the facts in *Example 3*), except TRX keeps its records using Eastern Standard Time (EST), and those records reflect that the debited units associated with K's transaction was recorded on March 9, Year 4, at 9:45:00 a.m. EST.

(2) *Analysis.* Under paragraph (d)(4) of this section, TRX must convert the time recorded in its records using EST into UTC time. Because 9:45:00 a.m. EST on March 9, Year 4, is equivalent to 2:45:00 p.m. UTC, the date and time TRX must report with respect to K's sale is March 9, Year 4, at 2:45:00 p.m. UTC.

(5) *Gross proceeds—(i) In general.* Except as otherwise provided in paragraph (d)(5)(ii) of this section with respect to digital asset sales, for

purposes of this section, *gross proceeds* on a sale are the total amount paid to the customer or credited to the customer's account as a result of the sale reduced by the amount of any qualified stated interest reported under paragraph (d)(3) of this section and increased by any amount not paid or credited by reason of repayment of margin loans. In the case of a closing transaction (other than a closing transaction related to an option) that results in a loss, gross proceeds are the amount debited from the customer's account. For sales before January 1, 2014, a broker may, but is not required to, reduce gross proceeds by the amount of commissions and transfer taxes, provided the treatment chosen is consistent with the books of the broker. For sales on or after January 1, 2014, a broker must reduce gross proceeds by the amount of commissions and transfer taxes related to the sale of the security. For securities sold pursuant to the exercise of an option granted or acquired before January 1, 2014, a broker may, but is not required to, take the option premiums into account in determining the gross proceeds of the securities sold, provided the treatment chosen is consistent with the books of the broker. For securities sold pursuant to the exercise of an option granted or acquired on or after January 1, 2014, or for the treatment of an option granted or acquired on or after January 1, 2014, see paragraph (m) of this section. A broker must report the gross proceeds of identical stock (within the meaning of § 1.1012-1(e)(4)) by averaging the proceeds of each share if the stock is sold at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the customer that reports an aggregate total price or an average price per share. However, a broker may not average the proceeds if the customer notifies the broker in writing of an intent to determine the proceeds of the stock by the actual proceeds per share and the broker receives the notification by January 15 of the calendar year following the year of the sale. A broker may extend the January 15 deadline but not beyond the due date for filing the return required under this section.

(ii) *Sales of digital assets.* The rules contained in paragraphs (d)(5)(ii)(A) through (D) of this section apply solely for purposes of this section.

(A) *In general.* Except as otherwise provided in this section, gross proceeds from the sale of a digital asset are equal to the sum of the total amount in U.S. dollars paid to the customer or credited to the customer's account from the sale plus the fair market value of any

property or services received (including services giving rise to digital asset transaction costs), reduced by the amount of digital asset transaction costs, as defined and allocated under paragraph (d)(5)(iv) of this section. In the case of a debt instrument issued in exchange for the digital asset and subject to § 1.1001-1(g), the amount realized attributable to the debt instrument is determined under § 1.1001-7(b)(1)(iv) rather than by reference to the fair market value of the debt instrument. See paragraph (d)(5)(iv) of this section for a special rule setting forth how digital asset transaction costs are to be allocated in an exchange of one digital asset for a different digital asset. Fair market value is measured at the date and time the transaction was effected. Except as provided in the next sentence, in determining the fair market value of services or property received or credited in exchange for a digital asset, the broker must use a reasonable valuation method that looks to contemporaneous evidence of value, such as the purchase price of the services, goods or other property, the exchange rate, and the U.S. dollar valuation applied by the broker to effect the exchange. In determining the fair market value of services giving rise to digital asset transaction costs, the broker must look to the fair market value of the digital assets used to pay for such transaction costs.

In determining the fair market value of a digital asset, the broker may perform its own valuations or rely on valuations performed by a digital asset data aggregator as defined in paragraph (d)(5)(ii)(D) of this section, provided such valuations apply a reasonable valuation method for digital assets as described in paragraph (d)(5)(ii)(C) of this section.

(B) *Consideration value not readily ascertainable.* When valuing services or property (including digital assets) received in exchange for a digital asset, the value of what is received should ordinarily be identical to the value of the digital asset exchanged. If there is a disparity between the value of services or property received and the value of the digital asset exchanged, the gross proceeds received by the customer is the fair market value at the date and time the transaction was effected of the services or property, including digital assets, received. If the broker or digital asset data aggregator, in the case of digital assets, reasonably determines that the fair market value of the services or property received cannot be determined with reasonable accuracy, the fair market value of the received

services or property must be determined by reference to the fair market value of the transferred digital asset at the time of the exchange. See § 1.1001-7(b)(4). If the broker or digital asset data aggregator, in the case of a digital asset, reasonably determines that neither the value of the received services or property nor the value of the transferred digital asset can be determined with reasonable accuracy, the broker must report that the received services or property has an undeterminable value.

(C) *Reasonable valuation method for digital assets.* A reasonable valuation method for digital assets is a method that considers and appropriately weighs the pricing, trading volumes, market capitalization and other factors relevant to the valuation of digital assets traded through digital asset trading platforms. A valuation method is not a reasonable valuation method for digital assets if it, for example, gives an underweight effect to exchange prices lying near the median price value, an overweight effect to digital asset trading platforms having low trading volume, or otherwise inappropriately weighs factors associated with a price that would make that price an unreliable indicator of value.

(D) *Digital asset data aggregator.* A digital asset data aggregator is an information service provider that provides valuations of digital assets based on any reasonable valuation method.

(iii) *Digital asset transactions effected by digital asset payment processors.* The amount of gross proceeds under paragraph (d)(5)(ii) of this section received by a party who sells a digital asset through a digital asset payment processor is equal to: the sum of the amount paid in cash, or the fair market value of the amount paid in digital assets by that digital asset payment processor to a second party, plus any digital asset transaction costs withheld (whether withheld from the digital assets transferred by first party or withheld from the amount due to the second party); and reduced by the amount of digital asset transaction costs paid by or withheld from the first party, as defined and allocated under the rules of paragraph (d)(5)(iv) of this section. For purposes of this paragraph (d)(5)(iii), if a digital asset payment processor transfers digital assets to a second person pursuant to a processor agreement that temporarily fixes the exchange rate in a transaction described in paragraph (a)(22)(ii) of this section, the fair market value of the amount paid in digital assets is the amount determined by reference to the fixed exchange rate.

(iv) *Allocation of digital asset transaction costs.* The term digital asset transaction costs means the amount paid in cash or property (including digital assets) to effect the disposition or acquisition of a digital asset. Digital asset transaction costs include transaction fees, transfer taxes, and commissions. Except as provided in the following sentence, in the case of a sale or disposition of digital assets, the total digital asset transaction costs paid by the customer are allocable to the disposition of the digital assets. In an exchange of one digital asset for another digital asset differing materially in kind or in extent, one-half of any digital asset transaction costs paid by the customer in cash or property to effect the exchange is allocable to the disposition of the transferred digital asset and the other half of such costs is allocable to the acquisition of the received digital asset.

(v) *Examples.* The following examples illustrate the rules of this paragraph (d)(5). Unless otherwise indicated, all events and transactions in the following examples occur after the applicability date set forth in paragraph (q) of this section.

(A) *Example 1: Determination of gross proceeds—(1) Facts.* CRX, a digital asset broker, buys, sells, and exchanges various digital assets for cash or different digital assets on behalf of its customers. For this service, CRX charges a transaction fee equal to 1 unit of CRX's proprietary digital asset CM per transaction. Using the services of CRX, customer K, an individual not otherwise exempt from reporting, purchases 15 units of CM and 10 units of digital asset DE. On April 28, Year 1, when the CM units have a value of \$2 per unit, the DE units have a value of \$8 per unit, and digital asset ST units have a value of \$0.80 per unit, K instructs CRX to exchange K's 10 units of DE for 100 units of digital asset ST. CRX charges K one unit of CM as a transaction fee for the exchange.

(2) *Analysis.* Under paragraph (d)(5)(iv) of this section, K has digital asset transaction costs of \$2, which is the value of 1 CM unit. Under paragraph (d)(5)(ii)(A) of this section, the gross proceeds amount that CRX must report from K's sale of the 10 units of DE is equal to the fair market value of the 100 units of ST that K received (less one-half of the value of the CM unit sold to pay the digital asset transaction cost to CRX). The fair market value of the 100 units of ST at the date and time the transaction was effected is equal to \$80 (the product of \$0.80 and 100 units). One-half of such costs (\$1) is allocable to the sale of the DE units. Accordingly,

CRX must report gross proceeds of \$79 from K's sale of the 10 units of DE. CRX must also report the gross proceeds from K's sale of one CM unit to pay for CRX's services. Under paragraph (d)(5)(ii)(A) of this section, the gross proceeds from K's sale of one unit of CM is equal to the fair market value of the digital assets used to pay for such transaction costs. Accordingly, CRX must report \$2 as gross proceeds from K's sale of one unit of CM.

(B) *Example 2: Determination of gross proceeds—(1) Facts.* CPP, a digital asset payment processor, offers debit cards to its customers who hold digital asset FE in their accounts with CPP. The debit cards allow CPP's customers to use digital assets held in accounts with CPP to make payments to merchants who do not accept digital assets. CPP charges its card holders a 2% transaction fee for purchases made using the debit card and sets forth in its terms and conditions the process CPP will use to determine the exchange rate provided at the date and time of its customers' transactions. CPP has issued a debit card to B, an individual not otherwise exempt from reporting, who wants to make purchases using digital assets. B transfers 1,000 units of FE into B's account with CPP. B then uses the debit card to purchase merchandise from a U.S. retail merchant STR for \$1,000. An exchange rate of 1 FE = \$2 USD is applied to effect the transaction, based on the exchange rate at that date and time and pursuant to B's account agreement. To settle the transaction, CPP removes 510 units of FE from B's account equal to \$1,020 (\$1,000 plus a 2% transaction fee equal to \$20). CPP then pays STR \$1,000 in cash.

(2) *Analysis.* Under paragraph (d)(5)(iv) of this section, B has digital asset transaction costs of \$20. Under paragraph (d)(5)(iii) of this section, the gross proceeds amount that CPP must report with respect to B's sale of the 510 units of FE to purchase the merchandise is \$1,000, which is the sum of the amount of cash paid by CPP to STR plus the \$20 digital asset transaction costs paid by B, reduced by the \$20 digital asset transaction costs paid by B. CPP's payment of cash to STR is also a payment card transaction under § 1.6050W-1(b) subject to reporting under § 1.6050W-1(a).

(C) *Example 3: Determination of gross proceeds—(1) Facts.* STR, a U.S. retail corporation, advertises that it accepts digital asset FE as payment for its merchandise. Customers making purchases at STR using digital asset FE are directed to create an account with digital asset payment processor CXX, which, pursuant to a preexisting

agreement with STR, accepts digital asset FE in return for payments in cash made to STR. CXX charges a 2% transaction fee, which is paid by STR and not STR's customers. S, an individual not otherwise exempt from reporting, seeks to purchase merchandise from STR for \$1,000. To effect payment, S is directed by STR to CXX, with whom S has an account. An exchange rate of 1 FE = \$2 USD is applied to effect the purchase transaction. Pursuant to this exchange rate, S then transfers 500 units of FE to CXX, which, in turn, pays STR \$980 (\$1,000 less a 2% transaction fee equal to \$20).

(2) *Analysis.* Under paragraph (d)(5)(iii) of this section, the gross proceeds amount that CXX must report with respect to this sale is \$1,000, which is the sum of the amount in U.S. dollars paid by CPP to STR (\$980) plus the \$20 digital asset transaction costs withheld from the payment due to STR. Under paragraph (d)(5)(iv) of this section, S has no allocable digital asset transaction costs. Therefore, the \$980 amount is not reduced by any digital asset transaction costs charged to STR because that fee was not paid by S. In addition, CXX's payment of cash to STR (plus the withheld transaction fee) may be reportable under § 1.6050W-1(a) as a third party network transaction under § 1.6050W-1(c) if CXX is a third party settlement organization under the definition in § 1.6050W-1(c)(2).

(D) *Example 4: Determination of gross proceeds in a real estate transaction—(1) Facts.* J, an unmarried individual not otherwise exempt from reporting, agrees to exchange with B, an individual not otherwise exempt from reporting, J's principal residence, Blackacre, which has a fair market value of \$300,000 for cash in the amount of \$75,000 and digital assets with a value of \$225,000. At closing, B transfers the digital assets directly from B's wallet to J's wallet. CA is the closing attorney, real estate reporting person under § 1.6045-4, and broker under paragraph (a)(1) of this section with respect to the transaction.

(2) *Analysis.* CA is required to report on the form prescribed by the Secretary pursuant to paragraph (d)(2)(i)(B) of this section the gross proceeds received by B in exchange for B's sale of digital assets in this transaction. The gross proceeds amount to be reported under paragraph (d)(5)(ii)(A) of this section is equal to \$225,000, which is the \$300,000 value of Blackacre less \$75,000 that B paid in cash. In addition, under § 1.6045-4, CA is required to report on Form 1099-S the \$300,000 of gross proceeds received by J (\$75,000 cash and \$225,000 in

digital assets) as consideration for J's disposition of Blackacre.

(6) \* \* \*  
(i) \* \* \* For purposes of this section, the adjusted basis of a specified security is determined from the initial basis under paragraph (d)(6)(ii) of this section as of the date the specified security is acquired in an account, increased by the commissions and transfer taxes related to its sale to the extent not accounted for in gross proceeds as described in paragraph (d)(5) of this section. A broker is not required to consider transactions or events occurring outside the account except for an organizational action taken by an issuer of a specified security other than a digital asset during the period the broker holds custody of the security (beginning with the date that the broker receives a transferred security) reported on an issuer statement (as described in § 1.6045B-1) furnished or deemed furnished to the broker. \* \* \*

(ii) \* \* \*  
(A) *Cost basis for specified securities acquired for cash.* For a specified security acquired for cash, the initial basis generally is the total amount of cash paid by the customer or credited against the customer's account for the specified security, increased by the commissions, transfer taxes, and digital asset transaction costs related to its acquisition. \* \* \*

\* \* \* \* \*  
(C) *Digital assets acquired in exchange for property—(1) In general.* This paragraph (d)(6)(ii)(C) applies solely for purposes of this section. For a digital asset acquired in exchange for property that is not a debt instrument described in § 1.1012-1(h)(1)(v), the initial basis of the digital asset is the fair market value of the digital asset received at the time of the exchange, increased by any digital asset transaction costs allocable to the acquisition of the digital asset pursuant to the rules under paragraph (d)(6)(ii)(C)(2) of this section. The fair market value of the digital asset received must be determined using a reasonable valuation method as of the date and time the exchange transaction was effected. In valuing the digital asset received, the broker may perform its own valuations or rely on valuations performed by a digital asset data aggregator as defined in paragraph (d)(5)(ii)(D) of this section, provided such valuations apply a reasonable valuation method for digital assets as described in paragraph (d)(5)(ii)(C) of this section. If the broker or digital asset data aggregator reasonably determines that the fair market value of the digital asset received cannot be determined

with reasonable accuracy, the fair market value of the digital asset received must be determined by reference to the property transferred at the time of the exchange. If the broker or digital asset data aggregator reasonably determines that neither the value of the digital asset received nor the value of the property transferred can be determined with reasonable accuracy, the fair market value of the received digital asset must be treated as zero. For a digital asset acquired in exchange for a debt instrument described in § 1.1012-1(h)(1)(v), the initial basis of the digital asset attributable to the debt instrument is the amount determined under § 1.1012-1(h)(1)(v).

(2) *Allocation of digital asset transaction costs.* Except as provided in the following sentence, in the case of an acquisition of digital assets, the total digital asset transaction costs paid by the customer are allocable to the digital assets received. In an exchange of one digital asset for a different digital asset differing materially in kind or in extent, one-half of the total digital asset transaction costs paid by the customer in cash or property to effect the exchange is allocable to the disposition of the transferred digital asset and one-half of such costs is allocable to the acquisition of the received digital asset for the purpose of determining basis.

(iii) \* \* \*  
(A) \* \* \* A broker must apply the wash sale rules under section 1091 of the Code if both the sale and purchase transactions are of covered securities described in paragraphs (a)(15)(i)(A) through (G) of this section with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). \* \* \*

\* \* \* \* \*  
(x) *Examples.* The following examples illustrate the rules of paragraphs (d)(5) and (6) of this section as applied to digital assets. Unless otherwise indicated, all events and transactions in the following examples occur using the services of CRX, an entity that owns and operates a digital asset trading platform and provides digital asset broker and hosted wallet services. In performing these services, CRX holds and records all customer purchase and sale transactions using CRX's centralized omnibus account. CRX does not record any of its customer's purchase or sale transactions on the relevant cryptographically secured distributed ledgers. Additionally, unless otherwise

indicated, all events and transactions in the following examples occur after the applicability date for reporting acquisition information set forth in paragraph (d)(2)(i)(C) of this section.

(A) *Example 1: Determination of basis in digital assets—(1) Facts.* As a digital asset broker, CRX generally charges transaction fees equal to 1 unit of CRX's proprietary digital asset CM per transaction. CRX does not, however, charge transaction fees for the purchase of CM. On March 9, Year 1, K, an individual not otherwise exempt from reporting, purchases 20 units of CM for \$20 in K's account at CRX. A week later, on March 16, Year 1, K uses CRX's services to purchase 10 units of digital asset DE for \$80 in cash. To pay for CRX's transaction fee, K directs CRX to debit 1 unit of CM (worth \$1 at the time of transfer) from K's account.

(2) *Analysis.* The units of CM purchased by K are covered securities under paragraph (a)(15)(i) of this section because they were purchased in K's account at CRX by a broker (CRX) providing hosted wallet services. Accordingly, under paragraphs (d)(2)(i)(B) and (C) of this section, CRX must report the disposition by K of 1 unit of CM as a sale by K. The gross proceeds from that sale is equal to the fair market value of the CM units on March 16, Year 1 (\$1), and the adjusted basis of that unit is equal to the amount K paid in cash for the CM unit on March 9, Year 1 (\$1). This reporting is required regardless of the fact that there is \$0 of gain or loss associated with this sale. Additionally, K's adjusted basis in the 10 units of DE acquired is equal to the initial basis in DE, \$80 plus the \$1 value of 1 unit of CM paid as a digital asset transaction cost for the purchase of the DE units.

(B) *Example 2: Determination of basis in digital assets—(1) Facts.* The facts are the same as in paragraph (d)(6)(x)(A)(1) of this section (the facts in *Example 1*), except that on June 12, Year 2, K instructs CRX to exchange K's 10 units of DE for 50 units of digital asset ST. CRX effects this exchange using its own omnibus account holdings of ST at an exchange rate of 1 DE = 5 ST. The total value of the 50 units of ST received by K is \$100. K directs CRX to debit 1 CM unit (worth \$2 at the time of the transfer) from K's account to pay CRX for the transaction fee.

(2) *Analysis.* Under paragraph (d)(5)(iv) of this section, K has digital asset transaction costs of \$2, which is the value of 1 unit of CM. Under paragraphs (d)(2)(i)(B) and (C) of this section, CRX must report the gross proceeds from K's exchange of DE for ST (as a sale of K's 10 units of DE) and

the gross proceeds from K's disposition of 1 unit of CM for CRX's services. Additionally, because the units of DE and CM were purchased in K's account at CRX by a broker (CRX) providing hosted wallet services, the units of DE and CM are covered securities under paragraph (a)(15)(i) of this section, and CRX must report K's adjusted basis in the 10 units of DE and 1 unit of CM. Under paragraph (d)(5)(ii)(A) of this section, the gross proceeds from K's sale of the DE units is \$99 (the fair market value of the 50 units of ST that K received less one-half of the \$2 digital asset transaction costs paid by K, or \$1, paid in CM), that is allocable to the sale of the DE units. The gross proceeds from K's sale of the single unit of CM is \$2. Under paragraph (d)(6) of this section, K's adjusted basis in the 10 units of DE is \$81, resulting in a long-term capital gain to K of \$18 (\$99 – \$81). K's adjusted basis in the ST units under paragraph (d)(6)(ii)(C) of this section is equal to the initial basis in ST, which is \$101.

(C) *Example 3: Basis reporting for digital assets—(1) Facts.* On August 26, 2023, Customer P purchases 10 units of DE for \$2 per unit in cash in an account at CRX. CRX charges P a fixed transaction fee of \$5 in cash for the exchange. DE is a digital representation of value, the transfer of which is recorded on Blockchain DE, a cryptographically secured distributed ledger. On October 26, 2027, P directs CRX to exchange P's 10 units of DE for units of digital asset FG. At the time of the exchange, CRX determines that each unit of DE has a fair market value of \$100 and each unit of FG has a fair market value of \$50. As a result of this determination, CRX effects an exchange of P's 10 units of DE for 20 units of FG. CRX charges P a fixed transaction fee of \$20 in cash for the exchange.

(2) *Analysis.* DE is a digital asset under paragraph (a)(19) of this section because it is a digital representation of value that is recorded on a cryptographically secured distributed ledger and, therefore, a specified security under paragraph (a)(14)(v) of this section. Because the 10 units of DE that P exchanged for FG through CRX were acquired in an account at CRX on August 26, 2023, which is after January 1, 2023, these units are covered securities under paragraph (a)(15)(i)(f) of this section. Under paragraph (d)(5)(iv) of this section, P has digital asset transaction costs of \$20. For the transaction that took place on October 26, 2027, under paragraph (d)(2)(i)(B) of this section, CRX must report the amount of gross proceeds from the sale of DE in the amount of \$990 (the \$1,000 fair market value of FG received on the

date and time of transfer, less one-half of the digital asset transaction costs of \$20, or \$10 allocated to the sale). CRX must also report the \$10 digital asset transaction costs allocated to the sale. Additionally, CRX must also report the adjusted basis of P's DE units under paragraph (d)(2)(i)(C) of this section because they are covered securities. Under paragraph (d)(6)(ii)(C) of this section, the adjusted basis of P's DE units is equal to \$25, which the \$20 paid in cash for the 10 units increased by the \$5 digital asset transaction costs allocable to that purchase. Finally, P's adjusted basis in the 20 units of FG is equal to the fair market value of the FG received, \$1,000, plus one-half of the \$20 transaction fee, or \$10, which is allocated under paragraph (d)(6)(ii)(C)(2) of this section to the acquisition of P's FG units.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(iii) *Coordination rules for exchanges of digital assets made through barter exchanges.* Exchange transactions involving the exchange of one digital asset held by one customer of a broker for a different digital asset held by a second customer of the same broker must be treated as a sale under paragraph (a)(9)(ii) of this section subject to reporting under paragraphs (c) and (d) of this section, and not as an exchange of personal property through a barter exchange subject to reporting under paragraphs (e) and (f) of this section, with respect to both customers involved in the exchange transaction. In the case of an exchange transaction that involves the transfer of a digital asset for personal property or services that are not also digital assets, if the digital asset payment also is a reportable payment transaction subject to reporting by the barter exchange under § 1.6050W-1(a)(1), the exchange transaction must be treated as a reportable payment transaction and not as an exchange of personal property through a barter exchange subject to reporting under paragraphs (e) and (f) of this section with respect to the member or client disposing of personal property or services. Additionally, an exchange transaction described in the previous sentence must be treated as a sale under paragraph (a)(9)(ii)(D) of this section subject to reporting under paragraphs (c) and (d) of this section and not as an exchange of personal property through a barter exchange subject to reporting under paragraphs (e) and (f) of this section with respect to the member or client disposing of the digital asset. Nothing in this paragraph (e)(2)(iii) may

be construed to mean that any broker is or is not properly classified as a barter exchange.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \* No return of information is required to be made by a broker with respect to a customer who is considered to be an exempt foreign person under paragraphs (g)(1)(i) through (iii) or paragraph (g)(4) of this section. See paragraph (a)(1) of this section for when a person is not treated as a broker under this section for a sale effected at an office outside the United States. See paragraphs (g)(1)(i) through (g)(3) of this section for rules relating to sales as defined in paragraph (a)(9)(i) of this section and see paragraph (g)(4) of this section for rules relating to sales of digital assets.

\* \* \* \* \*

(2) *Barter exchange.* No return of information is required by a barter exchange under the rules of paragraphs (e) and (f) of this section with respect to a client or a member that the barter exchange may treat as an exempt foreign person pursuant to the procedures described in paragraph (g)(1) of this section.

(3) \* \* \*

(iii) \* \* \*

(A) \* \* \* For purposes of this paragraph (g), a sale as defined in paragraph (a)(9)(i) of this section (relating to sales other than sales of digital assets) is considered to be effected by a broker at an office outside the United States if, in accordance with instructions directly transmitted to such office from outside the United States by the broker's customer, the office completes the acts necessary to effect the sale outside the United States. \* \* \*

\* \* \* \* \*

(4) *Rules for sales of digital assets.* The rules of this paragraph (g)(4) apply to a sale of a digital asset as defined in paragraph (a)(9)(ii) of this section. See paragraph (a)(1) of this section for when a person is treated as a broker under this section with respect to a sale of a digital asset. See paragraph (c) of this section for rules requiring brokers to report sales. See paragraph (g)(1) of this section providing that no return of information is required to be made by a broker effecting a sale of a digital asset for a customer who is considered to be an exempt foreign person under this paragraph (g)(4).

(i) *Definitions.* The following definitions apply for purposes of this section.

(A) *U.S. digital asset broker.* A U.S. digital asset broker is a U.S. payor or U.S. middleman as defined in § 1.6049–

5(c)(5), other than a controlled foreign corporation within the meaning of § 1.6049–5(c)(5)(i)(C), that effects sales of digital assets on behalf of others.

(B) *CFC digital asset broker.* A CFC digital asset broker is a controlled foreign corporation within the meaning of § 1.6049–5(c)(5)(i)(C) that effects sales of digital assets on behalf of others.

(C) *Non-U.S. digital asset broker.* A non-U.S. digital asset broker is a non-U.S. payor or non-U.S. middleman as defined in § 1.6049–5(c)(5) that effects sales of digital assets on behalf of others.

(D) *Conducting activities as a money services business.* A CFC digital asset broker or a non-U.S. digital asset broker is conducting activities as a money services business (conducting activities as a money services business (MSB)) under this paragraph (g)(4) with respect to its sales of digital assets, except as provided in the next sentence, if it is registered with the Department of the Treasury under 31 CFR 1022.380 or any successor guidance as an MSB, as defined in 31 CFR 1010.100(ff) or any successor guidance. Notwithstanding any registration as an MSB described in the preceding sentence, solely for purposes of this paragraph (g)(4), CFC digital asset brokers and non-U.S. digital asset brokers may not be treated as conducting activities as an MSB with respect to any sale of a digital asset that is effected by that broker on behalf of a customer at a foreign kiosk to the extent provided in paragraph (g)(4)(i)(E) of this section.

(E) *Foreign kiosk.* A foreign kiosk means a physical electronic terminal that is located outside the United States and is owned or operated by a CFC digital asset broker or a non-U.S. digital asset broker that is not required under the Bank Secrecy Act to implement an anti-money laundering program (AML program), file reports, or otherwise comply with requirements for MSBs under the Bank Secrecy Act with respect to sales effected on behalf of its customers at the foreign kiosk.

(ii) *Rules for U.S. digital asset brokers—(A) Place of effecting sale.* For purposes of this section, a sale of a digital asset that is effected by a U.S. digital asset broker is considered a sale effected at an office inside the United States.

(B) *Determination of foreign status.* A U.S. digital asset broker may treat a customer as an exempt foreign person with respect to a sale effected at an office inside the United States provided that, prior to the payment to such customer of the gross proceeds from the sale, the broker has a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) that the broker may

treat as valid under § 1.1441–1(e)(2)(ii) and that satisfies the requirements of paragraph (g)(4)(vi) of this section. Additionally, a U.S. digital asset broker may treat a customer as an exempt foreign person with respect to a sale effected at an office inside the United States under an applicable presumption rule as provided in paragraph (g)(4)(vi)(A)(2) of this section. A beneficial owner withholding certificate provided by an individual must include a certification that the beneficial owner has not been, and at the time the certificate is furnished reasonably expects not to be, present in the United States for a period aggregating 183 days or more during each calendar year to which the certificate pertains. See paragraphs (g)(4)(vi)(A) through (D) of this section for additional rules applicable to withholding certificates, when a broker may rely on a withholding certificate, presumption rules that apply in the absence of documentation, and rules for customers that are joint account holders. See paragraph (g)(4)(vi)(E) of this section for the extent to which a U.S. digital asset broker may treat a customer as an exempt foreign person with respect to a payment treated as made to a foreign intermediary, flow-through entity or certain U.S. branches. See paragraph (g)(4)(vi)(F) of this section for a transition rule for preexisting accounts.

(iii) *Rules for CFC digital asset brokers not conducting activities as MSBs.* This paragraph (g)(4)(iii) applies to CFC digital asset brokers that are not conducting activities as MSBs. See paragraph (g)(4)(v) of this section for rules applicable to CFC digital asset brokers that are conducting activities as MSBs.

(A) *Place of effecting sale.* For purposes of this section, a sale of a digital asset that is effected by a CFC digital asset broker subject to the rules of this paragraph (g)(4)(iii) is considered to be effected at an office outside the United States. See § 31.3406(g)–1(e) of this chapter for an exception to backup withholding on gross proceeds from a sale of a digital asset effected at an office outside the United States by a CFC digital asset broker unless the broker has actual knowledge that the payee is a U.S. person.

(B) *Determination of foreign status.* A CFC digital asset broker subject to the rules of this paragraph (g)(4)(iii) may treat a customer as an exempt foreign person with respect to a sale provided that, prior to the payment to such customer of the gross proceeds from the sale, the broker has either a beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section

or the documentary evidence described in § 1.1471–3(c)(5)(i) to support the customer's foreign status, pursuant to the requirements of paragraph (g)(4)(vi) of this section. Additionally, a CFC digital asset broker may treat the customer as an exempt foreign person with respect to a sale under an applicable presumption rule as provided in paragraph (g)(4)(vi)(A)(2) of this section. See paragraphs (g)(4)(vi)(A) through (D) of this section for additional rules applicable to withholding certificates and documentary evidence, when a broker may rely on documentation, presumption rules that apply in the absence of documentation, and rules for customers that are joint account holders. See paragraph (g)(4)(vi)(E) of this section for the extent to which a CFC digital asset broker subject to the rules of this paragraph (g)(4)(iii) may treat a customer as an exempt foreign person with respect to a payment treated as made to a foreign intermediary, flow-through entity or certain U.S. branches. See paragraph (g)(4)(vi)(F) of this section for a transition rule for preexisting accounts.

(iv) *Rules for non-U.S. digital asset brokers not conducting activities as MSBs.* This section applies to non-U.S. digital asset brokers that are not conducting activities as MSBs. See paragraph (g)(4)(v) of this section for rules applicable to non-U.S. digital asset brokers that are conducting activities as MSBs.

(A) *Sale outside the United States.* For purposes of this section and except as provided in paragraph (g)(4)(iv)(B) of this section, a digital asset sale that is effected by a non-U.S. digital asset broker subject to the rules of this paragraph (g)(4)(iv) is considered to be effected at an office outside the United States.

(B) *Sale treated as effected at an office inside the United States as a result of U.S. indicia.* For purposes of this section, a sale that is otherwise considered to be effected at an office outside the United States under paragraph (g)(4)(iv)(A) of this section by a non-U.S. digital asset broker must nevertheless be considered to be effected by that broker at an office inside the United States if, before the sale is effected, the broker collects documentation or has other information that is part of the broker's account information for the customer (including information collected with respect to the customer pursuant to the broker's compliance with applicable AML program requirements that show any of the following indicia (referred to in this paragraph (g)(4) as U.S. indicia)):

(1) A customer's communication with the broker using a device (such as a computer, smart phone, router, or server) that the broker has associated with an internet Protocol (IP) address or other electronic address indicating a location within the United States;

(2) A permanent residence address (as defined in § 1.1441–1(c)(38)) in the U.S. or a U.S. mailing address for the customer, a current U.S. telephone number and no non-U.S. telephone number for the customer, or the broker's classification of the customer as a U.S. person in its records;

(3) Cash paid to the customer by a transfer of funds into an account maintained by the customer in the United States, or cash deposited with the broker by a transfer of funds from such an account, or if the customer's account is linked to a bank or financial account maintained within the United States. For purposes of the preceding sentence, an account maintained by the customer in the United States includes an account at a bank or financial institution maintained within the United States but does not include an international account as defined in § 1.6049–5(e)(4);

(4) One or more digital asset deposits into the customer's account at the broker were transferred from, or one or more digital asset withdrawals from the customer's account were transferred to, a digital asset broker that the broker knows or has reason to know to be organized within the United States, or the customer's account is linked to a digital asset broker that the broker knows or has reason to know to be organized within the United States; or

(5) An unambiguous indication of a U.S. place of birth for the customer.

(C) *Consequences of treatment as sale effected at an office inside the United States.* If a non-U.S. digital asset broker subject to the rules of this paragraph (g)(4)(iv) is required to treat a sale as effected at an office inside the United States pursuant to paragraph (g)(4)(iv)(B) of this section, the broker is required to report the sale to the extent required by paragraph (c) of this section unless the broker determines the customer is an exempt foreign person. See, however, § 31.3406(g)–1(e) of this chapter for an exception to backup withholding on gross proceeds from a sale of a digital asset effected by a non-U.S. digital asset broker that is not conducting activities as an MSB unless the broker has actual knowledge that the payee is a U.S. person. The broker can treat the customer as an exempt foreign person if it obtains documentation permitted under paragraph (g)(4)(iv)(D) of this section and applies the rules of

paragraphs (g)(4)(vi)(A) through (D) of this section with respect to the documentation, or when the broker may treat the customer as an exempt foreign person under an applicable presumption rule as provided in paragraph (g)(4)(vi)(A)(2) of this section. In applying paragraph (g)(4)(vi)(B) (relating to reliance on beneficial owner withholding certificates) or (C) of this section (relating to reliance on documentary evidence), however, the broker is not required to treat documentation as incorrect or unreliable solely as a result of the U.S. indicia that required the broker to obtain such documentation with respect to a customer. See paragraph (g)(4)(vi)(E) of this section for the extent to which a non-U.S. digital asset broker subject to the rules of this paragraph (g)(4)(iv) may treat a customer as an exempt foreign person with respect to a payment treated as made to a foreign intermediary, flow-through entity or certain U.S. branches. See paragraph (g)(4)(vi)(F) of this section for a transition rule for preexisting accounts.

(D) *Type of documentation that may be obtained where there are U.S. indicia—(1) Collection of U.S. indicia other than U.S. place of birth.* A non-U.S. digital asset broker subject to the rules of this paragraph (g)(4)(iv) that is considered to effect a sale at an office inside the United States under paragraph (g)(4)(iv)(B) of this section due to the collection of a document or possession of other information showing any of the U.S. indicia that is described in paragraphs (g)(4)(iv)(B)(1) through (4) of this section may treat the customer as an exempt foreign person provided that, prior to the payment to such customer, the broker has either a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section for the customer, or both—

(i) The documentary evidence described in § 1.1471–3(c)(5)(i) to support the customer's foreign status; and

(ii) A written representation from the customer stating that: "I, the account owner represent and warrant that I am not a U.S. person for purposes of U.S. Federal income tax and that I am not acting for, or on behalf of, a U.S. person. I understand that a false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law. If my tax status changes and I become a U.S. citizen or a resident, I agree to notify [insert broker's name] within 30 days."

(2) *Collection of information showing U.S. place of birth.* A non-U.S. digital asset broker subject to the rules of this paragraph (g)(4)(iv) that is considered to

effect a sale at an office inside the United States due to the collection of a document or possession of information showing the U.S. indicia that is described in paragraph (g)(4)(iv)(B)(5) of this section with respect to a customer may treat the customer as an exempt foreign person if it obtains documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing the customer's citizenship in a country other than the United States and either—

(i) A copy of the customer's Certificate of Loss of Nationality of the United States; or

(ii) A valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section for the customer and a reasonable written explanation of the customer's renunciation of U.S. citizenship or the reason the customer did not obtain U.S. citizenship at birth.

(v) *Rules for CFC digital asset brokers and non-U.S. digital asset brokers conducting activities as MSBs.* A CFC digital asset broker or a non-U.S. digital asset broker that is conducting activities as an MSB as described in paragraph (g)(4)(i)(D) of this section with respect to a sale of a digital asset must apply the rules in paragraph (g)(4)(ii) of this section to that sale as if that broker were a U.S. digital asset broker to determine the location where the sale is effected and the foreign status of the customer.

(vi) *Rules applicable to brokers that obtain or are required to obtain documentation for a customer and presumption rules—(A) In general.* Paragraph (g)(4)(vi)(A)(1) of this section describes rules applicable to documentation permitted to be used under this paragraph (g)(4) to determine whether a customer may be treated as an exempt foreign person. Paragraph (g)(4)(vi)(A)(2) of this section provides presumption rules that apply if the broker does not have documentation on which the broker may rely to determine a customer's status. Paragraph (g)(4)(vi)(A)(3) of this section provides a grace period for obtaining documentation in circumstances where there are indicia that a customer is a foreign person. Paragraph (g)(4)(vi)(A)(4) of this section provides rules relating to blocked income. Paragraph (g)(4)(vi)(B) of this section provides rules relating to reliance on beneficial ownership withholding certificates to determine whether a customer is an exempt foreign person. Paragraph (g)(4)(vi)(C) of this section provides rules relating to reliance on documentary evidence to determine whether a customer is an exempt foreign person. Paragraph (g)(4)(vi)(D) of this section provides rules relating to customers that are joint

account holders. Paragraph (g)(4)(vi)(E) of this section provides special rules for a customer that is a foreign intermediary, a flow-through entity, or certain U.S. branches. Paragraph (g)(4)(vi)(F) of this section provides a transition rule for obtaining documentation to treat a customer as an exempt foreign person.

(1) *Documentation of foreign status.* A broker may treat a customer as an exempt foreign person when the broker obtains valid documentation permitted to support a customer's foreign status as described in paragraph (g)(4)(ii), (iii) or (iv) of this section that the broker can reliably associate (within the meaning of § 1.1441–1(b)(2)(vii)(A)) with a payment of gross proceeds, provided that the broker is not required to treat the documentation as unreliable or incorrect under paragraph (g)(4)(vi)(B) or (C) of this section. For rules regarding the validity period of a withholding certificate or documentary evidence, retention of documentation, electronic transmission of documentation, information required to be provided on a withholding certificate, who may sign a withholding certificate, when a substitute withholding certificate may be accepted, and general reliance rules on documentation (including when a prior version of a withholding certificate may be relied upon), the provisions of §§ 1.1441–1(e)(4)(i) through (ix) and 1.6049–5(c)(1)(ii) apply, with the following modifications—

(i) The provisions in § 1.1441–1(e)(4)(i) through (ix) apply by substituting the terms “broker” and “customer” for the terms “withholding agent” and “payee,” respectively, and disregarding the fact that the provisions under § 1.1441–1 apply only to amounts subject to withholding under chapter 3 of the Code;

(ii) The provisions of § 1.6049–5(c)(1)(ii) (relating to general requirements for when a payor may rely upon and must maintain documentary evidence with respect to a payee) apply by substituting the terms “broker” and “customer” for the terms “payor” and “payee,” respectively;

(iii) To apply § 1.1441–1(e)(4)(viii) (reliance rules for documentation), the reference to § 1.1441–7(b)(4) through (6) is replaced by the provisions of paragraph (g)(4)(vi)(B) or (C) of this section, as applicable, and the reference to § 1.1441–6(c)(2) is disregarded; and

(iv) To apply § 1.1441–1(e)(4)(viii) (reliance rules for documentation) and (ix) (certificates to be furnished to a withholding agent for each obligation unless an exception applies), the provisions applicable to a financial institution apply to a broker described

in this paragraph (g)(4) whether or not it is a financial institution.

(2) *Presumption rules.* If a broker is not permitted to treat a customer as an exempt foreign person under paragraph (g)(4)(vi)(A)(1) of this section because the broker has not collected the documentation permitted to be collected under this paragraph (g)(4) or is not permitted to rely on the documentation it has collected, the broker may determine the classification of a customer (as an individual, entity, etc.) by applying the presumption rules of § 1.1441–1(b)(3)(ii), except that references in § 1.1441–1(b)(3)(ii)(B) to exempt recipient categories under section 6049 are replaced by the exempt recipient categories in paragraph (c)(3)(i) of this section. With respect to a customer that the broker has classified as an individual, a broker that is a U.S. digital asset broker or that is a CFC digital asset broker or a non-U.S. digital asset broker that in each case is conducting activities as an MSB must treat the customer as a U.S. person. A broker that is a CFC digital asset broker or a non-U.S. digital asset broker that in each case is not conducting activities as an MSB is required to treat a customer that it has classified as an individual as a U.S. person only when the broker has documentation or other information that is part of the broker's account information for the customer (including information collected with respect to the customer pursuant to the broker's compliance with applicable AML program requirements) or a withholding certificate that show any of the U.S. indicia described in paragraphs (g)(4)(iv)(B)(1) through (5) of this section. With respect to a customer that the broker has classified as an entity, the broker may determine the status of the customer as U.S. or foreign by applying §§ 1.1441–1(b)(3)(iii)(A) and 1.1441–5(d) and (e)(6), except that § 1.1441–1(b)(3)(iii)(A)(1)(iv) does not apply. Notwithstanding the preceding provisions of this paragraph (g)(4)(vi)(A)(2), a broker may not treat a customer as a foreign person under this paragraph (g)(4)(vi)(A)(2) if the broker has actual knowledge that the customer is a U.S. person. For presumption rules to treat a payment as made to an intermediary or flow-through entity and whether the payment is also treated as made to an exempt foreign person, see paragraph (g)(4)(vi)(E) of this section.

(3) *Grace period to collect valid documentation in the case of indicia of a foreign customer.* If a broker has not obtained valid documentation that it can reliably associate with a payment of gross proceeds to a customer to treat the customer as an exempt foreign person,

or if the broker is unable to rely upon documentation under the rules described in paragraph (g)(4)(vi)(A)(1) of this section or is required to treat documentation obtained for a customer as unreliable or incorrect (after applying paragraphs (g)(4)(vi)(B) and (C) of this section), the broker may apply the grace period described in § 1.6049-5(d)(2)(ii) (generally allowing in certain circumstances a payor to treat an account as owned by a foreign person for a 90 day period). In applying § 1.6049-5(d)(2)(ii), references to “securities described in § 1.1441-6(c)(2)” are replaced with “digital assets.”

(4) *Blocked income.* A broker may apply the provisions in paragraph (g)(1)(iii) of this section to treat a customer as an exempt foreign person when the proceeds are blocked income as described in § 1.1441-2(e)(3).

(B) *Reliance on beneficial ownership withholding certificates to determine foreign status.* For purposes of determining whether a customer may be treated as an exempt foreign person under this section, except as otherwise provided in this paragraph (g)(4)(vi)(B), a broker may rely on a beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section unless the broker has actual knowledge or reason to know that the certificate is unreliable or incorrect. Reason to know is limited to when the broker has in its account opening files or other files pertaining to the account (account information), including documentation collected for purposes of an AML program or the beneficial owner withholding certificate, any of the U.S. indicia set forth in paragraphs (g)(4)(iv)(B)(1) through (5) of this section. A broker will not be considered to have reason to know that a certificate is unreliable or incorrect based on documentation collected for an AML program until the date that is 30 days after the account is opened. A broker may rely, however, on a beneficial owner withholding certificate notwithstanding the presence of any of the U.S. indicia set forth in paragraphs (g)(4)(iv)(B)(1) through (5) of this section on the withholding certificate or in the account information for a customer in the following circumstances:

(1) With respect to any of the U.S. indicia described in paragraphs (g)(4)(iv)(B)(1) through (4) of this section, the broker has in its possession for a customer who is an individual documentary evidence establishing foreign status (as described in § 1.1471-3(c)(5)(i)) that does not contain a U.S. address and the customer provides the broker with a reasonable explanation (as

defined in § 1.1441-7(b)(12)) from the customer, in writing, supporting the claim of foreign status. Notwithstanding the preceding sentence, in a case in which the broker classified an individual customer as a U.S. person in its account information, the broker may treat the customer as an exempt foreign person only if it has in its possession documentary evidence described in § 1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States. In the case of a customer that is an entity, the broker may treat the customer as an exempt foreign person if it has in its possession documentation establishing foreign status that substantiates that the entity is actually organized or created under the laws of a foreign country. Additionally, regardless of whether the customer is an individual or an entity, a broker may rely on a beneficial owner withholding certificate for purposes of this paragraph (g)(4)(vi)(B)(1) when—

(i) The broker is a non-U.S. person;

(ii) The broker is required to report the payment made to the customer annually on a tax information statement that is filed with the tax authority of the country where the customer is resident as part of that country’s resident reporting requirements; and

(iii) That country has a tax information exchange agreement or income tax treaty in effect with the United States.

(2) With respect to the U.S. indicia described in paragraph (g)(4)(iv)(B)(5) of this section, the broker has in its possession documentary evidence described in § 1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States and the broker has in its possession either a copy of the customer’s Certificate of Loss of Nationality of the United States or a reasonable written explanation of the customer’s renunciation of U.S. citizenship or the reason the customer did not obtain U.S. citizenship at birth.

(C) *Reliance on documentary evidence to determine foreign status.* For purposes of treating a customer as an exempt foreign person under this section, except as otherwise provided in this paragraph (g)(4)(vi)(C), a broker may rely on documentary evidence described in § 1.1471-3(c)(5)(i) (when the broker is otherwise permitted to do so under paragraph (g)(4)(iii)(B) or (g)(4)(iv)(B) of this section) unless the broker has actual knowledge or reason to know that the documentary evidence is unreliable or incorrect. Reason to know is limited to when the broker has in its account opening files or other files pertaining to the account, including documentation collected for purposes of an AML

program, any of the U.S. indicia set forth in paragraphs (g)(4)(iv)(B)(1) through (5) of this section. A broker will not be considered to have reason to know that documentary evidence is unreliable or incorrect based on documentation collected for an AML program until the date that is 30 days after the account is opened. A broker may rely, however, on documentary evidence notwithstanding the presence of any of U.S. indicia set forth in paragraphs (g)(4)(iv)(B)(1) through (5) of this section on the documentary evidence or in the account information for a customer in the following circumstances:

(1) With respect to any of the U.S. indicia described in paragraphs (g)(4)(iv)(B)(1) through (4) of this section, the broker has in its possession for a customer who is an individual additional documentary evidence establishing foreign status (as described in § 1.1471-3(c)(5)(i)) that does not contain a U.S. address and the customer provides the broker with a reasonable explanation (as defined in § 1.1441-7(b)(12)), in writing, supporting the claim of foreign status. In the case of a customer that is an entity, the broker may treat the customer as an exempt foreign person if the broker has in its possession documentation establishing foreign status that substantiates that the entity is actually organized or created under the laws of a foreign country. In lieu of the documentary evidence or documentation described in this paragraph (g)(4)(vi)(C)(1), a broker may treat a customer (regardless of whether an individual or entity) as an exempt foreign person if—

(i) The broker has in its possession a beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section for the customer that contains a permanent residence address (as defined in § 1.1441-1(c)(38)) outside the United States and a mailing address outside the United States (or if a mailing address is inside the United States the customer provides a reasonable explanation in writing or additional documentary evidence sufficient to establish the customer’s foreign status); or

(ii) The broker is a non-U.S. person and the conditions specified in paragraphs (g)(4)(vi)(B)(1)(ii) and (iii) of this section are satisfied.

(2) With respect to the U.S. indicia described in paragraph (g)(4)(iv)(B)(5) of this section, the broker has in its possession documentary evidence described in § 1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States and either—

(j) A copy of the customer's Certificate of Loss of Nationality of the United States; or

(ii) A valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section for the customer and a reasonable written explanation of the customer's renunciation of U.S. citizenship or the reason the customer did not obtain U.S. citizenship at birth.

(D) *Joint owners.* In the case of amounts paid to customers that are joint account holders for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (g)(4), such amounts are presumed made to U.S. payees who are not exempt recipients (as defined in paragraph (c)(3)(i)(B) of this section) when the conditions of paragraph (g)(3)(i) of this section are met.

(E) *Special rules for customer that is a foreign intermediary, a flow-through entity, or certain U.S. branches—(1) Foreign intermediaries.* For purposes of this paragraph (g)(4), a broker may determine the status of a customer as a foreign intermediary (as defined in § 1.1441-1(c)(13)) by reliably associating (under § 1.1441-1(b)(2)(vii)) a payment of gross proceeds with a valid foreign intermediary withholding certificate described in § 1.1441-1(e)(3)(ii) or (iii), without regard to whether the withholding certificate contains a withholding statement and withholding certificates or other documentation for each account holder. A broker that is a U.S. digital asset broker and a non-U.S. digital asset broker or a CFC digital asset broker that in each case is conducting activities as an MSB, that does not have a valid foreign intermediary withholding certificate or a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section for the customer applies the presumption rules in § 1.1441-1(b)(3)(ii)(B) (which would presume that the entity is not an intermediary). A broker that is a non-U.S. digital asset broker or a CFC digital asset broker that in each case is not conducting activities as an MSB may alternatively determine the status of a customer as an intermediary by presuming that the entity is an intermediary to the extent permitted by § 1.1441-1(b)(3)(ii)(C) (providing rules treating certain payees as not beneficial owners), without regard to the requirement in § 1.1441-1(b)(3)(ii)(C) that any documentation be furnished with respect to an offshore obligation, and applying § 1.1441-1(b)(3)(ii)(C) by substituting the references to exempt recipient categories under section 6049 with the

exempt recipient categories in paragraph (c)(3)(i) of this section. See § 1.1441-1(b)(3)(iii) for presumption rules relating to the U.S. or foreign status of a customer that is presumed to be an intermediary. In the case of a payment of gross proceeds from a sale of a digital asset that a broker treats as made to a foreign intermediary under this paragraph (g)(4)(vi)(E)(1), the broker must treat the foreign intermediary as an exempt foreign person except to the extent required by paragraph (g)(3)(iv) of this section (rules for when a broker is required to treat a payment as made to a U.S. person that is not an exempt recipient under paragraph (c)(3) of this section and for reporting that may be required by the foreign intermediary).

(2) *Foreign flow-through entities.* For purposes of this paragraph (g)(4), a broker may determine the status of a customer as a foreign flow-through entity (as defined in § 1.1441-1(c)(23)) by reliably associating (under § 1.1441-1(b)(2)(vii)) a payment of gross proceeds with a valid foreign flow-through withholding certificate described in § 1.1441-5(c)(3)(iii) (relating to nonwithholding foreign partnerships) or (e)(5)(iii) (relating to foreign simple trusts and foreign grantor trusts that are nonwithholding foreign trusts), without regard to whether the withholding certificate contains a withholding statement and withholding certificates or other documentation for each partner. A broker may alternatively determine the status of a customer as a foreign flow-through entity based on the presumption rules in §§ 1.1441-1(b)(3)(ii)(B) (relating to entity classification) and 1.1441-5(d) (relating to partnership status as U.S. or foreign) and (e)(6) (relating to the status of trusts and estates as U.S. or foreign). In the case of a payment of gross proceeds from a sale of a digital asset that a broker treats as made to a foreign flow-through entity under this paragraph (g)(4)(vi)(E)(2), the broker must treat the foreign flow-through entity as an exempt foreign person except to the extent required by § 1.6049-5(d)(3)(ii) (rules for when a broker is required to treat a payment as made to a U.S. person other than an exempt recipient (substituting “exempt recipient under § 1.6045-1(c)(3)” for “exempt recipient described in § 1.6049-4(c)”).

(3) *U.S. branches that are not beneficial owners.* For purposes of this paragraph (g)(4), a broker may determine the status of a customer as a U.S. branch (as described in § 1.1441-1(b)(2)(iv)) that is not a beneficial owner (as defined in § 1.1441-1(c)(6)) of a payment of gross proceeds by reliably associating (under § 1.1441-1(b)(2)(vii))

the payment with a valid U.S. branch withholding certificate described in § 1.1441-1(e)(3)(v) without regard to whether the withholding certificate contains a withholding statement and withholding certificates or other documentation for each person for whom the branch receives the payment. If a U.S. branch certifies on a U.S. branch withholding certificate described in the preceding sentence that it agrees to be treated as a U.S. person under § 1.1441-1(b)(2)(iv)(A), the broker provided the certificate must treat the U.S. branch as an exempt foreign person. If a U.S. branch does not certify as described in the preceding sentence on its U.S. branch withholding certificate, the broker provided the certificate must treat the U.S. branch as an exempt foreign person except to the extent required by paragraph (g)(3)(iv) of this section (rules for when a broker is required to treat a payment as made to a U.S. person that is not an exempt recipient under paragraph (c)(3) of this section and for reporting that may be required by the U.S. branch). In a case in which a broker cannot reliably associate a payment of gross proceeds made to a U.S. branch with a U.S. branch withholding certificate described in § 1.1441-1(e)(3)(v) or a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section, see paragraph (g)(4)(vi)(E)(1) of this section for determining the status of the U.S. branch as a beneficial owner or intermediary.

(F) *Transition rule for obtaining documentation to treat a customer as an exempt foreign person.* Notwithstanding the rules of this paragraph (g)(4) for determining the status of a customer as an exempt foreign person, for a sale of a digital asset effected before January 1, 2026, that was held in an account established for the customer by a broker before January 1, 2025, the broker may treat the customer as an exempt foreign person provided that the customer has not previously been classified as a U.S. person by the broker, and the information that the broker has in the account opening files or other files pertaining to the account, including documentation collected for purposes of an AML program, includes a residence address for the customer that is not a U.S. address.

(vii) *Barter exchange.* No return of information is required by a barter exchange under the rules of paragraphs (e) and (f) of this section with respect to a client or a member that the barter exchange may treat as an exempt foreign person pursuant to the procedures

described in paragraph (g)(4) of this section.

\* \* \* \* \*

(6) *Examples.* The application of the provisions of paragraph (g)(4) of this section with respect to sales of digital assets may be illustrated by the following examples. All events and transactions in the following examples occur after the applicability date set forth in paragraph (q) of this section.

(i) *Example 1: Foreign digital asset broker conducting activities as an MSB—(A) Facts.* Foreign corporation (FKS) owns and operates several digital asset kiosks physically located within the United States. FKS is not a controlled foreign corporation within the meaning of § 1.6049–5(c)(5)(i)(C). In addition to the digital asset kiosks located in the United States, FKS owns and operates an online digital asset trading platform and provides digital asset hosted wallet services for online customers who want to purchase, hold, and exchange various digital assets for cash or other digital assets. FKS does not own or operate kiosks located outside of the United States. FKS is registered as a money service business (MSB) with the Department of the Treasury.

(1) *Customer L: No withholding certificate.* L, an individual who is a non-U.S. resident visiting the United States, utilizes one of FKS's digital asset kiosks located in the United States in order to effect a sale of digital asset DE for cash. L has not previously done business with FKS and does not hold digital assets in an online account with FKS. L represents to FKS that L is a foreign individual. FKS requests a beneficial owner withholding certificate from L as part of FKS's procedures for effecting transactions with customers that use FKS's digital asset kiosks located in the United States. L does not provide FKS with a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section. FKS executes the sale of L's DE on behalf of L and pays the gross proceeds to L.

(2) *Customer L: Withholding certificate.* The facts are the same as in paragraph (g)(6)(i)(A)(1) of this section, except that prior to the payment of sale proceeds, L provides FKS with a beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section that FKS may treat as valid under § 1.1441–1(e)(2)(ii) and that satisfies the requirements of paragraph (g)(4)(vi) of this section.

(3) *Customer J.* J is an individual that opened an account with FKS to use FKS's online digital asset trading

platform. As part of performing FKS's account opening procedures FKS collected from J a copy of a driver's license issued by country Y and a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section. Shortly after opening J's account, FKS obtains information showing that J's communications to FKS come from an IP address located within the United States that becomes part of FKS's account file for J. After obtaining the information described in the preceding sentence, FKS effects a sale of digital asset DE for cash on behalf of J, and credits the gross proceeds to J's account with FKS.

(B) *Broker's status and requirements.* FKS is a non-U.S. digital asset broker under paragraph (g)(4)(i)(C) of this section because it is a non-U.S. payor under § 1.6049–5(c)(5) that effects sales of digital assets on behalf of customers. Because FKS is registered as an MSB with the Department of the Treasury, FKS is conducting activities as an MSB under paragraph (g)(4)(i)(D) of this section with respect to its sales of digital assets. As a result, FKS is subject to the requirements of a U.S. digital asset broker under paragraph (g)(4)(ii) of this section with respect to those sales rather than the requirements of a non-U.S. digital asset broker under paragraph (g)(4)(iv) of this section (which apply to a non-U.S. digital asset broker not conducting activities as an MSB). Moreover, FKS is subject to the requirements of paragraph (g)(4)(ii) of this section with respect to all sales of digital assets it effects for its customers because FKS does not own or operate any digital asset kiosks physically located outside of the United States. See paragraphs (g)(4)(i)(D) and (E) of this section.

(C) *Broker's obligation to report—(1) Customer L: No withholding certificate.* Because FKS must apply the requirements of paragraph (g)(4)(ii) of this section with respect to L's sale, FKS must make an information return for the sale under section 6045 unless FKS can treat L as an exempt recipient under paragraph (c)(3) of this section (which applies to only certain specified entities) or as an exempt foreign person. Because FKS has not collected documentation for L on which FKS may rely to treat L as an exempt foreign person, FKS must apply the presumption rules in paragraph (g)(4)(vi)(A)(2) of this section. FKS presumes that L is an individual because L appears to be an individual based on L's name in the customer file. As an individual, L cannot be treated as an exempt recipient under paragraph (c)(3) of this section. Because FKS has

classified L as an individual and FKS is a non-U.S. digital asset broker conducting activities as an MSB that is subject to the rules in paragraph (g)(4)(ii) of this section with respect to L's sale, FKS must treat L as a U.S. person under the presumption rule applicable to individuals described in paragraph (g)(4)(vi)(A)(2) of this section. Thus, FKS may not treat L as an exempt foreign person with respect to L's sale of digital asset DE and must make an information return for the sale under section 6045. See paragraph (r) of this section for cross references to requirements for backup withholding under section 3406 that may apply to a sale required to be reported under section 6045. In connection with applying the requirements for backup withholding, because sales of DE effected by FKS for L are considered effected at an office inside the United States under paragraph (g)(4)(ii)(B) of this section, FKS may not apply the exception to backup withholding provided in § 31.3406(g)–1(e) of this chapter to the sale effected on behalf of L.

(2) *Customer L: Withholding certificate.* As provided in paragraph (g)(4)(ii)(B) of this section, FKS may treat L as an exempt foreign person because FKS has a valid withholding certificate for L described in paragraph (g)(4)(ii)(B) of this section that satisfies the requirements of paragraph (g)(4)(vi) of this section. Accordingly, FKS is not required to make an information return under section 6045 with respect to L's sale.

(3) *Customer J.* As described in paragraph (g)(6)(i)(B) of this section, FKS must apply the requirements of paragraph (g)(4)(ii) of this section with respect to J's sale. Although FKS collected a valid beneficial owner withholding certificate with respect to J in accordance with paragraph (g)(4)(ii)(B) of this section, FKS has reason to know that the withholding certificate is incorrect or unreliable because FKS has U.S. indicia described in paragraph (g)(4)(iv)(B)(1) of this section in J's account file. FKS may continue to rely on the withholding certificate if FKS obtains from J documentary evidence establishing foreign status (as described in § 1.1471–3(c)(5)(i)) that does not contain a U.S. address and a reasonable explanation (as defined in § 1.1441–7(b)(12)) from J, in writing, supporting the claim of foreign status. Alternatively, FKS may rely on the withholding certificate if FKS reports J to country Y and the conditions specified in paragraphs (g)(4)(vi)(B)(1)(ii) and (iii) of this section are satisfied. FKS has a driver's license

for J issued by country Y but does not have the reasonable explanation. FKS does not report J to country Y or satisfy the other conditions in paragraphs (g)(4)(vi)(B)(1)(ii) and (iii) of this section. Therefore, FKS may not rely on the beneficial owner withholding certificate to treat J as an exempt foreign person. However, FKS may rely on the grace period described in paragraph (g)(4)(vi)(A)(3) of this section (which in turn references the requirements of § 1.6049–5(d)(2)(ii)) to treat J as an exempt foreign person for a 90-day period because FKS has a withholding certificate for J that is no longer reliable (other than because the validity period has expired), provided that the remaining balance of J's account with FKS is equal to or greater than the statutory backup withholding rate applied to the amount of gross proceeds credited to the account. See § 1.6049–5(d)(2)(ii). The 90-day grace period begins on the date that the withholding certificate may no longer be relied upon because of the communications from a U.S. IP address. If the sale is effected after the end of the grace period, FKS must apply the presumption rules in paragraph (g)(4)(vi)(A)(2) of this section. FKS may presume that J is an individual because FKS has a driver's license for J. As an individual, J cannot be treated as an exempt recipient under paragraph (c)(3) of this section. FKS must treat J as a U.S. person under the presumption rules applicable to individuals in paragraph (g)(4)(vi)(A)(2) of this section. Thus, FKS may not treat J as an exempt foreign person with respect to J's sale of digital asset DE and must make an information return for the sale under section 6045. See paragraph (r) of this section for cross references to requirements for backup withholding under section 3406 that may apply to a sale required to be reported under section 6045. In connection with applying the requirements for backup withholding, because sales of DE effected by FKS for J are considered effected at an office inside the United States under paragraph (g)(4)(ii)(B) of this section, FKS may not apply the exception to backup withholding provided in § 31.3406(g)–1(e) of this chapter to the sale effected on behalf of J.

(ii) *Example 2: Foreign digital asset broker registered as MSB effecting sales at digital asset kiosks located outside the United States—(A) Facts.* The facts are the same as in paragraph (g)(6)(i)(A) of this section (the facts in *Example 1*), except that FKS also effects sales of digital assets for customers through digital asset kiosks physically located in

country Y that FKS owns and operates. FKS is not required to implement an AML program, file reports, or otherwise comply with requirements for MSBs under the Bank Secrecy Act with respect to sales effected at digital asset kiosks physically located in country Y that FKS owns and operates.

(1) *Customer C.* C, an individual, utilizes a digital asset kiosk operated by FKS in country Y to sell C's digital asset DE for cash. C does not have any interaction with other parts of FKS's business (such as FKS's online digital asset trading platform or hosted wallet service). As part of FKS's documentation procedures, including the performance of local country AML program requirements, FKS collects from C a copy of C's driver's license issued by country Y and a copy of C's passport issued by country Y. FKS does not have in its account file for C any document or other information with respect to C showing any of the U.S. indicia described in paragraphs (g)(4)(iv)(B)(1) through (5) of this section.

(2) *Customer K.* K, an individual, utilizes a digital asset kiosk operated by FKS in country Y to sell K's digital asset DE for cash. As part of FKS's documentation procedures, including the performance of local country AML program requirements, FKS collects from K an address in country Y, a copy of K's driver's license issued by country Y, and a copy of K's U.S. passport that indicates a place of birth for K in the United States.

(B) *Broker's status and requirements.* As indicated in paragraph (g)(6)(i)(B) of this section (*Example 1*), FKS is a non-U.S. digital asset broker under paragraph (g)(4)(i)(C) of this section that is conducting activities as an MSB under paragraph (g)(4)(i)(D) of this section. As a result, FKS is subject to the requirements of paragraph (g)(4)(ii) of this section except with respect to sales it effects through foreign kiosks that are described in paragraph (g)(4)(i)(E) of this section since FKS is not required under the Bank Secrecy Act to implement an AML program, file reports, or otherwise comply with requirements for MSBs under the Bank Secrecy Act with respect to sales effected at the kiosks. Accordingly, FKS is subject to the requirements of a non-U.S. digital asset broker under paragraph (g)(4)(iv) of this section with respect to sales that it effects through its foreign kiosks.

(C) *Broker's obligation to report—(1) Customer C.* Because FKS is subject to the requirements of paragraph (g)(4)(iv) of this section with respect to C's sale at FKS's foreign kiosk and because none of the documents or other information

in FKS's account file for C include any of the U.S. indicia described in paragraphs (g)(4)(iv)(B)(1) through (5) of this section, FKS may treat the sale of digital asset DE on behalf of C as effected at an office outside the United States under paragraph (g)(4)(iv)(A) of this section. Accordingly, FKS is not considered a broker under paragraph (a)(1) of this section with respect to the sale, and FKS is therefore not required to make an information return under section 6045 with respect to C's sale. The result would be the same regardless of whether FKS collected documentation for C, provided that information in the account file does not show U.S. indicia.

(2) *Customer K.* FKS is subject to the requirements of paragraph (g)(4)(iv) of this section with respect to K's sale at FKS's foreign kiosk. FKS collected an unambiguous indication of a U.S. place of birth for K (that is, K's U.S. passport showing a U.S. place of birth) in performing its documentation procedures. Accordingly, FKS has U.S. indicia described in paragraph (g)(4)(iv)(B)(5) of this section as part of its account information for K and must treat K's sale of DE as effected inside the United States under paragraph (g)(4)(iv)(B) of this section. As a result, FKS is treated as a broker under paragraph (a)(1) of this section with respect to K's sale and must apply the requirements of paragraph (g)(4)(iv)(C) of this section to determine whether it must report K's sale under section 6045. Under paragraph (g)(4)(iv)(D)(2) of this section, FKS may treat K as an exempt foreign person if FKS collects, prior to making the payment to K, documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing K's citizenship in a country other than the United States and either a copy of K's Certificate of Loss of Nationality of the United States, or both a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section for K and a reasonable written explanation of K's renunciation of U.S. citizenship or the reason K did not obtain U.S. citizenship at birth. FKS does not have the documentary evidence described in the preceding sentence for K. FKS must therefore apply the presumption rules in paragraph (g)(4)(vi)(A)(2) of this section to determine whether it may treat K as an exempt foreign person. FKS may presume that K is an individual because FKS has a driver's license for K. As an individual, K cannot be treated as an exempt recipient under paragraph (c)(3) of this section. FKS must treat K as a U.S. person under the presumption

rules applicable to individuals in paragraph (g)(4)(vi)(A)(2) of this section because FKS has U.S. indicia associated with K's account information. Therefore, FKS must make an information return under section 6045 with respect to K's sale. However, FKS has no obligation to backup withhold on the proceeds from the sale based on the exemption under § 31.3406(g)–1(e) of this chapter, unless FKS has actual knowledge that K is a U.S. person that is not an exempt recipient under paragraph (c)(3) of this section.

(iii) *Example 3: CFC digital asset broker that is not conducting activities as an MSB—(A) Facts.* Corporation G (GFC) is a controlled foreign corporation under § 1.6049–5(c)(5)(i)(C) that operates a business as an online digital asset broker. Several of GFC's customers have online accounts with GFC through which they effect sales of digital assets. GFC does not register as an MSB with the Department of the Treasury.

(B) *Broker's status and requirements.* Because GFC is a controlled foreign corporation under § 1.6049–5(c)(5)(i)(C) that effects sales of digital assets on behalf of customers, GFC is a CFC digital asset broker as defined in paragraph (g)(4)(i)(B) of this section. Because GFC does not register as an MSB with the Department of the Treasury, GFC is not conducting activities as an MSB under paragraph (g)(4)(i)(D) of this section. As a result, GFC is subject to the requirements of a CFC digital asset broker under paragraph (g)(4)(iii) of this section with respect to sales of digital assets it effects for its customers.

(C) *Broker's obligation to report.* Because GFC is subject to the requirements of a CFC digital asset broker under paragraph (g)(4)(iii) of this section, GFC must make an information return for the sales it effects for its customers under section 6045 unless GFC can treat a customer as an exempt recipient under paragraph (c)(3) of this section or an exempt foreign person. Under paragraph (g)(4)(iii)(B) of this section, GFC may treat a customer (other than a foreign intermediary, foreign flow-through entity, or certain U.S. branches) as an exempt foreign person by obtaining with respect to the customer either a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section or the documentary evidence described in § 1.1471–3(c)(5)(i) supporting the customer's foreign status and upon which GFC may rely, pursuant to the requirements of paragraph (g)(4)(vi) of this section. If GFC does not obtain the withholding certificate or documentary evidence described in the preceding

sentence prior to a customer's sale, GFC may be permitted under a presumption rule as provided in paragraph (g)(4)(vi)(A)(2) of this section to treat a customer as an exempt foreign person (unless GFC has actual knowledge that the customer is a U.S. person). GFC may, instead of applying the earlier-described provisions of this paragraph (g)(6)(iii)(C), treat a customer as a foreign intermediary, foreign flow-through entity, or certain U.S. branches and an exempt foreign person when it is permitted to do under paragraph (g)(4)(vi)(E) of this section. As GFC's sales are considered effected at an office outside of the United States under paragraph (g)(4)(iii)(A) of this section, GFC has no obligation to backup withhold on the proceeds from a reportable sale based on the exemption under § 31.3406(g)–1(e) of this chapter, unless GFC has actual knowledge that customer is a U.S. person that is not an exempt recipient under paragraph (c)(3) of this section.

(j) *Time and place for filing; cross-references to penalty and magnetic media filing requirements.* Forms 1096 and 1099 required under this section shall be filed after the last calendar day of the reporting period elected by the broker or barter exchange and on or before February 28 of the following calendar year with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1096. For a digital asset sale effected prior to January 1, 2025, for which a broker chooses under paragraph (d)(2)(iii)(B) of this section to file an information return, Form 1096 and the Form 1099–B, "Proceeds From Broker and Barter Exchange Transactions," or if available the form prescribed by the Secretary pursuant to paragraph (d)(2)(i)(B) of this section, must be filed on or before February 28 of the calendar year following the year of that sale. See paragraph (l) of this section for the requirement to file certain returns on magnetic media. For provisions relating to the penalty provided for the failure to file timely a correct information return under section 6045(a), see § 301.6721–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

\* \* \* \* \*

(m) \* \* \*

(1) *In general.* This paragraph (m) provides rules for a broker to determine and report the information required under this section for an option that is

a covered security under paragraph (a)(15)(i)(E) or (H) of this section.

(2) \* \* \*  
(ii) \* \* \*

(C) Notwithstanding paragraph (m)(2)(i) of this section, if an option is an option on a digital asset or an option on derivatives with a digital asset as an underlying property, paragraph (m) of this section applies to the option if it is granted or acquired on or after January 1, 2023.

\* \* \* \* \*

(q) *Applicability date.* Except as otherwise provided in this paragraph (q) or paragraphs (m)(2)(ii) and (n)(12)(ii) of this section, this section applies on or after January 6, 2017. (For rules that apply after June 30, 2014, and before January 6, 2017, see § 1.6045–1 in effect and contained in 26 CFR part 1, as revised April 1, 2016.) For sales of digital assets, this section applies on or after January 1, 2025. For assets that are commodities pursuant to the Commodity Futures Trading Commission's certification procedures described in 17 CFR 40.2, this section applies to sales of such commodities on or after January 1, 2025, without regard to the date such certification procedures were undertaken.

(r) *Cross-references.* For provisions relating to backup withholding for reportable transactions under this section, see § 31.3406(b)(3)–2 of this chapter for rules treating gross proceeds as reportable payments, § 31.3406(d)–1 of this chapter for rules with respect to backup withholding obligations, and § 31.3406(h)–3 of this chapter for the prescribed form for the certification of information required under this section.

■ **Par. 7.** Section 1.6045–4 is amended by:

- 1. Revising the section heading and paragraph (b)(1);
- 2. Removing the period at the end of paragraph (c)(2)(i) and adding a semicolon in its place;
- 3. Removing the word "or" at the end of paragraph (c)(2)(ii);
- 4. Removing the period at the end of paragraph (c)(2)(iii) and adding "; or" in its place;
- 5. Adding paragraph (c)(2)(iv);
- 6. Revising paragraph (d)(2)(ii)(A);
- 7. In paragraphs (e)(3)(iii)(A) and (B), adding the language "or digital asset" after the language "cash", wherever it appears;
- 8. Revising paragraphs (h)(1)(v)(A) and (B);
- 9. Redesignating paragraphs (h)(1)(vii) and (viii) as paragraphs (h)(1)(viii) and (ix), respectively, and adding new paragraph (h)(1)(vii);
- 10. Adding paragraph (h)(2)(iii);

- 11. Revising paragraphs (i)(1) and (2), (i)(3)(ii), and (o);
- 12. In paragraph (r), redesignating *Examples 1* through *9* as paragraphs (r)(1) through (9), respectively;
- 13. In newly designated paragraph (r)(3), removing “section (b)(1)” and adding “paragraph (b)(1)” in its place;
- 14. Removing and reserving newly designated paragraph (r)(5);
- 15. Revising newly designated paragraph (r)(7);
- 16. In newly designated paragraph (r)(8), removing “example (6)” and adding “paragraph (r)(6) of this section (the facts in *Example 6*)” in its place;
- 17. In newly designated paragraph (r)(9), removing “example (8)” and adding “paragraph (r)(8) of this section (the facts in *Example 8*)” in its place;
- 18. Adding paragraph (r)(10); and
- 19. In paragraph (s), adding a sentence to the end of the paragraph.

The revisions and additions read as follows:

**§ 1.6045-4 Information reporting on real estate transactions.**

\* \* \* \* \*

(b) \* \* \*

(1) *In general.* A transaction is a “real estate transaction” under this section if the transaction consists in whole or in part of the sale or exchange of *reportable real estate* (as defined in paragraph (b)(2) of this section) for money, indebtedness, property other than money, or services. The term *sale or exchange* shall include any transaction properly treated as a sale or exchange for Federal income tax purposes, whether or not the transaction is currently taxable. Thus, for example, a sale or exchange of a principal residence is a real estate transaction under this section even though the transferor may be entitled to the special exclusion of gain up to \$250,000 (or \$500,000 in the case of married persons filing jointly) from the sale or exchange of a principal residence provided by section 121 of the Code.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iv) A principal residence (including stock in a cooperative housing corporation) provided the reporting person obtain from the transferor a written certification consistent with guidance that the Secretary has designated or may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). If a residence has more than one owner, a real estate reporting person must either obtain a certification from each owner (whether married or not) or file an

information return and furnish a payee statement for any owner that does not make the certification. The certification must be retained by the reporting person for four years after the year of the sale or exchange of the residence to which the certification applies. A reporting person who relies on a certification made in compliance with this paragraph (c)(2)(iv) will not be liable for penalties under section 6721 of the Code for failure to file an information return, or under section 6722 of the Code for failure to furnish a payee statement to the transferor, unless the reporting person has actual knowledge or reason to know that any assurance is incorrect.

(d) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) The United States or a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa, a political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; or

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(v) \* \* \*

(A) Received (or will, or may, receive) property (other than cash, consideration treated as cash, and digital assets in computing gross proceeds) or services as part of the consideration for the transaction; or

(B) May receive property (other than cash and digital assets) or services in satisfaction of an obligation having a stated principal amount; or

\* \* \* \* \*

(vii) In the case of a payment made to the transferor using digital assets, the name and number of units of the digital asset, the date and time the payment was made, the transaction identification as defined in § 1.6045-1(a)(26) and the digital asset address (or addresses) as defined in § 1.6045-1(a)(20) into which the digital assets are transferred;

\* \* \* \* \*

(2) \* \* \*

(iii) *Digital assets.* For purposes of this section, a digital asset has the meaning set forth in § 1.6045-1(a)(19).

(i) \* \* \*

(1) *In general.* Except as otherwise provided in this paragraph (i), the term *gross proceeds* means the total cash received, including cash received from a digital asset payment processor as described in § 1.6045-1(a)(22)(i), consideration treated as cash received, and the value of any digital asset received by or on behalf of the transferor

in connection with the real estate transaction.

(i) *Consideration treated as cash.* For purposes of this paragraph (i), consideration treated as cash received by or on behalf of the transferor in connection with the real estate transaction includes the following amounts:

(A) The stated principal amount of any obligation to pay cash to or for the benefit of the transferor in the future (including any obligation having a stated principal amount that may be satisfied by the delivery of property (other than cash) or services);

(B) The amount of any liability of the transferor assumed by the transferee as part of the consideration for the transfer or of any liability to which the real estate acquired is subject (whether or not the transferor is personally liable for the debt); and

(C) In the case of a contingent payment transaction, as defined in paragraph (i)(3)(ii) of this section, the maximum determinable proceeds, as defined in paragraph (i)(3)(iii) of this section.

(ii) *Digital assets received.* For purposes of this paragraph (i), the value of any digital asset received means the fair market value in U.S. dollars of the digital asset actually received. Additionally, if the consideration received by the transferor includes an obligation to pay a digital asset to, or for the benefit of, the transferor in the future, the value of any digital asset received includes the fair market value, as of the date and time the obligation is entered into, of the digital assets to be paid as stated principal under such obligation. The fair market value of any digital asset received must be determined based on the valuation rules provided in § 1.6045-1(d)(5)(ii).

(iii) *Other property.* Gross proceeds does not include the value of any property (other than cash, consideration treated as cash, and digital assets) or services received by, or on behalf of, the transferor in connection with the real estate transaction. See paragraph (h)(1)(v) of this section for the information that must be included on the Form 1099 required by this section in cases in which the transferor receives (or will, or may, receive) property (other than cash, consideration treated as cash, and digital assets) or services as part of the consideration for the transfer.

(2) *Treatment of sales commissions and similar expenses.* In computing gross proceeds, the total cash, consideration treated as cash, and digital assets received by or on behalf of the transferor shall not be reduced by expenses borne by the transferor (such

as sales commissions, amounts paid or withheld from consideration received to effect the digital asset transfer as described in § 1.1001-7(b)(2), expenses of advertising the real estate, expenses of preparing the deed, and the cost of legal services in connection with the transfer).

(3) \* \* \*

(ii) *Contingent payment transaction.* For purposes of this section, the term *contingent payment transaction* means a real estate transaction with respect to which the receipt, by or on behalf of the transferor, of cash, consideration treated as cash under paragraph (i)(1)(i)(A) of this section, or digital assets under paragraph (i)(1)(ii) of this section is subject to a contingency.

\* \* \* \* \*

(o) *No separate charge.* A reporting person may not separately charge any person involved in a real estate transaction for complying with any requirements of this section. A reporting person may, however, take into account its cost of complying with such requirements in establishing its fees (other than in charging a separate fee for complying with such requirements) to any customer for performing services in the case of a real estate transaction.

\* \* \* \* \*

(r) \* \* \*

(7) *Example 7: Gross proceeds (contingencies).* The facts are the same as in paragraph (r)(6) of this section (the facts in *Example 6*), except that the agreement does not provide for adequate stated interest. The result is the same as in paragraph (r)(6) (the results in *Example 6*).

\* \* \* \* \*

(10) *Example 10: Gross proceeds (exchange involving digital assets)—(i) Facts.* K, an individual, agrees to pay 140 units of digital asset DE with a fair market value of \$280,000 to J, an unmarried individual who is not an exempt transferor, in exchange for Whiteacre, which has a fair market value of \$280,000. No liabilities are involved in the transaction. P is the reporting person with respect to both sides of the transaction.

(ii) *Analysis.* With respect to the payment by K of 140 units of digital asset DE to J, P must report gross proceeds received by J of \$280,000 (140 units of DE). Additionally, to the extent K is not an exempt recipient under § 1.6045-1(c) or an exempt foreign person under § 1.6045-1(g), P is required to report gross proceeds paid to K, with respect to K’s sale of 140 units of digital asset DE, in the amount of \$280,000 pursuant to § 1.6045-1.

(s) \* \* \* The amendments to paragraphs (b)(1), (c)(2)(iv), (d)(2)(ii), (e)(3)(iii), (h)(1)(v) through (ix), (h)(2)(iii), (i)(1) and (2), (i)(3)(ii), (o), and (r) of this section apply to real estate transactions with dates of closing occurring on or after January 1, 2025.

■ **Par. 8.** Section 1.6045A-1 is amended by:

- 1. In paragraph (a)(1)(i), removing the language “paragraphs (a)(1)(ii) through (v) of this section,” and adding the language “paragraphs (a)(1)(ii) through (vi) of this section,” in its place; and
- 2. Adding paragraph (a)(1)(vi).

The addition reads as follows:

**§ 1.6045A-1 Statements of information required in connection with transfers of securities.**

(a) \* \* \*

(1) \* \* \*

(vi) *Exception for transfers of specified securities that are digital assets.* No transfer statement required under paragraph (a)(1)(i) of this section is required with respect to a specified security that is also a digital asset as defined in § 1.6045-1(a)(19). A transferor that chooses to provide a transfer statement reporting some or all of the information described in paragraph (b) of this section is not subject to penalties under section 6722 of the Code for failure to report this information correctly.

\* \* \* \* \*

■ **Par. 9.** Section 1.6045B-1 is amended by revising paragraph (a)(1) introductory text and adding paragraph (a)(6) to read as follows:

**§ 1.6045B-1 Returns relating to actions affecting basis of securities.**

(a) \* \* \*

(1) \* \* \* Except as provided in paragraphs (a)(3) through (6) of this section, an issuer of a specified security within the meaning of § 1.6045-1(a)(14)(i) through (iv) that takes an organizational action that affects the basis of the security must file an issuer return setting forth the following information and any other information specified in the return form and instructions:

\* \* \* \* \*

(6) *Exception for specified securities that are digital assets.* No reporting is required under this paragraph (a) with respect to a specified security that is also a digital asset as defined in § 1.6045-1(a)(19). An issuer that chooses to provide the reporting and furnish statements described in this section is not subject to penalties under section 6721 or 6722 of the Code for

failure to report this information correctly.

\* \* \* \* \*

■ **Par. 10.** Section 1.6050W-1 is amended by:

- 1. Adding a sentence to the end of paragraph (a)(2);
- 2. Adding paragraph (c)(5); and
- 3. Revising paragraph (j).

The additions and revision read as follows:

**§ 1.6050W-1 Information reporting for payments made in settlement of payment card and third party network transactions.**

(a) \* \* \*

(2) \* \* \* In the case of a third party settlement organization that has the contractual obligation to make payments to participating payees, a payment in settlement of a reportable payment transaction includes the submission of instructions to a purchaser to transfer funds directly to the account of the participating payee for purposes of settling the reportable payment transaction.

\* \* \* \* \*

(c) \* \* \*

(5) *Coordination with information returns required under section 6045 of the Code—(i) Reporting on exchanges involving digital assets.*

Notwithstanding the provisions of paragraph (c) of this section, the reporting of a payment made in settlement of a third party network transaction in which the payment by a payor is made using digital assets as defined in § 1.6045-1(a)(19) or the goods or services provided by a payee are digital assets must be as follows:

(A) *Reporting on payors with respect to payments made using digital assets.* If a payor makes a payment using digital assets and the exchange of the payor’s digital assets for goods or services is a sale of digital assets by the payor under § 1.6045-1(a)(9)(ii), the amount paid to the payor in settlement of that exchange is subject to the rules as described in § 1.6045-1 (including any exemption from reporting under § 1.6045-1) and not this section.

(B) *Reporting on payees with respect to the sale of goods or services that are digital assets.* If the goods or services provided by a payee in an exchange are digital assets and the exchange is a sale of digital assets by the payee under § 1.6045-1(a)(9)(ii), the amount paid to the payee in settlement of that exchange is subject to the rules as described in § 1.6045-1 (including any exemption from reporting under § 1.6045-1) and not this section.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (c)(5) of this section.

(A) *Example 1—(1) Facts.* CRX is a “shared-service” organization that performs accounts payable services for numerous purchasers that are unrelated to CRX. A substantial number of sellers of goods and services, including Seller S, have established accounts with CRX and have agreed to accept payment from CRX in settlement of their transactions with purchasers. The agreement between sellers and CRX includes standards and mechanisms for settling the transactions and guarantees payment to the sellers, and the arrangement enables purchasers to transfer funds to providers. Pursuant to this seller agreement, CRX accepts cash from purchasers as payment as well as digital assets, which it exchanges into cash for payment to sellers. P, an individual not otherwise exempt from reporting, purchases one month of services from S through CRX’s organization. S is also an individual not otherwise exempt from reporting. S’s services are not digital assets under § 1.6045–1(a)(19). To effect this transaction, P transfers 100 units of DE, a digital asset as defined in § 1.6045–1(a)(19), to CRX. CRX, in turn, exchanges the 100 units of DE for \$1,000, based on the fair market value of the DE units, and pays \$1,000 to S.

(2) *Analysis with respect to CRX’s status.* CRX’s arrangement constitutes a third party payment network under paragraph (c)(3) of this section because a substantial number of persons that are unrelated to CRX, including S, have established accounts with CRX, and CRX is contractually obligated to settle transactions for the provision of goods or services by these persons to purchasers, including P. Thus, under paragraph (c)(2) of this section, CRX is a third party settlement organization and the transaction involving P’s purchase of S’s services using 100 units of digital asset DE is a third party network transaction under paragraph (c)(1) of this section. Additionally, CRX is a digital asset payment processor as defined in § 1.6045–1(a)(22) and, therefore, a broker under § 1.6045–1(a)(1).

(3) *Analysis with respect to the reporting on P.* Because CRX is a digital asset payment processor under § 1.6045–1(a)(22), P’s payment of 100 units of DE to CRX in exchange for CRX’s payment of \$1,000 to S is a sale of the DE units as defined in § 1.6045–1(a)(9)(ii)(D). Accordingly, pursuant to the rules under paragraph (c)(5)(i)(A) of this section, CRX must file an information return under § 1.6045–1 with respect to P’s sale of the DE units. CRX is not required to file an

information return under paragraph (a)(1) of this section with respect to P.

(4) *Analysis with respect to the reporting on S.* S’s services are not digital assets as defined in § 1.6045–1(a)(19). Accordingly, pursuant to the rules under paragraph (c)(5)(i)(B) of this section, CRX’s payment of \$1,000 to S in settlement of the reportable payment transaction is subject to the reporting rules under paragraph (a)(1) of this section and not the reporting rules as described in § 1.6045–1.

(B) *Example 2—(1) Facts.* The facts are the same as in paragraph (c)(5)(ii)(A)(1) of this section (the facts in *Example 1*) except that S’s agreement with CRX provides that S will also accept digital assets, including digital asset DE, as payment for S’s services. To process P’s payment for the purchase of one month of services from S, CRX instructs P to transfer 100 units of DE directly to S’s account.

(2) *Analysis.* CRX’s instruction to P to transfer the 100 units of DE directly to S’s account constitutes the making of a payment in settlement of the reportable payment transaction under paragraph (c)(2) of this section. The payment is also a sale of the DE units under § 1.6045–1(a)(9)(ii)(D). Accordingly, the reporting set forth in paragraph (c)(5)(ii)(A)(2) of this section (the analysis in *Example 1*) remains applicable under these facts.

(C) *Example 3—(1) Facts.* CRX is an entity that owns and operates a digital asset trading platform and provides digital asset broker services under § 1.6045–1(a)(1). CRX takes custody of and exchanges, on behalf of customers, digital assets under § 1.6045–1(a)(19), including non-fungible tokens, referred to as NFTs, representing ownership in unique digital artwork, video, or music. Exchange transactions undertaken by CRX on behalf of its customers are considered sales under § 1.6045–1(a)(9)(ii) that are effected by CRX and subject to reporting by CRX under § 1.6045–1. A substantial number of NFT sellers have accounts with CRX, into which their NFTs are deposited for sale. None of these sellers are related to CRX, and all have agreed to settle transactions for the sale of their NFTs in digital asset DE, or other forms of consideration, and according to the terms of their contracts with CRX. Buyers of NFTs also have accounts with CRX, into which digital assets are deposited for later use as consideration to acquire NFTs. Once a buyer decides to purchase an NFT for a price agreed to by the NFT seller, CRX effects the requested exchange of the buyer’s consideration for the NFT, which allows CRX to guarantee delivery of the

bargained for consideration to both buyer and seller. CRX charges a transaction fee on every NFT sale, which is paid by the buyer in additional units of digital asset DE. Seller J, an individual not otherwise exempt from reporting, sells NFTs representing artwork on CRX’s digital asset trading platform. J does not perform any other services with respect to these transactions. Buyer B, also an individual not otherwise exempt from reporting, seeks to purchase J’s NFT–4 using units of DE. Using CRX’s platform, buyer B and seller J agree to exchange J’s NFT–4 for B’s 100 units of DE (with a value of \$1,000). At the direction of J and B, CRX executes this exchange, with B paying CRX’s transaction fee using additional units of DE.

(2) *Analysis with respect to CRX’s status.* CRX’s arrangement with J and the other NFT sellers constitutes a third party payment network under paragraph (c)(3) of this section because a substantial number of providers of goods or services who are unrelated to CRX, including J, have established accounts with CRX, and CRX is contractually obligated to settle transactions for the provision of goods or services, such as NFTs, by these persons to purchasers. Thus, under paragraph (c)(2) of this section, CRX is a third party settlement organization and the sale of J’s NFT–4 for 100 units of DE is a third party network transaction under paragraph (c)(1) of this section. Therefore, CRX is a payment settlement entity under paragraph (a)(4)(i)(B) of this section.

(3) *Analysis with respect to the reporting on B.* The exchange of B’s 100 units of DE for J’s NFT–4 is a sale under § 1.6045–1(a)(9)(ii)(A)(2) by B of the 100 DE units. Accordingly, under paragraph (c)(5)(i)(A) of this section, the amount paid to B in settlement of the exchange is subject to the rules as described in § 1.6045–1, and CRX must file an information return under § 1.6045–1 with respect to B’s sale of the 100 DE units. CRX is not required to also file an information return under paragraph (a)(1) of this section with respect to the amount paid to B even though CRX is a third party settlement organization.

(4) *Analysis with respect to the reporting on J.* The exchange of J’s NFT–4 for 100 units of DE is a sale under § 1.6045–1(a)(9)(ii) by J of a digital asset under § 1.6045–1(a)(19). Accordingly, under paragraph (c)(5)(i)(B) of this section, the amount paid to J in settlement of the exchange is subject to the rules as described in § 1.6045–1, and CRX must file an information return under § 1.6045–1 with respect to J’s sale of the NFT–4. CRX is not required to

also file an information return under paragraph (a)(1) of this section with respect to the amount paid to J even though CRX is a third party settlement organization.

\* \* \* \* \*

(j) *Applicability date.* Except with respect to payments made using digital assets, the rules in this section apply to returns for calendar years beginning after December 31, 2010. For payments made using digital assets, this section applies on or after January 1, 2025.

**PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE**

■ **Par. 11.** The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

\* \* \* \* \*

■ **Par. 12.** Section 31.3406(b)(3)–2 is amended by revising the section heading to read as follows:

**§ 31.3406(b)(3)–2 Reportable barter exchanges and gross proceeds of sales of securities, commodities, or digital assets by brokers.**

\* \* \* \* \*

■ **Par. 13.** Section 31.3406(g)–1 is amended by revising paragraphs (e) and (f) to read as follows:

**§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.**

\* \* \* \* \*

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.* For reportable payments made after June 30, 2014, other than gross proceeds from sales of digital assets (as defined in § 1.6045–1(a)(19) of this chapter), a payor or broker is not required to backup withhold under section 3406 of the Code on a reportable payment that is paid and received outside the United States (as defined in § 1.6049–4(f)(16) of this chapter) with respect to an offshore obligation (as defined in § 1.6049–5(c)(1) of this chapter) or on the gross proceeds from a sale effected at an office outside the United States as described in § 1.6045–1(g)(3)(iii) of this chapter (without regard to whether the sale is considered effected inside the United States under § 1.6045–1(g)(3)(iii)(B) of this chapter). For a reportable payment made on or after January 1, 2025, from a sale of a digital asset, a payor or broker is not required to backup withhold under section 3406 on a sale of a digital asset that is either effected by a CFC digital asset broker (as defined in § 1.6045–1(g)(4)(i)(B) of this chapter) that is not conducting activities as a

money services business (as described in § 1.6045–1(g)(4)(i)(D) of this chapter) with respect to the sale or by a non-U.S. digital asset broker (as defined in § 1.6045–1(g)(4)(i)(C) of this chapter) that is not conducting activities as a money services business with respect to the sale. The exceptions to backup withholding described in the preceding two sentences of this paragraph (e) do not apply when a payor or broker has actual knowledge that the payee is a United States person. Further, no backup withholding is required on a reportable payment of an amount already withheld upon by a participating FFI (as defined in § 1.1471–1(b)(91) of this chapter) or another payor in accordance with the withholding provisions under chapter 3 or 4 of the Code and the regulations under those chapters even if the payee is a known U.S. person. For example, a participating FFI is not required to backup withhold on a reportable payment allocable to its chapter 4 withholding rate pool (as defined in § 1.6049–4(f)(5) of this chapter) of recalcitrant account holders (as described in § 1.6049–4(f)(11) of this chapter), if withholding was applied to the payment (either by the participating FFI or another payor) pursuant to § 1.1471–4(b) or § 1.1471–2(a) of this chapter. For rules applicable to notional principal contracts, see § 1.6041–1(d)(5) of this chapter. For rules applicable to reportable payments made before July 1, 2014, see § 31.3406(g)–1(e) in effect and contained in 26 CFR part 1 revised April 1, 2013.

(f) *Applicability date.* Except with respect to sales of digital assets, this section applies on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see § 31.3406(g)–1 in effect and contained in 26 CFR part 1 revised April 1, 2016.) For sales of digital assets, this section applies on or after January 1, 2025.

■ **Par. 14.** Section 31.3406(g)–2 is amended by adding a sentence to the end of paragraphs (e) and (h) to read as follows:

**§ 31.3406(g)–2 Exception for reportable payment for which withholding is otherwise required.**

\* \* \* \* \*

(e) \* \* \* Notwithstanding the previous sentence, a real estate reporting person must withhold under section 3406 of the Code and pursuant to the rules under § 31.3406(b)(3)–2 on a reportable payment made in a real estate transaction with respect to a purchaser that exchanges digital assets for real estate to the extent that the exchange is treated as a sale of digital

assets subject to reporting under § 1.6045–1 of this chapter.

\* \* \* \* \*

(h) \* \* \* For sales of digital assets, this section applies on or after January 1, 2025.

**PART 301—PROCEDURE AND ADMINISTRATION**

■ **Par. 15.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

\* \* \* \* \*

■ **Par. 16.** Section 301.6721–1 is amended by revising paragraph (g)(3)(iii) and adding a sentence to the end of paragraph (h) to read as follows:

**§ 301.6721–1 Failure to file correct information returns.**

\* \* \* \* \*

(g) \* \* \*

(3) \* \* \*

(iii) Section 6045(a) or (d) (relating to returns of brokers, generally reported on Form 1099–B, “Proceeds From Broker and Barter Exchange Transactions,” for broker transactions not involving digital assets; the form prescribed by the Secretary pursuant to § 1.6045–1(d)(2)(i)(B) of this chapter for broker transactions involving digital assets; Form 1099–S, “Proceeds From Real Estate Transactions,” for gross proceeds from the sale or exchange of real estate; and Form 1099–MISC, “Miscellaneous Income,” for certain substitute payments and payments to attorneys);

\* \* \* \* \*

(h) \* \* \* Paragraph (g)(3)(iii) of this section applies to returns required to be filed on or after January 1, 2026.

■ **Par. 17.** Section 301.6722–1 is amended by revising paragraphs (d)(2)(viii) and (e) to read as follows:

**§ 301.6722–1 Failure to furnish correct payee statements.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(viii) Section 6045(a) or (d) (relating to returns of brokers, generally reported on Form 1099–B, “Proceeds From Broker and Barter Exchange Transactions,” for broker transactions not involving digital assets; the form prescribed by the Secretary pursuant to § 1.6045–1(d)(2)(i)(B) of this chapter for broker transactions involving digital assets; Form 1099–S, “Proceeds From Real Estate Transactions,” for gross proceeds from the sale or exchange of real estate; and Form 1099–MISC, “Miscellaneous Income,” for certain substitute payments and payments to attorneys);

\* \* \* \* \*

(e) *Applicability date.* The reference in paragraph (d)(3) of this section to Form 8805 shall apply to partnership taxable years beginning after April 29,

2008. Paragraph (d)(2)(viii) of this section applies to payee statements

required to be furnished on or after January 1, 2026.

**Douglas W. O'Donnell,**  
*Deputy Commissioner for Services and Enforcement.*

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